The First Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 22 December 2015 in respect of findings. The appeal was heard by Mr Justice Garnham on 28 April 2016 with Judgment handed down on 18 May 2016. The appeal was dismissed. Richard Barnett v Solicitors Regulation Authority [2016] EWHC 1160 (Admin.)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11249-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

RICHARD ANTHONY BARNETT — First Respondent

[*SECOND RESPONDENT*] — Second Respondent
[Name Redacted]

Before:

Mr J. C. Chesterton (in the Chair)
Ms A.E. Banks
Mrs N. Chavda

Date of Hearing: 29 June-20 July 2015

Appearances

Timothy Dutton QC of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH (instructed by Paolo Sidoli of Russell Cooke LLP) for the Applicant.

Timothy Nesbitt, Counsel, of Outer Temple Chambers, The Outer Temple, 222 Strand, London, WC2R 1BA for the First Respondent.

Gary Christianson, Solicitor, of Malt House, Strefford, Craven Arms, Shropshire, SY7 8DE for the Second Respondent.

JUDGMENT

INDEX

Allegations

First Respondent

1. The allegations against the First Respondent were that he:

1.1 Caused or permitted Barnetts Solicitors ("the Firm") to accept, and use, monies received from an investment fund totalling £4,861,399.33, in the amounts of £197,600[1], £40,768, £100,848, £96,264, £496,600, £859,054.33, £2,296,775, £705,000, and £68,490 in circumstances where it was improper for the First Respondent to do so for the following reasons (and each of them):

1.1.1 He knew that the Firm had not complied with the terms of a Litigation Funding Agreement ("LFA"), pursuant to which the monies were purportedly advanced, intended to protect the interests of the investment fund and of the ultimate investors[2] in the investment fund;

1.1.2 He knew that the LFA pursuant to which the monies were purportedly advanced did not reflect the purpose for which the Firm intended to use and/or in fact used the monies, and that the intended and actual use of the monies was not properly documented by the First Respondent;

1.1.3 He had no intention that the Firm would repay the monies within the time required by the LFA and/or knew or was reckless as to the fact that payment was very unlikely;

1.1.4 He misused the funds received by failing to apply them only towards "Eligible Legal Expenses", as defined in and required by the LFA;

1.1.5 Despite being on notice of the serious risk that the investment fund's investment manager, in arranging for the monies to be paid to the Firm, was acting fraudulently, or committing some other serious breach of duty, towards the investment fund and/or the ultimate investors, he failed to carry out any or sufficient enquiries reasonably to satisfy himself that the payments did not involve any such conduct by the investment manager;

1.1.6 He unreasonably risked the Firm being a party to transactions in fraud of the investment fund and/or of the ultimate investors, or which involved other serious breach of duty by the investment manager towards them (or one of them); and

1.1.7 In all the circumstances, as the First Respondent well knew, the transactions pursuant to which the monies were received were dubious, and the monies should not have been accepted or used.

The First Respondent thereby acted without integrity, in breach of Principle 2 of the SRA Principles 2011 ("the Principles"), and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services, in breach of Principle 6.

---

[1] The amounts stated in the allegations take no account of Barnetts' liability to pay the Facilitation Fee

[2] The investors invested via a "feeder fund", which invested in the investment fund that made the loans, as explained in more detail below

1.2 (a) Caused or permitted representations to be made to the investment fund as prospective funder, for the purpose of persuading it to provide funds to the Firm, to the effect that the Firm expected to receive £2 million of income, (b) caused or permitted that income to be recognised in the Firm's management accounts contained in a draft due diligence report produced by Baker Tilly ("BT"), and (c) gave an undertaking to the investment fund's investment manager that the sums received of £197,600 and £40,768 would be repaid from this income when it was received, in circumstances where he had reason to suspect, and/or in fact suspected, that:

1.2.1 the income related to a fraudulent or bogus transaction, and/or

1.2.2 the Firm was very unlikely to receive the income.

The First Respondent thereby acted without integrity, in breach of Principle 2 of the Principles, and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services, in breach of Principle 6.

1.3 Failed to pay the monies identified in allegation 1.1 into client account or, if he wrongly but honestly believed that it was office money, failed to open an office account whose sole purpose was to hold the monies pending their use for an authorised purpose, and failed to keep adequate records of how the monies were spent, contrary to Principles 2, 6, 8 and 10 of the Principles and to Rules 1.2(a), 1.2(b) and 14.1 of the SRA Accounts' Rules 2011 ("SAR");

1.4 Misappropriated or caused or permitted the misappropriation of £643,054.33 (or thereabouts) of the payment of £859,054.33. The First Respondent thereby acted without integrity in breach of Principle 2 of the Principles, and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services in breach of Principle 6;

1.5 Acted for a client in circumstances where there was a conflict, or significant risk of conflict, between (i) his own interests and (ii) the interests of his client, contrary to Principles 2 and 3 of the Principles and Outcome 3.4 of the SRA Code of Conduct 2011 ("the Code");

1.6 Acted for two clients where there was a conflict, or a significant risk of conflict, between the interests of those clients, contrary to Principles 2 and 3 of the Principles and Outcome 3.5 of the Code;

1.7 In the alternative to allegation 1.6, took instructions from and/or acted on instructions from the representative of a client without keeping the client appropriately informed, in circumstances where there was a conflict, or a significant risk of conflict, between the interests of the representative and the client, contrary to Principles 2 and 3 of the Principles;

1.8 Failed to act in the best interests of his client, contrary to Principles 2, 4 and 5 of the Principles and Outcomes 1.1 and 1.2 of the Code;

1.9 Assisted the conduct of the investment manager despite being on notice of the serious risk that the investment manager was acting fraudulently, or committing some other serious breach of duty, towards the investment fund and the ultimate investors. The First Respondent thereby acted without integrity, in breach of Principle 2 of the Principles, and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services in breach of Principle 6;

1.10 In furtherance of his own interests and/or those of WE Solicitors (and not those of his client), the First Respondent encouraged Mr David Wingate of WE Solicitors LLP to change information required by the investment manager and/or investment fund as to the ability of WE Solicitors LLP to continue without further funding. The First Respondent thereby acted contrary to the interests of his client and without integrity in breach of Principles 2 and 4 of the Principles, and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services in breach of Principle 6;

1.11 Provided false and/or misleading and/or incomplete information to professional indemnity insurers in respect of the renewal of the Firm's professional indemnity insurers and/or suppressed material facts. The First Respondent thereby acted without integrity in breach of Principle 2 of the Principles, and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services in breach of Principle 6;

1.12 Gave false and/or misleading information and failed to cooperate with the SRA, contrary to Principles 2 and 7 of the Principles and Outcome 10.6 of the Code;

1.13 The Applicant alleged that the First Respondent acted dishonestly in relation to the allegations. Further or alternatively he acted recklessly. The allegations do not, however, depend on the Tribunal making a finding of dishonesty or recklessness.

Second Respondent

2. The allegations against the Second Respondent were that he:

2.1 Caused or permitted the Firm to accept, and use, monies received from an investment fund totalling £4,861,399.33 in the amounts of £197,600[3], £40,768, £100,848, £96,264, £496,600, £859,054.33, £2,296,775, £705,000, and £68,490 in circumstances where it was improper for the Second Respondent to do so for the following reasons (and each of them):

2.1.1 He knew that the Firm had not complied with the terms of a Litigation Funding Agreement ("LFA"), pursuant to which the monies were purportedly advanced, intended to protect the interests of the investment fund and of the ultimate investors[4] in the investment fund;

2.1.2 He knew that the LFA pursuant to which the monies were purportedly advanced did not reflect the purpose for which the Firm intended to use and/or in fact used the

[3] See footnote 1.
[4] See footnote 2.

monies, and that the intended and actual use of the monies was not properly documented by the Second Respondent;

2.1.3 He had no intention that the Firm would repay the monies within the time required by the LFA and/or knew or was reckless as to the fact that repayment was extremely unlikely;

2.1.4 He misused the funds received by failing to apply them only towards "Eligible Legal Expenses", as defined in and required by the LFA;

2.1.5 Despite being on notice of the serious risk that the investment fund's investment manager, in arranging for the monies to be paid to the Firm, was acting fraudulently, or committing some other serious breach of duty, towards the investment fund and/or the ultimate investors, he failed to carry out any or sufficient enquiries reasonably to satisfy himself that the payments did not involve any such conduct by the investment manager;

2.1.6 He unreasonably risked the Firm being a party to transactions that were made in fraud of the investment fund and/or of the ultimate investors, or involved other serious breach of duty by the investment manager towards them (or one of them); and

2.1.7 In all the circumstances, as the Second Respondent well knew, the transactions pursuant to which the monies were received were dubious, and the monies should not have been accepted or used.

The Second Respondent thereby acted without integrity, in breach of Principle 2 of the Principles, and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services, in breach of Principle 6.

2.2 Failed to pay the monies identified in allegation 2.1 into the client account or, if he wrongly but honestly believed that it was office money, failed to open an office account whose sole purpose was to hold the monies pending their use for an authorised purpose, and failed to keep adequate records of how the monies were spent, contrary to Principles 2, 6, 8 and 10 of the Principles and to Rules 1.2 (a), 1.2 (b) and 14.1 of the SAR;

2.3 Misappropriated or caused or permitted the misappropriation of £643,054.33 (or thereabouts) of the payment of £859,054.33. The Second Respondent thereby acted without integrity, in breach of Principle 2 of the Principles, and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services in breach of Principle 6;

2.4 Acted for a client in circumstances where there was a conflict, or significant risk of conflict, between (i) his own interests and (ii) the interests of his client, contrary to Principles 2 and 3 of the Principles and Outcome 3.4 of the Code;

2.5 Acted for two clients where there was a conflict, or a significant risk of conflict, between the interests of those clients, contrary to Principles 2 and 3 of the Principles and Outcome 3.5 of the Code;

2.6 In the alternative to allegation 2.5, the Second Respondent took instructions and/or acted on instructions from the representative of the client without keeping the client appropriately informed, in circumstances where there was a conflict, or a significant risk of conflict, between the interests of the representative and the client, contrary to Principles 2 and 3 of the Principles;

2.7 The Second Respondent failed to act in the best interests of his client, contrary to Principles 2, 4 and 5 of the Principles and Outcomes 1.1 and 1.2 of the Code;

2.8 Assisted the conduct of the investment manager despite being on notice of the serious risk that the investment manager was acting fraudulently, or committing some other serious breach of duty, towards the investment fund and the ultimate investors. The Second Respondent thereby acted without integrity, in breach of Principle 2 of the Principles, and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services in breach of Principle 6;

2.9 Permitted the First Respondent to provide false and/or misleading and/or incomplete information to professional indemnity insurers in respect of the renewal of the Firm's professional indemnity insurance, and/or to suppress material facts. The Second Respondent thereby acted without integrity in breach of Principle 2 of the Principles, and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services in breach of Principle 6;

2.10 The Applicant alleges that the Second Respondent acted dishonestly in relation to the allegations. Further or alternatively he acted recklessly. The allegations do not, however, depend on the Tribunal making a finding of dishonesty or recklessness.

Documents

3. The Tribunal reviewed all the documents submitted by the Applicant and the Respondents, which included:

- Applicant's Chronology (versions 1-3);
- Volume 1 - Application and Rule 5 Statement dated 27 May 2014 and Exhibit "PAS1" (part only); First Respondent's Answer dated 25 June 2014; Answer of the Second Respondent dated 30 June 2014; Applicant's Skeleton Argument dated 22 June 2015; Skeleton Argument on behalf of the First Respondent dated 22 June 2015; Skeleton of the Second Respondent dated 22 June 2015;
- Volumes 2 to 6 – Documents from Rule 5 Statement Exhibits "PAS1" and "PAS2" in chronological order;
- Volumes 7 to 10 – Rule 5 Statement Exhibit "PAS2"
- Volumes 11 and 12 – Witness Statements;
- Volume 13 – Correspondence File;
- Volumes 14 and 14a – Costs Submissions;
- Closing Written Argument of the Applicant, the First and the Second Respondents, all dated 16 July 2015;
- Bundle of Authorities;
- Daily Transcripts of Hearing.

Factual Background

4. The First Respondent was admitted as a solicitor in 1974. At all material times he was the Firm's Senior Partner holding 98% of the equity. The Second Respondent was admitted as a solicitor in 1983. At all material times he was a Partner of the Firm holding 2% of the equity.

5. It was alleged by the Applicant that the Respondents were on notice of the serious risk that the investment fund's investment manager was acting fraudulently or committing some other serious breach of duty towards the investment fund and the ultimate investors. The Applicant did not seek to establish that the investment manager was in fact acting fraudulently or committing other serious wrongdoing, since that did not need to be established in these proceedings for the purpose of addressing the Respondents' alleged conduct.

The Axiom Funds

6. At all material times:

6.1 JP SPC 1 was a segregated portfolio company incorporated in the Cayman Islands comprising various sub-funds, known as "segregated portfolios", incorporated in 2007;

6.2 Axiom Legal Financing Fund, Segregated Portfolio ("the Fund") was a segregated portfolio of JP SPC 1;

6.3 JP SPC 4 was another segregated portfolio company incorporated in the Cayman Islands;

6.4 Axiom Legal Financing Funding Master, Segregated Portfolio ("the Fund Master") was a segregated portfolio of JP SPC 4;

6.5 The Fund owned shares in, and was the feeder fund for, the Fund Master; and

6.6 Tangerine Investment Management Ltd ("Tangerine") was the investment manager of the Fund and of the Fund Master.

The expression "the Funds", where used in this Judgment, refers to both the Fund and the Fund Master.

7. The Fund was promoted to investors as a feeder fund that invested in the Fund Master, which would provide funding to UK law firms to finance the conduct of legal cases. By 2012, investors had invested over £100 million in the Fund.

8. The Applicant understood that the basis on which investors invested in the Fund was set out in Offering and Supplemental Offering Memoranda. One Offering Memorandum was dated June 2009, and there were Supplemental Offering Memoranda were dated August 2010, January 2012 and September 2012. The expression "the SOM" (with a date as applicable) when used in this Judgment refers collectively and individually to these Memoranda.

9. The terms on which Tangerine acted as investment manager for the Funds were set out in an investment management agreement ("IMA") dated 25 May 2009 between JP SPC 1 for the Fund, JP SPC 4 for the Fund Master and The Synergy Solution Ltd ("Synergy") (the previous investment manager). Tangerine later became a party to the agreement, as investment manager, in place of Synergy.

10. From August 2012 onwards articles appeared on an Internet site "Offshore Alert" and other websites accusing a Mr Schools ("TS") (who established the Funds) and Tangerine of fraud, and alleging that the Funds were a fraudulent scheme. On 26 October 2012, the directors of the Funds suspended both the calculation of net asset values for participating shares and share redemptions with effect from 30 September 2012. On 12 February 2013, Grant Thornton ("GT") was appointed as the Funds' receivers. On 26 February 2013, the receivers' solicitors sent a letter to the Firm demanding repayment of monies provided to it, on the grounds that the monies had not been used in accordance with the terms of the LFA (as defined below), which constituted an event of default. On 21 May 2013, the receivers commenced civil proceedings against various people associated with Tangerine and others seeking damages of over £100 million on various grounds including fraud, conspiracy, breach of fiduciary duty and breach of contract. The Funds remain in receivership.

The Firm's Application For Funding From The Fund Master

11. The Firm was in financial difficulty by 2012. The Firm's bankers were Royal Bank of Scotland ("RBS"). They had lent £1.7 million to the Firm secured by "all monies" charges over the Respondents' personal assets. RBS declined to provide additional significant funding.

12. On or about 17 February 2012, the Firm completed the application form for a facility of £250,000 for the stated purpose of funding 15,000 "sale and purchase and remortgage cases" from the Fund Master, and submitted the same to Tangerine.

13. Baker Tilly ("BT") prepared a draft financial due diligence report on the Firm dated 17 April 2012, based on information provided by the Firm. This was to enable the Firm's application to be assessed by Check Mate Audits Limited ("Check Mate") on behalf of the Fund Master. A draft of the report was sent to Tangerine. It was apparent from the report that the Firm's financial condition was very poor, and in particular that:

13.1 The Firm had suffered from the collapse of the property market, with turnover falling;

13.2 In the financial year to April 2012, the Firm had made a trading loss, which was said to be offset by £2 million of "exceptional income" relating to a fee for work said to have been done by the First Respondent in arranging a "warehouse line of credit" of £100 million for a client through a man referred to in this Judgment as VM, receipt of which was said to be expected in June 2012, but for which BT had not seen any evidence;

13.3 If the £2 million "exceptional income" was not included, the Firm was loss-making in 2012;

13.4 If the Firm did not receive the "exceptional income", BT doubted that a £250,000 loan from the Fund Master would be sufficient to alleviate the Firm's cash flow pressures;

13.5 The Firm was operating at the limits of its current facilities, was heavily indebted and had already borrowed money to pay its VAT; and

13.6 The weakness of the Firm's financial position was such that its ability to survive was in serious doubt.

The Litigation Funding Agreement

14. On 19 April 2012, the Respondents (on behalf of the Firm) each signed an agreement entitled "Precedent Litigation Funding Agreement for proceedings instituted in England and Wales" otherwise known as the LFA in this Judgment. On 10 May 2012, a director of Tangerine signed the LFA on behalf of the Fund Master. The Respondents read the terms of the LFA at about the time they signed it, and again in May/June 2012 when they were engaged in re-drafting and amending the standard LFA.

15. Under the LFA, the Fund Master agreed to make available to the Firm a revolving loan facility in an aggregate amount stated in the agreement to be £5 million (although the First Respondent said that he believed that £10 million had been agreed).

16. The LFA contained terms restricting and controlling the use of sums provided, with the apparent purpose of reducing the risk that money provided by the Fund Master to the Firm would not be repaid, thus protecting the interests of the Fund Master and its ultimate investors, namely investors in the Fund.

16.1 Monies provided could be used only for two specific purposes (clause 2 of the LFA), which were:

- to fund "Eligible Legal Expenses", as defined in clause 1.1, essentially disbursements in respect of a claim evidenced by an invoice (the use of the loan to fund the Firm's own costs was specifically excluded); and

- to fund the insurance premium relating to the Financial Guarantee Insurance ("FGI").

16.2 Monies received were effectively required to be paid into a client account, since their purpose was to fund individual client's claims, not the Firm generally (clause 4.2(a)(iii)).

16.3 The Firm could not draw funds unless Tangerine had received from the Firm all of the documents and other evidence listed in Part A of Schedule 1 (clause 3.1), which included:

- Various documents concerning the Firm's constitution and its ability to enter into the agreement;

- Written confirmation from the Fund Master's insurers that the Fund Master was or would be included as a co-insured under the FGI policy;

- The executed fixed charge granted by the Firm over the collection account into which the Firm was required, pursuant to clause 7.6(a)(iii), to pay the proceeds of the amounts due under invoices relating to the Eligible Legal Expenses.

16.4 It was a further condition precedent for each provision of funding that the Firm provide Tangerine with details of the relevant Legal Expenses for which the money was requested and all related invoices, and that Tangerine confirm that it was satisfied that the Legal Expenses were Eligible Legal Expenses (clause 3.2 and Part B of Schedule 1).

16.5 As further conditions precedent for the first provision of funding in respect of each claim (clause 3.3 and Part C of Schedule 1), the Firm was required to provide Tangerine with certain documents, including:

- a copy of any conditional fee agreement for the claimant;

- a copy of the Legal Funding Facility Application Form for the claimant;

- a copy of the written advice regarding the claimant's prospects of success in its claim or related proceedings;

- a copy of Legal Expenses Insurance in relation to the claimant and claim.

16.6 The Utilisation Request for each drawdown had to satisfy certain requirements (clause 4), including that:

- it should specify the client account which the proceeds were to be credited;

- in the case of Eligible Legal Expenses, copies of the relevant invoices should be attached; and

- the Firm was required to take out what was described as FGI to cover amounts outstanding under the LFA and procure the inclusion of the Fund Master as co-insured (clauses 5 and 12.3).

17. The Firm was required to repay the facility in full on 19 April 2013 (clauses 1 and 6).

18. The applicability of the terms of the LFA to the monies provided by the Fund Master to the Firm was reinforced in two ways:

- There was an entire agreement clause, which made it clear that the written terms of the LFA superseded any prior arrangement, agreement or representation (clause 22);

- A non-disclosure agreement between the Firm and Tangerine dated on or about 8 February 2012 stated that "information made available … in the course of or for

the purpose of negotiations relating to funding arrangements will not form the basis of any contract which will be constituted solely by the final agreement(s) to be entered into".

The Facilitation Fee ("FF")

19. There was evidence that suggested that at all material times the Respondents were aware that the investment manager would receive a payment of 50% of sums provided by the Fund Master to the Firm, as a so-called "Facilitation Fee" ("FF"), and that the amount of the FF would be paid from the Fund Master's funds and added to the debt due from the Firm to the Fund Master under the LFA.

20. The intention of the LFA appeared to be that the Firm should repay the Fund Master a sum equal to the FF when the loans were due to be repaid, although this was unclear (clauses 1 and 10.2).

Monies Received By The Firm

21. The Firm received total payments of £4,861,399.33 from the Fund Master, purportedly pursuant to the LFA. Allowing for liability for the 50% FF, the Firm's total liability to the Fund Master was in excess of £7 million. None of the money has been repaid.

22. Tangerine agreed and arranged the provision of monies to the Firm.

23. The details of the sums drawn down by the Firm under the LFA were as follows (ignoring the Firm's liability for the FF):

DATE	AMOUNT	SUGGESTED CASE LINK	PURPOSE FOR WHICH USED
23.04.12	£197,600	Conveyancing transactions	Funding the Firm's general overheads and work-in-progress ("wip")
27.04.12	£40,768	Conveyancing transactions	Funding the Firm's general overheads and work-in-progress ("wip")
22.05.12	£100,848	Personal injuries cases	Funding the Firm's general overheads and work-in-progress ("wip")
28.06.12	£96,264	Conveyancing transactions	Funding the Firm's general overheads and work-in-progress ("wip")
24.07.12	£496,600	Care home cases	Funding the Firm's general overheads and work-in-progress ("wip")
02.08.12	£859,054	MV Rena - See Note 1.	See Note 1.
13.09.12	£2,296,775	Care home cases	Repaying the Firm's debt of about £1,677,500 to RBS Funding the Firm's general overheads and work-in-progress ("wip")
16.10.12	£705,000	Interest rate swaps cases	Funding the Firm's general overheads and work-in-progress ("wip")
19.10.12	£68,490	Industrial hearing cases	Funding the Firm's general overheads and work-in-progress ("wip")

Table 1

Note 1.

On 2 August 2012, the Firm received £859,054.33, which it had not requested and which the First Respondent was not expecting. Tangerine effected the transfer of the money apparently in anticipation of, and prior to, the conclusion of an agreement (not properly documented) between the First Respondent on behalf of the Firm and Tangerine, purporting to act on behalf of the Fund Master, whereby the Fund Master would provide $5 million to fund litigation conducted by lawyers in New Zealand arising from the grounding of the MV Rena. 35% of the proceeds of the litigation would be shared between the Firm, Tangerine (and/or its associates such as Mr Rae ("DR") and TS), and Mr FB of Jura Capital Ltd, a New Zealand company involved in litigation funding.

How the Firm Has Used the Monies

24. The Firm used, or substantially used, the monies for the following purposes, none of which were permitted under the Litigation Funding Agreement:

24.1 About £1,677,500 was used to repay lending from RBS in September 2012, following which the bank's security over the Respondents' personal assets was released;

24.2 £216,000 (of the total funding of £859,054.33 advanced for that purpose) was used purportedly to fund the conduct of the MV Rena litigation by New Zealand lawyers;

24.3 The balance of the funding, or a substantial part of it, was used to fund the general overheads of the Firm (e.g. £300,000 used to pay the Firm's professional indemnity insurance ("PII") premium, including the conduct of wip (despite the fact that the LFA specifically excluded the funding of the Firm's costs in the definitions of "Legal Expenses" and "Eligible Legal Expenses" in clause 1.1.

Progress Of SRA Inspection And Investigation

25. The SRA commenced an inspection of the Firm's books of account and other documents on 27 November 2012. The inspection progressed as follows:

DATE	SRA REPRESENTATIVE	MEETING WITH, WHERE:	PROGRESS
27.11.12	David Levy ("DL") Investigation Officer	Second Respondent Joe Whelan, Chief Executive ("JW") Firm's Southport offices	Service of Section 44B Notice
06.12.12	DL	First Respondent The Law Society offices, London	Interview
06-07.02.13	DL and Nicholas Ireland ("NI"), SRA Investigation Team Manager	First Respondent and JW (and Second Respondent	Inspection visit

DATE	SRA REPRESENTATIVE	MEETING WITH, WHERE:	PROGRESS
		briefly) Firm's Southport offices	
14.03.13	DL	Not Applicable	Interim Forensic Investigation Report
17.04.13	NI	Firm's Southport offices	Visit
18.04.13	NI	The Respondents	Meeting
22.05.13	DL, NI	The First and Second Respondents, JW	Interviews
24.07.13	DL and Mr Shields (SRA Investigation Team Manager)	The Second Respondent	Interview
03.09.13	DL	Not Applicable	Final Forensic Investigation Report
13.09.13	SRA	Respondents	"Explanation with Warning" letters with copies of the Forensic Investigation reports sent
27.05.14	SRA	Not Applicable	Rule 5 Statement filed at SRA
25.06.14	Not Applicable	First Respondent	Answer to Rule 5 Statement
30.06.14	Not Applicable	Second Respondent	Answer to Rule 5 Statement
February 2015	SRA Compensation Fund	Axiom Fund	SRA Compensation Fund claim made

Table 2

Applicant's Supplemental Facts (Including Some Submissions)

26.1 Allegation 1.1 (First Respondent) and 2.1 (Second Respondent)

26.1.1 There were 7 main reasons why the acceptance and use of the monies by the Firm gave rise to a breach of Principles 2 and 6:

(1) When each tranche of funds was received and/or used, the Respondents knew that the Firm had not complied with the terms of the LFA. In particular, the Respondents knew that:

- the Firm had not provided Tangerine with the required documents - a condition of drawing down sums, for example the FGI and Legal Expenses Insurance ("LEI"), neither of which had been obtained. The Respondents knew or should have known that the insurance arrangements upon which investors were entitled to rely had not been implemented and that funds advanced to the Firm were uninsured;

- the Firm had not provided Tangerine with details of Eligible Legal Expenses for which funding was requested in accordance with the LFA;

- the Firm had not paid the monies into a client account; and

- the Firm had not executed a fixed charge over a collection account in accordance with the LFA.

(2) When each provision of funds was received and/or used, the Respondents also knew that the LFA did not reflect the purpose for which the Firm intended to use or was using the money, and that the intended and actual use of the monies was not properly documented by the Respondents.

(3) At the time each tranche of funds was received and/or used, the Respondents had no intention that the Firm would repay the monies within the time required by the LFA and/or knew or were reckless as to the fact that repayment was very unlikely.

(4) The Respondents misused the funds received by failing to apply them only towards "Eligible Legal Expenses" (as defined), as required by the LFA.

(5) The Respondents were on notice of the serious risk that Tangerine was acting fraudulently, or committing some other serious breach of duty, towards the Funds and the ultimate investors. The Respondents, as experienced solicitors, would (and should) have recognised and understood the implications of the following indicators of possible fraud or other serious wrongdoing:

- As the Respondents knew, Tangerine failed to ensure that the Firm complied with the terms of the LFA as regards both the purpose for which monies could be used and the manner in which they could be drawn down, and failed to properly document the provision of funding. Despite the large amounts of money involved, and despite the fact that Tangerine was under a duty to act as a responsible investment manager, the arrangements put in place by Tangerine were informal in the extreme;

- As the Respondents knew, despite the Firm's poor financial condition, Tangerine made no proper assessment of the Firm's ability to repay and did not take any security. The BT Report expressed doubt about the Firm's ability to repay £250,000, and yet Tangerine agreed a facility of £5m. The Firm's ability to repay up to £5m within 12 months had not been reasonably demonstrated, and the available information strongly indicated that it would be unable to repay the loan, let alone interest;

- As the Respondents knew, the prudent approach to funding reasonably to be expected of an investment manager in Tangerine's position was wholly absent;

- The Respondents were aware of the 50% FF to which Tangerine claimed to be entitled. The fee was suspicious because of its size, because of the incentive that it gave Tangerine to lend recklessly on the Funds' behalf, and because it substantially increased the cost of funding to the Firm (making the funding even riskier from the perspective of the Fund);

In relation to the First Respondent only:

- As the First Respondent knew, Tangerine advanced the monies on 23 and 27 April 2012 on the strength of the First Respondent's undertaking to repay from the proceeds of a dubious transaction;

- On 8 May 2012, the First Respondent received an e-mail from one JP from email address "@checkmatebusiness.com", headed "Checkmate Urgent Requirements", beginning "Dear Barnetts", and forwarding an earlier email beginning "Dear Panel Firm". JP asked the Firm urgently to supply certain documents relating to conditional fee agreements and after-the event insurance ("ATE insurance"). The First Respondent forwarded the email to DR of Tangerine stating "We obviously don't fit into this category – do you want me to tell them that??" DR responded on 8 May 2012 stating "Just confirm that your funded cases don't require ate insurance and that you are covered by the fgi policy". The First Respondent responded to DR in the positive later that day. Until that point the funding received had purportedly related to conveyancing transactions, not litigation cases, and had been used to fund the Firm's general overheads. The First Respondent was in effect being encouraged by Tangerine not to be frank about its use or intended use of the funding;

- At the point of acceptance by the Firm of sums of money on or after 22 May 2012, the First Respondent was aware that the basis on which the Firm had accepted and used monies from the Fund was inconsistent with representations made to the investors regarding the loans that the Fund would make. In particular:

    - By 11 May 2012, the First Respondent had considered at least the June 2009 Offering Memorandum and the January 2012 SOM (and perhaps other SOMs as well), and had annotated the January 2012 SOM;

    - The June 2009 Offering Memorandum and the SOMs contained representations to investors that were inconsistent with the basis on which the Firm had accepted and used loans from the Fund. Taking the January 2012 SOM as an example:

    (a) The January 2012 SOM did not provide for the FF;

    (b) The January 2012 SOM represented that the Fund Master provided loans to law firms in the United Kingdom (except Scotland) to pursue legal disputes. As the First Respondent

knew, each of the purposes identified at [23] and [24] above for which the Firm used the loans was outside the scope of the investments indicated;

(c) The January 2012 SOM represented that Tangerine was responsible for the screening of law firms before instructing the loan manager to make payment, and that panel law firms would undergo satisfactory due diligence. As the First Respondent knew, the Firm had not been subjected to rigorous screening or due diligence and/or such due diligence as had been carried out by BT appeared to have been ignored by Tangerine. On the contrary, Tangerine on behalf of the Fund Master had purported to commit to lend the Firm £5m on the basis of a report by BT that suggested that the Firm would have difficulty repaying £250,000, and on the basis of a dubious undertaking from the First Respondent concerning the alleged £2m of "exceptional income";

(d) The January 2012 SOM represented that the loans would be short term, and would take on average 12 months to be returned;

(e) The January 2012 SOM represented that the Fund Master retained ownership of cases, so that if the Firm failed the Fund Master would reclaim the case and hand it over to another panel firm. The First Respondent knew that no such arrangements (even if possible) had been put into place;

(f) The January 2012 SOM contained representations concerning insurance and security that would be obtained in respect of funding provided to law firms: a) all funding provided to law firms would be insured; (b) an "Indemnity Loan Guarantee Policy" would be obtained for every loan to cover failure to repay by reason of a panel firm's insolvency or ceasing to trade (c) in such an event, the relevant cases would be passed by the lender to a new firm (d) the Fund Master retained ownership of every case (e) the panel firm in appropriate cases would take out "Legal Protection Insurance" with an "authorised insurer" (ATE insurance) to protect up to a maximum amount for all legal expenses, disbursements and fees if a case was lost (f) investors were alerted to the risk that the insurer might fail but were given reassurance concerning the regulation of the insurers used (g) if a case was lost, the Legal Protection Insurance would pay the amount loaned. If the case was won the amount of the loan, together with the insurance premiums and loan charges would be recovered from the losing party under statute (h) Frion provided the majority of insurance required by the Fund Master (i) the "solicitors indemnity fund" helped to ensure the solvency of solicitors firms. The First Respondent knew or should have known that the insurance and

security arrangements were an important aspect of the proposition being put to investors. He knew or should have known that the representations made to investors in the January 2012 SOM regarding the insurance and security arrangements were false in a number of respects particularised by the Applicant. For example, (i) by no later than 28 July 2012, the First Respondent had asked for and received a contract of insurance between JP SPC 4 and Gable Insurance AG that provided cover of the kind referred to in the January 2012 SOM as an "Indemnity Loan Guarantee Policy". The policy did not appear to apply to the funds the First Respondent had received for several reasons: (a) The policy only applied to loans made upon terms consistent with the objects of the Fund Master as agreed in writing with the insurer. (b) The policy only covered loans of between £1,800 and £12,750 without the written consent of the insurer. (c) The policy was expressed to provide cover for short-term fixed interest loans to finance specified litigation cases and other matters of a non-litigious type. (d) It was a condition of cover that the insured Fund had satisfied itself by reasonable enquiry of the creditworthiness of the borrower and as to the borrower's ability to repay the loan in its entirety on the success of the claim. (e) It was a condition of the policy that the loan was in accordance with the detailed procedures setting out the insured Fund's criteria for acceptance of an application for a loan. (f) Indemnity under the policy was limited to legal actions where "the cause of action arose in the courts of England and Wales" and where there was a conditional fee agreement and issued ATE insurance. ATE insurance must have been issued by an insurer regulated by the UK FSA (ii) The Fund Master did not and could not "retain ownership of the cases", given the client's ability to choose a solicitor (iii) a typical ATE policy would not cover the amount of the loan and would have its insured the claimant in proceedings (not the panel firm) (iv) it was at the very last doubtful that loan charges would be recovered from the losing party (v) Frion was not regulated by the FSA, could not lawfully issue insurance policies and had been subject to an SRA warning notice (under a previous name of LLPE Insurance Ltd) (vi) By 1 September 2000 the solicitors indemnity fund had ceased to indemnify new claims, save for some run-off claims made against practices that ceased at least 6 years earlier, having been replaced by other arrangements and in any event the solicitors indemnity fund (and the replacing arrangements) did not help to ensure the solvency of solicitors firms. The First Respondent acknowledged by an email dated 11 May 2012 sent to DR on behalf of Tangerine that Tangerine was managing the Fund Master inconsistently with the January 2012 SOM, and that the January 2012 SOM did not provide for the FF.

- By 1 June 2012, the First Respondent had read the terms of the IMA. Therefore, when monies were accepted and used by the Firm after that date, he knew from his consideration of the terms of the IMA that the basis on which the Firm had received funding was inconsistent with the terms of the IMA in a number of particularised respects. For example, Tangerine's investment discretion was subject to the investment objective and policies and investment restrictions set out in Schedule A to the IMA, which Tangerine was required to follow. Tangerine had failed to comply with these in respect of funding from the Fund Master that the Firm had accepted and used. In particular: there was provision for payment to the investment manager of specific management and performance fees but not the FF; Loans could only be used for "Permitted Uses", said to be restricted to different types of litigation funding for the time being; Insurance to cover both any risks related to litigation and the potential insolvency of the borrower or the litigation risk insurer were required in accordance with the January 2012 SOM.

- The First Respondent's own perception was that the LFA and the other Axiom documentation was "defective", "seriously flawed…[and] impossible to fulfil", "deeply flawed", "totally mispresent the actuality or are plainly defective", and "not fit for purpose".

- The sum of £859,054.33 was received on 2 August 2012 in relation to the MV Rena litigation. The First Respondent agreed that Tangerine (and/or DR/TS) would benefit from his position as investment manager for the Funds by sharing 35% of the proceeds of the litigation. The circumstances in which the Firm received the money were abnormal and suspicious. The First Respondent acknowledged in an email dated 3 August 2012 to DR and TS that a proposed agreement that the Firm was to enter into with a New Zealand law firm was a "fiction which will satisfy our mandate [i.e. Tangerine's mandate] but covers all parties".

- The Respondents knew that Tangerine was acting as representative on behalf of the Funds. They therefore knew that Tangerine was required to act within its authority and in the best interests of its principal (and of the ultimate investors). Tangerine, and those acting for it, could not have reasonably appeared to the Respondents to be well-established, reputable investment managers, and any representations that they may have made to the Respondents concerning the scope of their authority could not have been taken on trust in view of each of the abnormal and suspicious circumstances described above.

- The circumstances set out above singly and/or cumulatively put the Respondents on notice at all material times that there was serious risk that Tangerine, in arranging and purporting to agree the funding on behalf of the Fund Master, was exceeding its authority to act on behalf of the Funds and/or was not acting in good faith in its best interests and/or was taking unauthorised fees and/or was defrauding the Funds and their investors.

- The Respondents could not therefore properly cause or permit the Firm to accept and use the monies received without carrying out enquiries that reasonably satisfied them that Tangerine was acting within its authority, and in good faith in the best interests of the Fund Master, and that the Funds and their investors were not being defrauded. They each failed to make any, or sufficient, enquiries in this regard, for example disclosing the material facts to and obtaining information from the Funds' directors. The Respondents deliberately refrained from making enquiries lest they learned something they would rather not know concerning Tangerine.

(6) In all the circumstances, the Respondents unreasonably ran the risks that the Firm was a party to a fraud of the Fund Master and of the ultimate investors, or that involved other serious breaches of duty by Tangerine; that the Firm was benefitting from Tangerine's wrongdoing.

(7) In all the circumstances, as the Respondents knew, the funding was dubious, and should not have been accepted or used.

26.1.2 In acting as alleged, the Respondents were motivated by personal financial gain or benefit including to enable the Firm to continue trading.

26.1.3 The Respondents' conduct was dishonest by the standards of reasonable and honest people. The Applicant relied as an example on Royal Brunei Airlines v Tan [1195] 2 AC 378 and 389G, per Lord Nicholls: "Nor does an honest person in such a case deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather not know, and then proceed regardless". As experienced solicitors, the Respondents would each have been aware that they were acting dishonestly by those standards. Further or alternatively, the Respondents' conduct in relation to allegation 1 was reckless because they unreasonably ran the risks mentioned in paragraph (6) above.

26.2 Allegation 1.2 (First Respondent)

26.2.1 The BT report referred, with the First Respondent's approval, to the Firm's expectation that £2m of "exceptional income" would be received. The report recorded that such alleged exceptional income was recognised in the Firm's 2012 management accounts, which the Respondents approved. The First Respondent permitted these documents to refer to the alleged income in order to present the Firm's financial position to potential lenders as being stronger than it was.

26.2.2 At the time BT prepared its report and the Respondents approved the accounts, the First Respondent had seen documents that, as an experienced solicitor, he would have known or suspected indicated that there was a serious risk that the alleged transaction that was said to be the source of the "exceptional income" was fraudulent or bogus and that no legitimate income would be received from it. In particular a document entitled "Submission Package" suggested that a client could generate high returns from vaguely described trading involving money being held on deposit in a bank account. It contained various phrases about which the SRA had issued warning in its "Yellow Card" warnings on banking instrument fraud dated September 1997, on fraudulent financial arrangements dated April 2009, and on money laundering

activities (dated April 2009). Examples of such phrases were references to "good, clean, cleared funds of non-criminal origin", "bank co-ordinates", "fresh cut instruments" (see SRA Warning on banking instrument fraud).

26.2.3 The "Submission Package" described an investment scheme containing characteristics or features about which the SRA had warned in its warnings on banking instrument fraud, fraudulent financial arrangements, and money laundering such as:

- an overwhelming amount of description with supporting papers and flowcharts of the transaction;
- the promise of unrealistically high returns;
- an indication that the deal formed part of larger deals involving millions of pounds or other currencies;
- the requirement of an advance fee payable to buy into an "investment" process;
- trading in apparent banking instruments to provide returns for non-banking investors;
- confusing and complex transactions involving misleading descriptions or ill-defined terminology;
- instructions outside the normal pattern of business; and
- the need for secrecy.

26.2.4 Even without the benefit of these warnings, the First Respondent, as an experienced solicitor, would have known or suspected that there was a serious risk that the alleged transaction was fraudulent or bogus and that no legitimate income would be received from it. In an email to the SRA dated 22 February 2013, sent by JW, but copied to the First Respondent and expressly stated to be a "joint reply", it was said that, "[i]t became clear, shortly afterwards (assumed to mean shortly after 17 April 2012), that the funding deal wouldn't happen, and indeed there was no chance of that particular deal ever happening so that obligation fell away."

26.2.5 By an email sent on 18 April 2012, copied to the Respondents, JW sent Tangerine an undertaking from the First Respondent to the Fund Master that as soon as the First Respondent received sufficient monies into his account from VM in respect of the alleged transaction he would repay the Fund Master £250,000, plus the FF of £125,000, plus interest at 15% from the date of payment until receipt of the money owed.

26.2.6 The First Respondent's conduct was dishonest by the standards of reasonable and honest people. As a senior solicitor, he would have appreciated that it was dishonest by those standards. Further or alternatively, his conduct was also reckless because he

unreasonably ran the risk that the £2m "exceptional income" related to a fraudulent or bogus transaction and/or that prospective lenders would be misled.

26.3 Allegation 1.3 (First Respondent) and Allegation 2.2 (Second Respondent)

26.3.1 The monies provided under the LFA could be applied only for purposes for which they were provided. In the highly suspicious circumstances the monies should not have been received at all. However, having improperly received the monies, the Firm should have paid them into a client account, where they should have been held unless and until they were disbursed for a permitted purpose, giving effect to the intent of the scheme that law firms would not have to fund Eligible Legal Expenses themselves. This was necessary because the monies were provided to fund Eligible Legal Expenses in respect of each claim and further or alternatively because they were subject to a Quistclose resulting trust; and for the further reason that the LFA required that the sums be credited to client account in any event; the monies were therefore client monies (Rule 12 SAR). The Respondents held the monies in office account, in breach of rules 1.2(a), 1.2(b) and 14.1 of the SAR.

26.3.2 Alternatively, if the Respondents wrongly but honestly believed that the monies were not client monies, they should have paid them into an office bank account whose sole purpose was to receive the monies, where they would not be mixed with other office monies, (and/or consequently used for general running expenses or dissipated by overdraft), and should have kept proper records to ensure that the funding was expended for an authorised purpose. The Respondents did neither of these things.

26.3.3 The Respondents committed these failings in order to facilitate the wrongful use of the monies for the purposes that were not authorised by the LFA.

26.3.4 The Respondents' conduct was dishonest by the standards of reasonable and honest people. As senior solicitors, they would have appreciated that it was dishonest by those standards. Further or alternatively, their conduct was reckless as to the risks which the Funds and the ultimate investors were exposed as a result of their misconduct.

26.4 Allegation 1.4 (First Respondent) and Allegation 2.3 (Second Respondent)

26.4.1 The Fund Master provided £859,054.33 to the Firm on 2 August 2012 for the purpose of funding litigation conducted by lawyers in New Zealand arising from the grounding of the MV Rena.

26.4.2 Only £216,000 was used for that purpose (the management accounts suggested that £17,992.70 may have been returned). The Respondents deliberately caused or permitted the balance of £643,054.33 to be used to fund the Firm's general overheads, thereby misappropriating it, or causing or permitting it to be misappropriated.

26.4.3 The Respondents' conduct was dishonest by the standards of reasonable and honest people. As senior solicitors, they would have appreciated that it was dishonest by those standards. Alternatively, their conduct was reckless.

26.5 Allegations 1.5 - 1.8 (First Respondent) and Allegations 2.4 – 2.7 (Second Respondent)

26.5.1 These related allegations concerned own client conflict, client conflict (in the alternative, conflict between the client and the representative giving instructions on its behalf), and failure to act in the best interests of the client. The allegations arose from work done by the Respondents and by the First Respondent alone, in connection with the Fund Master. The SRA's primary case was that the clients for whom the work was done were the Fund Master and Tangerine: allegation 1.6 against the First Respondent and allegation 2.5 against the Second Respondent proceeded on that basis. Allegation 1.7 against the First Respondent and allegation 2.6 against the Second Respondent proceeded on the alternative basis that Tangerine instructed the firm (or the First Respondent) only as representative for the Fund Master, and not as client, such that the Fund Master was the sole client. The Respondents made no attempt to ensure that they had properly identified their client(s) but in any event preferred the interests of Tangerine, and themselves, over those of the Fund Master for whom they were clearly (and on occasion expressly) acting.

26.5.2 Three bills were raised by the First Respondent: 6 June 2012 - £14,868.55 for work said to have been done from 1 May to 31 May 2012; 2 July 2012 - £22,519.50 for work said to have been done from 1 June to 30 June 2012; 23 November 2012 - £40,000 for work said to have been in the period August to November 2012.

26.5.3 The four relevant pieces of work were:

- (both Respondents) - the redrafting of the standard litigation funding agreements between the Fund Master and law firms;
- First Respondent only - obtaining advice from Counsel;
- First Respondent only - acting as panel manager; and;
- First Respondent only - the funding made available by the Fund Master to WE Solicitors

Redrafting of the Standard Litigation Funding Agreements

26.5.4 From May to June 2012 the Respondents, acting for Tangerine and the Fund Master (alternatively for the Fund Master, instructed by its representative Tangerine), redrafted the standard form agreement between the Fund Master and panel firms, known as the "Precedent Litigation Funding Agreement" ("PLFA"), and other related documents, and gave related advice. In view of the conflict or significant risk of conflict between the interests of their client, the Fund Master, and their own interests, those instructions should not have been accepted. This work was principally conducted by the First Respondent; the Second Respondent's involvement was also significant. He worked with the First Respondent to produce a redraft of the LFA, prepared a redrafted calculation of interest clause 10.1, and assisted the First Respondent with the drafting of: a debenture and a draft guarantee between the directors of the panel firms and the Fund; a draft offer letter from Axiom; and, a draft charge of the bank account.

26.5.5 The Respondents drafted amendments to the PLFA favourable to the panel firms, including the following:

- The original LFA provided for monies to be paid into client account: the revised agreement provided for monies to be paid into office account (clause 4.2(a)(iii));

- The original LFA provided that funding could only be used for Eligible Legal Expenses (essentially disbursements): the revised agreement provided that funding could be used for "designated expenses agreed with the Investment Manager in advance in respect of Legal Work" (definition of "Legal Expenses");

- A number of provisions provided for the deduction of the FF (definition of "Facility" at clauses 2.2(d), 4.4 and 6).

26.5.6 Nevertheless, the redrafted agreement did not permit funding to be used for the firms' general overheads and wip (definitions of "Claim", "Eligible Legal Expenses", and "Legal Expenses" in clause 1.1 and clause 2.2 (purpose)).

26.5.7 In July 2012, the Respondents advised Axiom and Tangerine to use the redrafted documents for two new panel firms. In October 2012, the First Respondent sought to persuade panel firms to sign the new documents he had drafted.

26.5.8 The First Respondent told the Investigating Officers that the Firm, in its capacity as a panel firm, had signed the new version of the funding agreement drafted by the Respondents, but that it was held by Tangerine.

26.5.9 The Respondents' actions in redrafting the PLFA between the Fund Master and panel firms and other related documents gave rise to a conflict, or significant risk of conflict, as follows:

- Own client conflict: The Firm was a party to the LFA, and was likely to become (and indeed became) a party to the redrafted agreement. The Respondents' interest therefore was that the terms of the redrafted agreement be favourable to the law firms, including themselves. That interest conflicted with their duty to the Fund Master to seek to ensure that the terms of the redrafted agreement were as favourable as they could be to the Fund Master;

- Client conflict: The Fund Master's interest was that the LFAs conformed with the statements made to investors in the SOM and to the IMA, and that any evidence that Tangerine was concluding LFAs on its behalf that were inconsistent with the statements made to investors in the SOM or with the IMA be reported to Axiom. This conflicted with Tangerine's interest, which was that the continued use of funding agreements perpetuated the provision of funds to panel firms (and consequent FF to Tangerine or its associates) and that the agreements expressly provided for the payment of the FF (despite the fact that neither the SOM nor the IMA provide for payment of the FF), and that evidence of the kind mentioned in the previous sentence was not reported to the Fund Master;

- Client/representative conflict: On the alternative footing that Tangerine was not a client, but instructed the Firm as representative for the Fund Master, the Respondents should not to have taken instructions from Tangerine, given the conflict between its interests and those of the Fund Master, at least not without fully informing the Fund Master of the matters giving rise to the conflict, which the Respondents did not do.

26.5.10 The Respondents also failed to act in the best interests of their client, the Fund Master, in other respects in the course of redrafting the standard agreements:

- The Respondents acted despite conflicts identified above;

- The Respondents failed to inform the Fund Master that the basis of the provision of monies to the Firm and other panel firms was inconsistent with the PLFA, both in its original form and as redrafted;

- As regards the First Respondent only, in the course of doing this work the First Respondent came to appreciate that Tangerine was managing the Fund Master in a way that was seriously inconsistent with the SOM and with the IMA, but failed to draw this to the attention of the Fund Master;

- The Respondents deliberately preferred the interests of Tangerine over those of the Fund Master, because the relationship with Tangerine was important to the Firm: Tangerine had arranged Axiom funding on which the Firm was reliant to remain in business, and had provided work for the Firm (purportedly on behalf of the Fund Master).

<u>As Regards the First Respondent: Obtaining Counsel's Advice</u>

26.5.11 In June and July 2012, the First Respondent, acting for Tangerine and the Fund Master (alternatively for the Fund Master, instructed by its representative, Tangerine), instructed Counsel to advise on whether the PLFA made the panel firm liable for payment of the FF and the FGI premium and, if not, whether the Fund Master had a professional negligence claim against its former who had drafted the agreement.

26.5.12 On 25 July 2012, the First Respondent and TS of Tangerine attended a conference with Counsel, at which Counsel gave provisional advice, including that the FF would not be recoverable from panel firms. In November 2012, Counsel gave written advice concluding that, whilst the drafting of the PLFA was unclear, the FF was recoverable.

26.5.13 The First Respondent's acting for Tangerine and the Fund Master (alternatively for the Fund Master, instructed by its representative, Tangerine), in obtaining advice from Counsel gave rise to both an own client conflict and a client conflict.

26.5.14 Own client conflict: since the Firm was a party to the LFA, it was in the First Respondent's interests that Counsel gave advice that the FF and the FGI premium were irrecoverable from the panel firms. That conflicted with the Fund Master's interests, which were to receive impartial advice on the questions asked of Counsel based on appropriately full and balanced instructions. The First Respondent told the Investigation Officers that it was important that panel firms did not become aware of

the apparent defects in the documentation, yet the Firm was a past and continuing panel firm and was aware of the apparent defects and Counsel's advice on them. The First Respondent's misconduct was aggravated by the following:

- Notwithstanding that he had doubts about whether the FF was recoverable, he continued to draw down monies under the LFA and to incur additional potential liabilities for FF;

- He subsequently denied that the Firm was liable for the FF;

- He sought to use information obtained from instructing Counsel to persuade the receivers of the Funds to grant further lending.

26.5.15 Client conflict: Tangerine's interest was that the FF should continue to be paid to them; that it should continue to be recovered from panel firms; that Counsel should not be asked to advise on whether the payment of the FF was permitted by the SOM and by the IMA; and that any doubt about the propriety of the FF arising from the fact that neither the SOM nor the IMA provided for it should not be disclosed to Axiom. That conflicted with the Fund Master's interest, which was that the FF be fully considered by Counsel, and that it be informed of any grounds for doubting its legitimacy.

26.5.16 Client/representative conflict: on the alternative footing that Tangerine was not a client, but instructed the Firm as representative for the Fund Master, the Respondents should not have taken instructions from Tangerine, given the conflict between its interests and those of the Fund Master, at least not without fully informing the Fund Master of the matters giving rise to the conflict, which the Respondents did not do.

26.5.17 Further, the First Respondent failed to act in the best interests of the Fund Master, and preferred the interests of Tangerine, in three respects in relation to Counsel's advice: he acted despite the conflicts identified above; he failed to inform the Fund Master of Counsel's provisional advice given in July 2012 that the FF was not recoverable or of his views as to the quality of the documentation and implications for the Funds; in an email sent by the First Respondent to TS and DR of Tangerine on 22 June 2012, the First Respondent queried whether Counsel should be asked to advise if the investor-facing documents gave Tangerine authority to charge a FF of 50% of the monies provided, but Counsel was not asked to advise on this point.

<u>As Regards the First Respondent: Acting as Panel Manager</u>

26.5.18 From about August 2012, the First Respondent acted for Tangerine and the Fund Master (alternatively for the Fund Master, instructed by its representative, Tangerine), as panel manager for the Fund Master. His purported role was to "immerse himself in the detail of the new models and new firms and help us [Tangerine] to ensure that we have the panel firms complying with the terms and conditions", for which he charged a retainer of £10,000 per month (resulting in the invoice for £40,000 dated 23 November 2012 referred to above).

26.5.19 The First Respondent's acting as panel manager gave rise to a conflict, or significant risk of conflict, as follows:

- Own client conflict: His interest was in not ensuring that panel firms complied with the terms and conditions of the LFA with the Fund Master, especially in circumstances where the Firm was not complying. That interest conflicted with the First Respondent's duty to the Fund Master to seek to ensure that panel firms complied with the LFA. An independent approach to the role would have risked raising questions about the Firm's own compliance with the LFA. As a result of the conflict, the First Respondent failed to ensure that panel firms complied with the terms of their respective LFA. For example, the First Respondent and DW of WE Solicitors acknowledged to each other that the terms of the LFA between WE Solicitors and the Fund Master did not reflect the anticipated use of the funds to be provided to WE Solicitors, and yet the First Respondent failed to take any steps to ensure that WE Solicitors complied with the agreement or that the basis on which it received funding was properly documented; some of the panel firms were conducting litigation against the Firm, funded by the Fund Master. The Firm had an interest in funding being withdrawn from those panel firms, and therefore in identifying breaches of the LFA by the panel firms that would entitle Fund Master to demand repayment of funding. That interest conflicted with the Firm's duty to give independent advice to the Fund Master regarding panel firms' compliance with the terms and conditions of the LFA. There was a risk that confidential information might be made available to the First Respondent about claims against his own Firm, including information about and problems with funding;

- Client conflict: The Fund Master's interest was that it be informed of the substantial evidence that Tangerine was not properly managing the Fund, whereas Tangerine's interest was that such information be withheld;

- Client/representative conflict: On the alternative footing that Tangerine was not a client, but instructed the Firm as representative for the Fund Master, the First Respondent should not have taken instructions from Tangerine to be panel manager, at least not without fully informing the Fund Master of the matters giving rise to the conflict.

26.5.20 As panel manager, the First Respondent failed to act in the best interests of the Fund Master, in that he acted despite the conflicts identified above, and that he did not inform it of the various matters that gave serious cause for concern that Tangerine was defrauding, or committing some other serious breach of duty towards, the Funds and the investors.

<u>As Regards the First Respondent: acting for the Fund Master and WE Solicitors</u>

26.5.21 In August 2012, the First Respondent, as panel manager, acted for the Fund Master and WE Solicitors in respect of WE Solicitors' proposed funding from Axiom and the preparation of related documentation. He thereby put himself in a position where he owed conflicting duties to two clients. Further, the First Respondent failed to act in the best interests of the Fund Master in two respects in relation to the funding granted to WE Solicitors:

- As stated, he acted notwithstanding his conflicting duties;

- On 15 August 2012, the First Respondent became aware that WE Solicitors intended to use the monies borrowed from the Fund Master to repay their existing borrowing with HBOS and to release HBOS's debenture. As the First Respondent knew, that was contrary to the June 2009 OM, to the SOMs, and to the IMA. However, the First Respondent failed to inform the Fund Master of the proposed misuse of the funding, as he should have done in the best interests of the Fund Master, but instead proceeded to facilitate the agreement of the funding. Other investigations undertaken by the Applicant identified that on 29 August 2012 WE Solicitors received £573,000 into their office account from the Fund Master and used this money to discharge their debt to HBOS and the debenture.

Failing to Advise the Fund Master to Take Independent Legal Advice

26.5.22 Notwithstanding that the Firm (or the First Respondent) was acting for the Fund Master as set out above, the Respondents continued to accept monies from the Fund Master without advising it to take independent legal advice, thus failing to act in the best interests of their client.

The Respondents' Respective States of Mind in relation to Allegations 1.5 – 1.8 (First Respondent) and Allegations 2.4 – 2.7 (Second Respondent)

26.5.23 In acting in a position of conflict and in failing to discharge their obligations to the Fund Master, the Respondents were motivated by a desire to maintain and develop their relationship with Tangerine, to earn additional fees, and not to do anything that might jeopardise either existing funding or the prospects of obtaining further monies from Axiom. Their misconduct was therefore, at least in part, motivated by financial gain. The Respondents' conduct concerning these allegations was dishonest by the standards of reasonable and honest people. As senior solicitors they would have appreciated that it was dishonest by those standards. Alternatively, they acted recklessly.

26.6 Allegation 1.9 (First Respondent) and Allegation 2.8 (Second Respondent)

26.6.1 The Respondents assisted Tangerine and/or its associates such as TS and DR, despite being on notice of the matters giving rise to serious concern that it was acting fraudulently or committing some other serious breach of duty towards the Funds and the investors, as follows:

- improperly receiving monies, as described under allegations 1.1 and 2.1 respectively against each Respondent, in the knowledge that the funding would provide the pretext for 50% FF and enabling tens of millions of pounds to be taken;

- failing to act in the best interests of the Fund Master, and in particular failing to alert it to the various concerns that Tangerine was acting fraudulently or committing some other serious breach of duty towards the Funds and the investors;

- undertaking the work outlined above, including drafting further funding agreements that provided for the panel firm's liability to pay the FF, and causing other firms to enter into such agreements;

- in the case of the First Respondent, acting as panel manager, a role in which he was liable to be seen by panel firms as a representative of Tangerine and the Fund Master, and in which he risked lending credibility to Tangerine and to the way in which it was managing the Fund Master's investments, and also risked providing unjustified comfort to panel firms; and

- agreeing to share the proceeds of the MV Rena litigation with Tangerine and/or its associates such as DR and TS.

26.6.2 As a result, in so far as Tangerine was acting fraudulently or otherwise improperly, the First Respondent risked enabling Tangerine to prolong and further benefit from its wrongdoing, to the detriment of the Funds and the ultimate investors.

26.6.3 The Respondents' motivation in relation to the conduct forming the basis of this allegation was dishonest by the standards of reasonable and honest people. As senior solicitors, they would have appreciated that it was dishonest by those standards. Alternatively, the Respondents were reckless.

26.7 Allegation 1.10 (First Respondent)

26.7.1 Between August and October 2012 there was press coverage about Axiom which led the directors to suspend redemptions by investors on 26 October 2012. By an email of 5 November 2012 at 16:33 to DW of WE Solicitors, the First Respondent, in his capacity as panel manager acting on behalf of Tangerine and the Fund Master, commented "As you will know the Fund at the moment is requiring some urgent information" and asked "to that end" for DW to answer a list of questions "as a matter of urgency" regarding their borrowing from Axiom. By email of 5 November 2012 at 16:47, DW expressed concern that he was "being besieged by requests for information deemed as urgent from numerous sources" and asked "what is going on, why all these requests and what the concerns are please?". At 17:15 the same day the First Respondent wrote that:

> "David R has to present to the Fund directors this week in the Caymans, and is producing a report which he hopes will convince them to allow the fund to continue. It needs to contain all the necessary facts, plus a narrative about how good your firm is…Your assistance would be very much appreciated….There is an independent review by KPMG and this info will be fed into there so it's obviously in all our interests for the Fund directors to realise how good our firms are, and that we should be allowed to mature our cases, and thus pay back the investors! Please treat this email in the strictest confidence for obvious reasons"

At 18:27 DW replied that he would respond the following day; the First Respondent replied at 18:30 that: "…We all need to pull together on this one!!"

26.7.2 The relevant exchange proceeded as follows:

- Question 6 was "Please describe the impact of no additional funding being made available?";

- DW initially replied to that question by email on 6 November 2012 at 12:54: "…Without new funding the firm will most likely run out of cash within 24 months";

- DW sent an email (also at 12:54) stating "Was that enough? Give me a bell if you want to discuss how [sic] can be improved?";

- The First Respondent replied at 13:38: "My suspicion is that you could run out of cash a bit sooner, if you continue to grow and are able to take on more cases yourself??";

- DW replied at 13:43: "I think you may be right. Trying to balance not scaring them whilst making it clear more funding is needed. Which approach would be more helpful?";

- The First Respondent replied at 14:02: "Send us a fresh email perhaps putting a short span – maybe 3/6 months? It's your call". DW in response by email the same day at 16:40 revised his answer to question 6 thus: "…Without new funding the firm will most likely run out of cash within 6 to 12 months".

26.7.3 By this correspondence, the First Respondent was encouraging WE Solicitors to mislead Tangerine and/or the Fund Master as to its ability to continue without funding, or alternatively to influence the information provided in a way that suited his own interests and those of WE Solicitors (namely that the Fund Master continue to provide monies to panel firms) rather than those of his client, the Axiom Master (which were that information provided by panel firms be full and frank, so that it could decide what steps to take regarding funding that it had made to them). In so acting, the First Respondent was motivated by a desire that the Fund Master should continue to provide funds to panel firms, including to his Firm.

26.8 Allegation 1.11 (First Respondent) and Allegation 2.9 (Second Respondent)

26.8.1 In July 2013, the Firm started the renewal process for its PII insurance. The Respondents were (and/or should have been) aware that their involvement with Axiom and its collapse, together with the investigation conducted by the SRA, would be material in any proposal to a professional indemnity insurer and that they owed duties of good faith to such an insurer which required disclosure of all material facts. On 4 July 2013 the First Respondent signed a proposal form for PII Insurance, which asked at question 4:

> "In the last 12 months, has the firm (a) been subject to a monitoring visit from the Law Society or Solicitors Regulation Authority or been the subject of any visit or enquiry from the Forensic Investigation Unit of the Law Society or Solicitors Regulation Authority…? If "YES" please provide full details on a separate sheet".

The response signed by the First Respondent stated:

"Yes".

The separate sheet stated:

> "We have had a visit from the monitoring unit of the SRA as part of a wide ranging investigation they are undertaking on the collapse of a fund lending money to Solicitors. We were a recipient of that fund and were more than happy to help them in their investigation.
>
> They have checked our systems from both a COLP and COFA perspective and left with the words, "You have everything in apple pie order"."

The Firm's Chief Executive, JW, sent the response to the Firm's insurance broker to be submitted to potential insurers.

26.8.2 The response was misleading and/or untrue:

- It stated that the Firm had had a visit from the monitoring unit of the SRA. The Firm was subject to an investigation by the Forensic Investigations Unit;

- The response suggested that the Firm was simply helping the SRA with a wide-ranging investigation on the collapse of the Funds, whereas in truth, the Firm and the Respondents were subject to an investigation into their own conduct, as evidenced by (i) the interviews that the FI Officer had carried out, (ii) the two Section 44B Notices that had been served on the firm on 27 November 2012 and 9 April 2013, and (iii) the substantial correspondence between the SRA's Forensic Investigations team, Supervision Department and Regulatory Management team and the Firm in respect of conduct and financial stability issues;

- The Forensic Investigation Officers did not inform the Firm that it "had everything in apple pie order" or say anything to that effect. Furthermore, regardless of what DL was alleged to have said, the Respondents could not reasonably have believed that everything was in "apple pie order", or that their conduct would not be the subject of further regulatory action, in view of their knowledge of their own conduct

26.8.3 The First Respondent knew all matters stated above and therefore knew his response was misleading and untrue. Further, the response did not disclose the following material facts:

- The Firm had been notified of the commencement of the SRA's investigation by letter dated 27 November 2012;

- The First Respondent had been interviewed by the Forensic Investigation Officer on 6 December 2012;

- On 26 February 2013, the Firm had received a letter from the receivers' solicitors demanding repayment of monies advanced under the LFA and alleging that the Firm had used them in breach of its terms;

- By email dated 12 April 2013 from the receivers' solicitors to the Firm's solicitors, the First Respondent was warned "he may have a liability for dishonest assistance in view of his conduct.";

- The receivers had commenced civil proceedings against various defendants on 21 May 2013;

- The First Respondent (and JW) had attended a recorded interview with the FIO on 22 May 2013, during which various matters had been put to him regarding his conduct, including the use of the funds inconsistently with the LFA and conflicts of interests;

- The Second Respondent also attended a recorded interview with the FIO on 24 July 2013, which had sought to deal with the extent of the Second Respondent's knowledge of and dealings with the matters under investigation but did not seek to update the disclosure to the insurer.

26.8.4 The First Respondent was aware that the facts stated above were material facts that had to be disclosed and deliberately suppressed them. He signed the proposal form, falsely stating that "no material facts have been mis-stated or suppressed after enquiry".

26.8.5 The contract of insurance was effected from 1 October 2013. At all times up to that point, the Firm had a duty to update any information provided in the proposal form that was no longer materially accurate. The First Respondent was aware of this duty. Notwithstanding this, the First Respondent failed to inform the insurers of the receipt of a detailed letter from the SRA dated 13 September 2013 attaching two Forensic Investigation Reports and asking for an explanation in respect of apparent multiple and serious misconduct. This was a material fact that should have been disclosed, as the First Respondent must have known. The First Respondent deliberately suppressed this information. The First Respondent's conduct concerning this allegation was dishonest by the standards of reasonable and honest people. As a senior solicitor, he would have appreciated that it was dishonest by those standards. Alternatively, he acted recklessly.

26.8.6 The Second Respondent either knew of the matters represented and of the matter suppressed or, if he did not know, failed to make the enquiries that any honest solicitor would have made in the circumstances to confirm the basis upon which the PII insurance was being obtained and to confirm that the duty of good faith to insurers had been discharged on renewal. The Second Respondent's conduct concerning this allegation was dishonest by the standards of reasonable and honest people. As a senior solicitor, he would have appreciated that it was dishonest by those standards. Alternatively, he acted recklessly.

26.9 <u>Allegation 1.12 (First Respondent)</u>

26.9.1 This allegation relates to the MV Rena funding of £859,054.33, of which only £216,000 was expended on that case. There ought therefore to have been a balance of £643,054.33.

26.9.2 On 22 February 2013, the First Respondent told the FIO that the Firm did not hold the balance because the Fund Master, in suspending the fund in October 2012, acted in breach of contract, and that the Firm was entitled to spend the money to mitigate its losses. The Applicant does not accept that the suspension of the Fund gave rise to any breach of contract, or that the Firm was entitled to spend the balance in alleged mitigation. But even if it had been so entitled, the explanation was untrue and misleading, because the Firm had already spent part of the MV Rena funding on its overheads before October 2012. The Firm's office account, into which the MV Rena funding was paid on 2 August 2012, stood at £469,173.44 on 31 August 2012, including available overdraft facilities. By that time, £55,995.09 had been disbursed on the MV Rena litigation via the JCL Eight Account. The Firm must therefore have spent at least £277,885 of the funding on other purposes before the timing of the alleged breach of contract.

26.9.3 The First Respondent gave the explanation either knowing it to be untrue, or not caring whether it was true or false. The First Respondent's conduct concerning this allegation was dishonest by the standards of reasonable and honest people. As a senior solicitor, he would have appreciated that it was dishonest by those standards. Alternatively, he acted recklessly.

Witnesses

27. Witnesses (including the Respondents) gave oral evidence during the hearing as set out in Table 3 below. The written and oral evidence is quoted and/or summarised in the Tribunal's findings only insofar as it was directly relevant to those findings (and, in particular, disputed issues of fact). The absence of specific reference in this Judgment to written and oral evidence should not be taken as indicating that the Tribunal did not read or pay heed to it: the Tribunal read all documents in the case and made a careful note of all oral evidence in addition to referring to the written transcripts of the same.

NAME AND ROLE OF WITNESS IN THESE PROCEEDINGS	PARTY FOR WHOM EVIDENCE GIVEN	DATE OF WRITTEN WITNESS STATEMENT(S)
Nicholas Ireland SRA Investment Team Manager	Applicant	28.10.14 and 31.03.15
David Levy SRA Forensic Investigation Officer	Applicant	27.10.14 and 31.03.15
Richard Barnett First Respondent	First Respondent	Reference made to Answer dated 25.06.14 and Skeleton Argument dated 22.06.15
Joseph Whelan Chief Executive Officer of the Firm	First Respondent	23.10.14
Second Respondent	Second Respondent	30.10.14

Table 3

28. In Volume 11 of the documents, witness statements were included from witnesses who, for various reasons did not appear before the Tribunal to give oral evidence and to subject themselves to cross-examination. The Tribunal heard submissions from Mr Dutton and Mr Nesbitt concerning the weight to be given to those witness statements assuming that the Tribunal was prepared to admit the same. In the event the Tribunal did not consider the contents of the statements when reaching its findings.

Submissions

29. Timothy Dutton QC (Applicant)

29.1 The central issue of the case was the credibility of the denials of dishonesty by each Respondent. The Tribunal must assess dishonesty by reference to two tests: was the conduct of each Respondent looked at separately dishonest by the standards of reasonable ordinary people, and if so, did each Respondent know that his conduct was dishonest? If the Tribunal felt that the Second Respondent was not subjectively dishonest, it must consider "Nelsonian" dishonesty, paying due regard to the words of Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan [1995] 2 AC 378, 389, quoted by Lord Hutton in Twinsectra Ltd v Yardley and Others [2002] UKHL 12, page 178, para. 46.

29.2 The test for dishonesty was as set out in Bryant and Another v Law Society [2007] EWHC 3043 (Admin), and involved the two-limbed test referred to above. One could not escape a finding of dishonesty because one deliberately closed one's eyes and ears or deliberately did not ask questions in case one learnt something that one would rather not know and then proceeded regardless. The Second Respondent signed the LFA (by the terms of which he knew he was bound) knowing that it required monies to be paid into client account, to be used only for eligible legal expenses and for litigation funding, with repayment by the termination date of 12 months later. The Second Respondent must have known that the funds were going into office account. It was no answer for him to say that he did not ask any questions. He must have known by no later than the date of repayment of the overdraft and the release of the charge on his home that monies were being used contrary to the LFA. The Applicant went further and submitted that he must have known this when he studied the LFA, if only for 6 hours, in order to amend it. Therefore the Second Respondent was dishonest if he knew that monies were being used contrary to the terms of the LFA, in circumstances where he knew that the LFA was not being complied with and he decided to close his eyes and ears and not ask any questions. The First Respondent was, in the Applicant's submission, clearly acting in a subjectively dishonest way. Neither Respondent could avoid a finding of subjective dishonesty by turning a blind eye and/or not asking questions and then proceeding other than in accordance with the LFA.

29.3 The Tribunal would apply its collective experience, intelligence and knowledge when assessing the Respondents' credibility by reference to all of the available material. It must ask itself whether, in that light, either or both of the Respondents acted dishonestly. The Tribunal should ask: "what would an honest solicitor in the position of the Respondents armed with their experience and intelligence have done in the situation in which they found themselves?" The Tribunal could compare what they

did with what the Tribunal expected from an honest solicitor, which would lead infallibly to the conclusion that each Respondent was subjectively dishonest. In assessing credibility the Tribunal would look, for example, at what the First Respondent did and said, having in mind that he accepted in interview that he knew that the MV Rena monies were to be used for a specific purpose. He explained his use of those monies by reference to mitigation of his losses when the fund was suspended; however, it was later discovered that the fund was not suspended until 2 ½ months after the monies had been received and spent in part. The First Respondent said in oral evidence to the Tribunal that he was always permitted to use the MV Rena monies to discharge practice liabilities. The Applicant submitted that these varying accounts "spoke volumes" about the First Respondent's credibility and honesty.

29.4 The events surrounding the "exceptional income" were noteworthy. JW's evidence was that the language used in the BT reports came from the First Respondent, for example, in the 3 February 2012 Report, the references to trading and bank instruments and the exceptional fee income of £2 million. The First Respondent had read the "nonsensical" (Mr Dutton's word) documents which indicated that this was neither a proper nor a realistic transaction. The First Respondent could not honestly suggest to BT that he was going to receive a £2 million fee, either from VM or company B (as later became apparent). Further, the First Respondent represented to Axiom on 18 April 2012 that the fee was to come from VM. These variations indicated that the First Respondent had crossed the line into dishonesty in order to try to keep the business going rather than face the alternative. He used monies which he knew had to be provided for as required by the investors/the Axiom fund for practice funding on the say-so of individuals on whom he should not have relied.

29.5 Mr Nesbitt argued, in his client's favour, that Axiom directors had not been called to give evidence or investigated by the Applicant; this was a "red herring". Those directors were bound to use the funds in accordance with their undertakings to investors. There was no evidence that the objects of the fund as provided in the January 2012 SOM had changed. In the absence of such evidence, the directors were bound to apply the funds in accordance with that SOM. The scheme was dependent on funds being advanced (in accordance with the scheme) to regulated solicitors who would discharge their duties under a Code of Conduct and who were insured. The scheme therefore depended on solicitors' compliance with their professional obligations. The suggestion by Mr Nesbitt that the Applicant should have investigated the directors was "nothing to the point". The First Respondent was a solicitor to the fund from 10 May 2012, ultimately becoming panel manager, and had his own duty to ensure that the best interests of the directors were protected, and that they received proper advice.

29.6 It was suggested for the First Respondent that the Axiom loans were akin to commercial bank lending and did not invoke professional duties. This was unrealistic. The First Respondent knew from the outset that he was dealing with investment funds. From May 2012, he knew that the funds were subject to the terms of the LFA and the IOA, and, by 1/2 June 2012, the IMA. These documents were interlocking and sought to protect the private investors. The LFA was not a conventional loan agreement. The First Respondent would have behaved with the same grave breach of duty, as it was submitted he had done in respect of Axiom, if he had acted for and advised a commercial bank in circumstances where he had borrowed and used monies

contrary to the terms of the loan agreement under which he borrowed from and acted for the bank.

29.7 The alleged lack of warning about Axiom from The Law Society or the SRA was another red herring. The scheme depended upon each of the Respondents (as solicitors to Axiom) discharging their duties under the Code and each of them had admitted that they had not done so. Further, this was a hollow submission in circumstances where the First Respondent received explicit warnings about TS from 6 August 2012 onwards and did nothing in response. The Firm received the bulk of the monies retained by the practice after that notice.

29.8 A central issue was whether DR or TS said that the funding could be paid into office account and used for general office overheads. Mr Dutton accepted that, from the evidence, it looked as if DR had said as much. It was also proposed by Tangerine's representative, AL, that money could be used to pay off the Firm's bank loan. The Applicant's positive case was that it was improper for the Respondents to rely on what they were told by DR and TS when the Respondents were themselves solicitors and knew that DR and TS were Axiom's fiduciaries. The First Respondent knew of the terms of the IMA and both Respondents knew that they were themselves bound by the LFA. Further, the First Respondent knew the basis upon which investors had invested in the fund. It was therefore improper to rely upon what DR and TS said in order to circumvent clear professional duties.

29.9 The burden of proof remained on the Applicant. The Tribunal had to be satisfied that each allegation was proved to the criminal standard. In order to discharge that burden, the Applicant had in its submissions cross-referenced each evidential assertion to either contemporaneous documents or the transcript of witness evidence, or both. The fact that the Respondents gave alternative/different evidence did not mean that the Tribunal had to accept what they said. The credibility of the First Respondent did not stand up to scrutiny. The Second Respondent sought in his evidence to deny knowledge in the hope that he might escape a finding of subjective dishonesty. JW and the First Respondent gave evidence that the Second Respondent was kept informed of important financial matters, and they had no reason to lie about this. The role of each loan was important. Each was for an ever-increasing, large sum of money. The process started with an application for funding of £250,000 and ended up with receipt of £4.8 million. It was the Applicant's case that the Second Respondent knew more than he was prepared to admit in cross-examination. There was a "degree of belligerence" in his denials which went to his credibility. The Tribunal might conclude that, although the Second Respondent was much less involved than the First Respondent in the dealings with DR and TS, he was nevertheless kept abreast of developments. He was prepared to accept the monies as a partner in the Firm in circumstances where he must have known that they were being used improperly and that he could not repay them. In these circumstances each Respondent was dishonest.

29.10 What did the Respondents want in February to April 2012? They sought RBS funding of £250,000. They knew from the BT February 2012 Report that, without the £2m exceptional income, they would struggle to repay £250,000, even though they hoped to expand their business. In 2012-2013, the anticipated upturn did not materialise and the Firm's income remained flat. They applied for funding from Axiom of £250,000. The FF and FGI fees were taken out as a result of having signed the LFA. The

Respondents had read and gained an understanding of the LFA's contents, even if they had not read it in detail. The First Respondent's evidence was that he wanted the Second Respondent to read the LFA to spot any "howlers". Anyone reading the document in that level of detail would know the terms under which the monies had to be used. Even if the relevant terms of the LFA were not known to the Respondents at that point, they would have been known shortly afterwards, because the First Respondent embarked on a "dissection" (his own words) of the documentation. Each of them would then have known what was required by the Fund. RBS had refused funding at the level requested. The suggestion by the First Respondent that BT should speak to VM concerning the exceptional funding was no answer to the fact that the First Respondent had read the "nonsensical" submission pack. The First Respondent must have known that he would not obtain £2m (or £4m as suggested in other documents) from VM or someone else as part of that deal. There was no evidence of any legal work associated with the exceptional funding, and this purported deal bore all the hallmarks of bank instrument transactions against which the Yellow Card warned. Those hallmarks would have been obvious to an experienced solicitor, and the First Respondent gave evidence that he drew VM's attention to the Yellow Card, so he must have been on notice that this was a suspect transaction.

29.11 The First Respondent met with DR on 8 February 2012. He claimed that DR told him at that meeting that he could use the Axiom monies for practice funding. This meeting took place 2 months before the Respondents signed the LFA (on 19 April 2012). These two senior lawyers would have known that they could not rely on a conversation with an intermediary like DR as giving rise to a variation of an agreement that at the point of the conversation had yet to be signed. The LFA was clear that in order for the monies to be drawn down, they had to be applied in accordance with the terms of the LFA. The Respondents knew and accepted that in order to get the monies they had to sign that LFA. If the First Respondent's evidence concerning what he was told by DR on 8 February 2012 was right, they compromised themselves by taking the monies knowing that they were going to apply the funds in a way other than provided for in the LFA and that they would not be able to make the repayment when due. They had learnt by no later than 18 April 2012 that there was a 50% facilitation fee to be taken by Tangerine from the funding in advance, as evidenced by the email of undertaking of that date from the First Respondent (copied to the Second Respondent) to DR of Tangerine.

29.12 There were a number of "remarkable" features of the meeting on 8 February 2012, which the Tribunal might consider relevant to its assessment of the First Respondent's honesty. DR provided no business card, no landline, no office address. No sensible solicitor signing a detailed LFA would suggest that it had already been varied by an earlier meeting. The First Respondent did not write a letter or produce any record of the content of the varied terms, and neither did DR or Axiom, either before or at the time of the signing of the LFA. The inference as to why this was not done must be that everybody knew that the funds could only be dealt with in accordance with Axiom's obligations to its investors mirrored by the LFA. The Second Respondent signed the LFA in circumstances where he had not attended a meeting with DR but relied on what the First Respondent told him (the First Respondent did not appear to tell him very much). His account of how his Firm dealt with Axiom monies was wholly unsatisfactory. He could not rely on any conversation or document from Axiom to give him any reassurance that his Firm was entitled to do what it did with

the monies. At the time of signing the LFA, each believed that they had applied for and would receive £250,000 of funding. To obtain the £250,000, the First Respondent made representations as to the £2m exceptional income. Those misrepresentations were made twice: to BT in February 2012; and repeated in April 2012, and were coupled with an undertaking from the First Respondent to DR on 18 April 2012 that repayment would be made to the Fund. It was absurd to suggest that the First Respondent held an honest belief that the £2m was to be received lawfully or at all.

29.13 These experienced solicitors must have known when they signed the LFA, or at the very least shortly afterwards, that it contained an entire agreement clause. The First Respondent was an experienced commercial lawyer, with over 30 years of commercial experience. He tried to downplay that experience in his evidence but that was what he said at interview. The idea that an entire agreement setting out its terms could be varied by a prior conversation did not hold water. It was not in issue that DR said what he said to the First Respondent when they met on 8 February 2012. What was not addressed by the Respondents was that they must have known or suspected that Tangerine was acting outside its proper authority. They must have known this because: (i) this was an investment fund which investors had entered on a specific basis; (ii) the First Respondent knew of the terms of the SOM and IMA which clearly set out the restrictions on the investment; (iii) such permission as was granted to the Investment Manager to vary the nature of cases funded was limited by reference to the investment objectives; (iv) each knew, or in the case of the Second Respondent must have known, that Tangerine was a fiduciary of Axiom and was therefore bound to act in Axiom's best interests. Each also knew that Tangerine would receive 50% of every loan as the FF, and in the First Respondent's case he also knew that the investors were not told about that 50% FF. This gave rise to a stark conflict and should have been a real cause for concern for him as Axiom's solicitor; (v) each knew that the funding application had been for £250,000. The First Respondent's evidence was that it was intended to be a facility for £10m, negotiated via DR. That figure was not mentioned in the contemporaneous documents until KPMG (conducting the independent review for the Funds) asked questions in December 2012. The idea that a firm of solicitors could apply for funding of £250,000 and be awarded £5m without any further due diligence by Tangerine and then could apparently at a meeting on 31 May 2012 orally agree the variation of that figure to £10m "beggared belief". It would have at least set alarm bells ringing in the Respondents' minds and have been a hot topic of conversation.

29.14 The Tribunal had before it a document which gave a summary of how the money was applied for and its purpose. The third payment, £100,848 came in on 22 May 2012, and was paid into office account in respect of personal injury claims. This payment was made 9 days before DR and TS visited the Firm's offices. On the Respondents' own accounts this was before they could have been aware of the £5m facility; according to the First Respondent's evidence they did not see the £5m figure entered into the LFA, and therefore knew nothing about an increase beyond the £250,000 application. After 22 May 2012, they were "literally showered with money" in circumstances where, according to BT's April 2012 Report, they were going to be in difficulty even repaying £250,000. The written agreement must have been misleading to the Axiom directors if they relied on that and nothing else. The First Respondent did not understand there to be meetings going on which enabled the directors to know any more than that the Respondents were bound by the LFA. The First Respondent

said this during his SRA interview and Mr Dutton submitted that he accepted the point in cross-examination.

29.15 An honest solicitor would have been extremely concerned that DR was offering large sums of money contrary to the terms of the LFA. The excuse for the fact that the Firm was getting itself ever deeper into trouble was that it was somehow going to trade out of its difficulties. By November 2012 its repayment obligations to the Fund were £4.8m plus the 50% FF and interest. By the end of 2012 the total liability was over £7m. Cases had by this time come through to the Firm in significant numbers. By October 2012 when the Fund was suspended, all the conveyancing cases funded by the initial £250,000 loan would have passed through the Firm; none of that money was ever repaid.

29.16 On 6 August 2012 the First Respondent learnt about TS's background. His knowledge increased on 22 August 2012 when an accurate article was published concerning TS's disciplinary, regulatory and financial past history. The First Respondent got deeper involved with Tangerine after this date, without ever contacting the independent directors or simply stopping receipt of funding. For example, he went to Singapore for meetings after the publication of articles in September and November 2012.

29.17 The First Respondent's changing accounts concerning the use of the MV Rena funding started with an admission to the investigators that the money had been spent but that he could use it to mitigate his losses, which, in the Applicant's submission, was "obviously implausible", and wrong. The First Respondent later changed his story to assert that on the authority of DR the money was always permitted to be used in the practice. The Applicant's case was that the money was plainly to be used for the MV Rena action.

29.18 The drawdown of £2.296m was used in September 2012 to pay off the Firm's loan and the overdraft. This was after it was known that there was a suspicion of fraud and that TS was a person who had committed professional wrongdoing. On 16 October 2012 £705,000 was drawn down, ostensibly for interest rate swap cases. On 19 October 2012, £68,490 was drawn down for noise-induced hearing loss cases. No such cases were taken on by the Firm because JW doubted the quality of the leads. His evidence was that money was drawn down ahead of cases being purchased, with reliance placed on the supplier of the care homes cases. In fact the drawdowns were used to prop up the Firm. Against that background the Respondents must have known that DR and AL of Tangerine were acting outside the scope of their authority from the Fund. They were legal advisers to Axiom and billed over 100 hours for legal advice to their client during this period. The charges raised in that period, if the panel manager work was included, amounted to over £100,000.

29.19 When deciding whether each of the Respondents was subjectively dishonest in relation to each allegation, the questions to be asked were: (i) was the particular allegation proved? (ii) were each of the Respondents subjectively dishonest in relation to that allegation? If the answers to both questions, in respect of each Respondent and each allegation, is "yes", that is the end of the matter. If the Tribunal was not satisfied about subjective dishonesty in relation to either of the Respondents, where allegations were found proved the Tribunal should ask itself whether the breaches of the rules

were reckless. Mr Christianson for the Second Respondent had referred the Tribunal to the decision in RvG and Another [2003] UKHL 50.

29.20 If the Tribunal found that the Respondents were subjectively dishonest, then clearly they were acting without integrity. If the Tribunal found that the Respondents were reckless, but not subjectively dishonest, they would also have lacked integrity.

29.21 The allegation in respect of misleading insurers was made against both Respondents. As far as the First Respondent was concerned, it was common ground that he read the form, including the reference to the SRA investigation, and he accepted that it was inaccurate. The real question to be answered concerned his state of mind. The Second Respondent's evidence was that, in so far as any words of reassurance were given by DL or NI during the investigation, they were that the bookkeeping was in order. DL in his evidence agreed that he said as much. On that evidence, the First Respondent was unable to say that the Firm had received a Monitoring Unit visit and that their accounts were in "apple pie order". By July 2013 the Firm had been subject to detailed investigation and knew that there was an ongoing investigation, which had not been closed. They should have been completely frank with their insurers. On 2 May 2013 the receivers' solicitors informed the First Respondent that he was in breach of duty because he had failed to apply the monies in accordance with his obligations under the Quistclose trust. All of the evidence including from meetings, interviews, service of Section 44B Notices, indicated that the Firm was subject to a detailed investigation. The First Respondent had no answer to this allegation.

29.22 Matters were a little different in respect of the Second Respondent. His evidence was that he never saw the PII insurance application. However his oral evidence in that regard lacked credibility. The Firm had only two equity partners. The Applicant's case was that the Second Respondent would have seen the entire insurance form in order to be able to ensure that JW had made an accurate return to the insurers, for example as to the make-up of the practice percentages. If he saw the form and read it, the conclusion that the Tribunal would reach was that the answer that the Firm had been subject only to a Monitoring Unit visit and that the books were in "apple pie order" would have been as misleading in the Second Respondent's mind as it was in the First Respondent's mind, making each dishonest. If the Tribunal concluded that the Second Respondent did not or may not have read the form, the Tribunal had to ask whether the Second Respondent knowingly permitted the form to be submitted believing it to contain a misrepresentation? The Tribunal could find this allegation proved against the Second Respondent if it answered the first question "no", and the 2nd question "yes".

29.23 Throughout the proceedings the Second Respondent had adopted a different stance from the First Respondent. On the first day of the hearing the First Respondent made modest admissions to the allegations relating to conflicts. He later expanded those admissions. The Second Respondent admitted SAR breaches without admissions of lack of integrity. He had also admitted the conflict allegations including breaches of his duties of integrity and to uphold the reputation of the profession. Those admissions were to his credit, but bearing in mind the history of the matter and the evidence go far enough. It was remarkable that the First Respondent, who was plainly more involved than the Second Respondent had not even gone that far in terms of his

admissions, which may speak volumes about the First Respondent's approach. He had a long background of service, but in 2012 he crossed the line.

30. Timothy Nesbitt (First Respondent)

30.1 After referring to the number of allegations, and in particular the sub-particularisation of allegation 1.1, Mr Nesbitt explained his intention to simplify matters. Most of the issues, and in particular allegations 1.1 and 1.9 which he dealt with together, came down to what the Tribunal made of the First Respondent's evidence as to what he thought and believed over the summer/autumn 2012. His evidence was that in his mind he was dealing with an apparently professional investment fund manager. Distinctions between managers and directors were not initially apparent to him. He was offered and accepted funding from the Fund which in his mind was a sophisticated commercial lender/entity engaged in lending to the legal market. He was offered the funding on expensive terms, which he accepted. For all the detailed "remorseless" analysis by the SRA of the documents and what he should have appreciated and understood, the case was about whether the Tribunal accepted the First Respondent's account that he believed that he could trust the professionals that he was dealing with and what he was being told. He thought and believed that he was dealing with people who could be trusted and whose activities were the subject of monitoring and supervision by a range of other professional entities which contained, as part of their offices and staff, professional people with solemn professional obligations. It did not occur to the First Respondent against that background that when he was orally told that these were the terms on which his Firm could have this money, that that was information that he should not trust.

30.2 Bearing in mind the way in which the burden and standard of proof operated in this case, if the Tribunal accepted, as it should, that this was what the First Respondent believed, on the central allegations the Tribunal was left with assessing how a solicitor was to be judged if he placed his trust in what he has been told by commercial entities staffed by professional people. He accepted that there may have been misjudgements along the way, enquiries he did not make, matters he did not record in writing. However, this was not an area of a solicitor's life in which there were warning cards, but was in the context of private commercial lending from a private commercial lender. On the factual bedrock of the trust that the First Respondent deposed in what he was told (and which other solicitors deposed when accepting money with the same background), even if the Tribunal found that the First Respondent made misjudgements, that act of trust did not result in breach of Principles 2 and 6, which necessarily involved an element of morality.

30.3 Mr Nesbitt highlighted three preliminary points:

- Perspective. It would be too easy for the Tribunal to come to a complicated story such as this, and to consciously or unconsciously assess the First Respondent's conduct with knowledge of what happened subsequently. The Tribunal could not wholly eliminate from its mind knowledge of the subsequent outcome, but it did not have any evidence before it as to what was or was not approved by the Fund directors or shareholders. The Tribunal must put itself in the First Respondent's shoes as to his knowledge in 2012, when he had no idea that events would take the term they did. When put in touch with a commercial organisation by a highly

reputable firm of international accountants, BT, he thought that he could trust the professional people he was dealing with. One did not begin dealings with professional people with suspicion, and would naturally take what one was told at face value. The Tribunal should conclude that not only was this a reasonable attitude, but one that anyone would have. When dealing with an apparently reputable businessman introduced to him by his own well-known accountancy firm, would the point about DR using a mobile phone and not having a business card really give rise to suspicion?

- The burden and standard of proof, relying on extracts from chapter 6 of Phipson On Evidence (Eighteenth Edition). The burden and standard of proof might ultimately have little bearing on the Tribunal's findings, because in many instances the factual evidence in this case was evidence where there was no contrary evidence. In so far as there was challenge to factual points, it was important to have a clear picture of how the burden and standard of proof operated. What was instructive in Phipson was the reinforcement of the fact that the Defendant had nothing to prove in a normal case. The accused was entitled to be acquitted if at the end of and on the whole of the case there was a reasonable doubt created by the evidence given either by the prosecution or the accused. "It is not for the accused to prove honest dealing with the property but for the prosecution to prove the reverse. Thus, if the explanation given is one that the jury think may be true, though they are not convinced that it is they must acquit, for the burden of proof remains on the prosecution throughout and will not have been discharged." Mr Nesbitt referred the Tribunal to Woolmington v DPP [1935] AC 462 at 481,482 (per Viscount Sankey L.C.). The implications in relation to the approach to the finding of facts in this case, were that where, as was the position here, a Respondent raised factual contentions that were centrally relevant to the assessments that the Tribunal had to make as to whether breaches of the Principles as alleged were made out e.g. what the First Respondent was told and his state of mind, unless the Tribunal decided that it was sure that those factual assertions were untrue, the Respondent was entitled to have his case assessed on the assumption that that the factual assertions were true.

- General observations regarding the First Respondent's reliability and credit closely linked to the burden and standard of proof. There was no counter evidence to rebut what the First Respondent said he was told by the people he dealt with. It was now accepted by the Applicant that the First Respondent was told that he could use the funding in the way that he did. The points of dispute between the witnesses as to what was said may be "few and far between", mostly limited to the exchanges that were said to have passed between DL and people at the firm in the aftermath of the interview. Mr Dutton sought to persuade the Tribunal that the evidence of each of JW, and the Respondents lacked credit, and that the conclusion should be that they had lied before the Tribunal. Mr Nesbitt rejected that submission. The Respondents are men of good character without professional blemish. At the core of events during summer/autumn 2012 were the assurances that they were given, the discussions that took place and the thinking around the repayment of the funding. In respect of all of those matters their evidence was corroborative of each other and was an account which made sense of the events that took place. There was limited paperwork to explain receipt of the drawdowns. Against that background what JW and the Respondents said was fundamentally

true. Axiom, through its representatives Tangerine, entered into discussions and embarked upon a deliberate strategy in which they would work with the Firm and advance money to them to fund new lines of work that they all genuinely thought could be profitable to the benefit of the Firm and the Fund. This had the ring of truth about it from the way in which events unfolded. The alternative was that the Firm was suddenly showered with money for no reason at all, which was unrealistic. Mr Nesbitt invited the Tribunal to the view that the story itself was both corroborative of the accounts they gave and gave the lie to the suggestion that when they gave those accounts they should not be believed. On that basis it was incorrect to say that these were witnesses who lacked credit. Mr Nesbitt invited the Tribunal to reflect on the way in which each of the witnesses gave evidence. The First Respondent was put under considerable pressure by skilled cross-examination from Mr Dutton. Throughout he gave evidence that was measured, that provided answers to most of the issues that were raised with him and that was delivered in a way which involved him in recollecting from memory a sequence of events. It was not the performance of a dishonest witness, but of a witness who was delivering a genuine account from his recollection of what happened and his thinking around events of the summer/autumn 2012.

- JW's evidence was that of a "plainly honest witness". He had no continuing connection with the First Respondent. The idea that he would in effect perjure himself in support of his former employer did not have an "air of reality". Events were no longer recent but he was plainly genuinely attempting to cast his mind back and giving an honest account from his recollection. The same point applied to the Second Respondent, regardless of his limited part in the proceedings and the events of the summer of 2012. In so far as he provided the Tribunal with an account of what he knew of what was taking place at the Firm over the summer of 2012, he too was a witness giving a plainly honest account. He was well aware that there had been careful financial modelling and thought given to the drawdowns. The Second Respondent presented as a "genuinely plain and honest man".

- Mr Nesbitt referred the Tribunal to his general characterisation of the sequence of events in his written closing submissions, which he invited the Tribunal to review. For the reasons set out on those pages, Mr Nesbitt invited the Tribunal to the view that the factual account set out there was that which accorded with the truth.

30.4 Allegations

30.4.1 Mr Nesbitt read the Rule 5 Statement as describing allegation 1.9 as essentially a reformulation of allegation 1.1, and therefore the Tribunal's conclusions on those allegations were likely to stand or fall together. Seven headline reasons were advanced by the Applicant to explain why the Respondents were wrong to accept the funding. The fifth reason was that the Firm should have been on notice that something dubious was going on in relation to Tangerine, with a number of further sub-reasons advanced. For all the, "sometimes intimidating very analytical detail", ultimately the big question was how the First Respondent assessed things on the ground over the summer of 2012 and into 2013. Mr Dutton recognised this in his submissions by encapsulating the ultimate question as to whether it was improper for the First Respondent to rely on what DR and TS said, with which Mr Nesbitt agreed.

Mr Nesbitt agreed with that encapsulation. This in turn went back to the issue of how the Tribunal was to judge the First Respondent's evidence, which came down to the issue of how the Tribunal was to judge the evidence of a professional man for placing his trust in others.

30.4.2 A number of the allegations relied on the proposition that it was a breach of contract for the Firm to accept funding in the way that it did. It was presumably said that by reason of that breach of contract there was some professional misconduct in accepting the funds. This was a fair point, but questions of whether a solicitor was in breach of contract were ordinarily a matter of civil law and contract and would not ordinarily involve the solicitor in professional misconduct allegations. This would be the position in particular where the proper analysis was that the breach of contract was not deliberate, because if it was a breach it was authorised by the other contracting party. If what took place in the summer of 2012 into 2013 was inconsistent with the hard letter of the terms of the written contract, it was plain and uncontroversial that all that took place was with the approval of the representatives of the Fund. The Tribunal would see that there was provision within the contract for the variation of its terms, which did not require variations to be in writing. The only sensible analysis of what took place during the discussions over the summer of 2012 was that the use of the funds for the purposes to which they were put (which seem to be accepted and agreed) was authorised and approved and therefore agreed for and on behalf of Axiom. If it was not approved and did not formally amount to a variation, it must have been a waiver of any breach of contract. In either event there was no actionable breach of contract. Even if one could maintain the contention that it did involve a breach of contract, the notion that in such circumstances, where the use to which funds had been put was expressly permitted by the other party to the contract, should involve professional misconduct was over analytical and unreal.

30.4.3 This was similarly the position in relation to other criticisms made of the Firm by reference to breach of contract, such as the provision of documentation said to be a condition precedent to receipt of funds. Mr Nesbitt invited the Tribunal to review the provisions of the contract relating to that point. The correct reading of those clauses was that they provided that the funders may decline to provide the funding which they had otherwise contracted by the existence of the facility to provide if the documentary details which were set out in the schedules were not supplied. What the contract did not say was that by failing to provide that documentation the recipient of the funding was in breach of contract. The provisions gave justification for the funds to be withheld if in the judgement of the fund manager or the directors that was what they chose to do.

30.4.4 This was similarly the position in relation to payment to the client account. The subheading of the contract "utilisation" referred to and clearly contemplated that money would be paid into client account without providing completely explicit terms that that was the obligation. Even if there was an implied obligation or an obligation that one would otherwise imply from the existence of that clause, on the facts here what was absolutely stark was that it was agreed by the representatives of the Fund that this was funding that had been supplied and could and should be used and could and should be paid into office account because that was what they had expressly said in emails that were before the Tribunal. If, technically, there had been some sort of breach of the hard letter of the contract that, like the other breaches relied upon by the

Applicant, was clearly agreed and authorised. The proper analysis was that they amounted to variations of the agreement between the parties and the idea that that disclosed professional misconduct had an unreal and over-analytical flavour.

30.4.5 There was a separate sub-strand in relation to allegation 1.1. It was said that the purposes for which the funding was to be used by the Firm did not reflect the provisions of the LFA. This begged the question of the true terms of the funding agreement that the Firm entered into. The Tribunal had the evidence of what was discussed and what was orally agreed. The only sensible analysis was that the true contractual relationship between Axiom and the Fund was one under which the purposes to which the funding was put by the Firm was exactly as was contemplated.

30.4.6 The third strand of this part of the Applicant's case was that there was no intention to repay the funds or that the Firm was wholly reckless as to whether the funds were repaid. At the start of the case the Tribunal might have been forgiven for thinking that there had been no budgeting or financial planning; that this was just sticking the finger in the air and accepting money that was showered upon them. Whether or not the judgements made about financial projections were unrealistic or over-optimistic, JW's evidence established beyond any real doubt at all that there was detailed financial planning over the summer/autumn 2012. JW was immensely experienced in these matters. He and the accountant TH (formerly of Grant Thornton) had obviously put a great deal of work into these matters, and both believed that the financial planning was realistic. The planning was challenged in cross-examination and some of the figures explored. However the Tribunal had not been presented with any expert evidence which would allow it to form a conclusion about whether the views that JW or TH held involved misjudgements. Even if the Tribunal did have the evidential foundation, that was not the allegation, which was in practical terms that there was a complete failure to budget at all and no intention to repay the money. On the evidence that the Tribunal had heard (whether or not the Tribunal concluded that they were being optimistic) it was plain that there were detailed assessments genuinely made and the evidence established beyond any sensible doubt that a lot of thought went into this. It was wholly unreal to suggest that there was no intention to repay this money or recklessness in relation to it. The genuinely held view of all was that, as they had done before, they could trade in an expansionary way, rapidly develop new and profitable lines of work and that formed a proper basis on which to reasonably expect in the medium term that all the borrowing drawn down could be repaid. How likely was it that a law firm led by a solicitor such as the First Respondent of some 40 years' experience, a clearly cautious and sensible man such as the Second Respondent, and a man of immense experience in running a law firm such as JW, what possible reason would accept the loan of millions of pounds if they did not think it could be repaid? In the First Respondent's case, by virtue of the fact that he was a partner in the Firm, the borrowing would become a personal liability. The possibility that there was no intention to repay this money or that the prospects of repayment had not been carefully thought through was wholly unrealistic and the Tribunal should leave it out of their account of what took place.

30.4.7 The submissions above for the most part dealt with all the reasons advanced by the Applicant for why it was improper for the Firm to accept the funding, save for those about what they should or did perceive or detect about the activities of Tangerine. These were the criticisms under the fifth reason for why it was said that it was wrong

to draw down the funding, which involved detailed analysis of the proper reading of the documents like the SOM and IMA, and the FF, and so on. The size of the FF was relied on. The Tribunal was invited to find that the size of the fee must have been known by the Fund directors. As a cost of borrowing it seemed expensive. However, in the First Respondent's experience at the time, it was not out of kilter with other opportunities for borrowing e.g. the RBS fees on the continuing overdraft. It was expecting too much of the First Respondent and was unrealistic for him to regard the size of that fee as a reason for him not to enter into commercial dealings with the parties to these arrangements.

30.4.8 It was said by the Applicant that it must have been known by the First Respondent that Tangerine was failing to comply with the LFA's terms. This was a circular argument. The First Respondent was presented by Tangerine's representatives with an account of events which made it explicit that the strategy that the Fund directors wished to pursue was one in which the lending model was to be expanded to encompass the sort of funding that was supplied to the Firm. The reason why the true agreement was reached with the Firm was on all fours with that aim.

30.4.9 The criticism was made that it must have occurred to the First Respondent that no financial assessment had been made of the Firm before these funds were offered. The evidence showed that there were wide-ranging discussions about the new lines of work to be developed, involving several visits to the Firm's offices, including the impression left by JW's evidence of 3/4 visits by AL, during which time he spent a day looking over the accounts and the new lines of work. The evidence established that the thinking on the part of the Fund's representatives was that the Firm was in a position to take on new lines of work and that it was realistic to expect those lines to be profitable. This did not paint a picture of the Fund's representatives wholly failing to carry out any financial assessment of the Firm and its capacity to take on board this borrowing. Genuinely the First Respondent thought that the funding could be repaid, that it was realistic to draw down, and that there were good prospects of the Firm trading itself into a position in which it could repay. He had ample successful experience of expansion of work of that kind. The First Respondent thought that the Fund's representatives shared his optimism about the prospects. It went too far to expect him at the time to have concluded that the assessments made on behalf of the Fund were inadequate.

30.4.10 It was said that it should have been obvious to the First Respondent that the Fund managers were showing themselves prepared to advance lending on the basis of a transaction that was dubious (the £2m exceptional income). The First Respondent's genuine assessment, rightly or wrongly, was not that the transaction was dubious. He knew that it was speculative and his evidence was that this was what he told anyone who asked him. He told BT that they should speak to the proposed source of the funding to form their own view about it. This indicated the reservations, the caution with which he expressed himself. It was wrong to say about a subject that was itself the subject of an independent exploration by an accountant at that point acting on behalf of the Firm and reporting to Axiom, that the First Respondent thought that something was amiss.

30.4.11 The Tribunal had received the First Respondent's evidence as to how he read documents such as the SOM and IMA. By reference to the paragraphs of those documents which gave discretion to the Investment Manager to vary the investment strategy and objectives, the First Respondent genuinely and reasonably believed that this was the position. It was suggested that there was no provision for a FF in the SOM, but Mr Dutton reminded Mr Nesbitt that this was incorrect. The First Respondent was keen for the Tribunal to be aware that the document did contain reference to "management fees". His evidence was that the Fund was aware of the FF and there was no evidence that they were not so aware. The First Respondent did not pretend to be a company lawyer with a detailed understanding of these things. It did not strike him, for instance, that the insurance arrangements in place were anything other than appropriate and covered what was anticipated. Applying the standard of proof as proposed by Mr Nesbitt, the Tribunal was invited to accept the First Respondent's account on all of those matters as realistic. Rightly or wrongly the position was that he genuinely believed that the SOM provided scope for the Fund to undertake the lending it was embarking on. The Applicant had not established that the First Respondent did not believe that, and he was entitled to have his conduct assessed on the basis that that was the true position. The position was the same in relation to the IMA. Rightly or wrongly his view was that discretion was vested in the investment manager by that document and he honestly took the view that the funding strategy being pursued by the investment manager was both permissible and expressly understood as permitted by the Fund directors. The Tribunal was invited to conclude that his account was genuine and approach an overall assessment as to whether the allegations against the First Respondent were made out on the basis that that was the truth.

30.4.12 Mr Nesbitt turned to an email written by the First Respondent to DR on 8 May 2012 following receipt of an email from Check Mate requesting information in relation to the funding. He was asked questions about the ATE insurance. The First Respondent was told by DR to confirm that the funded cases did not require ATE insurance and that he was covered by the "fgi policy". That seemed to the First Respondent to be the truth. The cases that were being funded at that point were conveyancing matters, and did not require ATE insurance. The First Respondent understood that they were covered by the FGI policy. What DR was asking him to say was simply the truth. It was being over-analytical to suggest that the exchange was a basis on which the First Respondent should, still less did, conclude that DR was up to no good.

30.4.13 The point was taken against the First Respondent that his own analysis of the LFA was that it was defective and seriously flawed. The truth was that he regarded the document as being defective in the sense that it did not reflect and provide for what the Fund wished to and was trying to do. It was in that sense that he described it as "defective" and "not fit for purpose". Mr Nesbitt invited the Tribunal to reflect on how that account dovetailed with what the First Respondent said he thought and understood about the genuine intention of those that ran the Fund in terms of the direction in which they were seeking to take the lending. This was the start of the process in which he offered proposals for the re-drafting of the documentation which corrected what he saw as the defects and produced a written agreement which reflected the model which he understood the Fund wished to pursue. It must be true, as the First Respondent told the Tribunal, that he anticipated, almost self-evidently, that that documentation was going to be examined by those who ran the Fund, namely

the directors. The likelihood equally being, as he said he believed to be the case, that they would also be examined by the Fund's own lawyers in the Cayman Islands. This entirely corroborated the First Respondent's evidence that he truly believed that this was the direction in which the Fund was going and the model of funding that was genuinely authorised and which it was deliberately pursuing. If nothing else, the documentation the First Respondent was drafting and the observations that he was making about defects were plainly matters that he would have expected would pass across the desk of those in the Caymans, and would make it absolutely plain to them what was happening. This evidence was entirely of a piece with the evidence that he gave that he did not believe that something was amiss and that he believed that what was happening was entirely consistent with the genuine wishes of the fund. What he was doing was plainly going to alert those operating the Fund to the new model of agreement that he was proposing.

30.4.14 The next point taken against the First Respondent was the MV Rena funding. Here as in other parts of the case, the analysis by the Applicant was not the analysis that was undertaken by the First Respondent at the time of the events. The First Respondent did not suspect what was suspected now of the operation of Tangerine. By early August there were rumours on the Internet about TS. The other directors and management of Tangerine assured the First Respondent that TS had stepped back. He had no reason to doubt the integrity or professionalism of those other people, including DR and AL. That was simply the truth and the basis on which the Tribunal should approach the case. It did not occur to the First Respondent that the investment of substantial Axiom funds in a project like MV Rena was something that could be taking place behind the back of the Fund or that it was something that the directors or fund managers would be undertaking if there was any impropriety about it. The Tribunal may conclude that the First Respondent should have asked more questions, but that was the truth. The First Respondent said of himself that he was not a greatly academic lawyer. Perhaps he was not an insightful lawyer, in failing to spot some of these points. With the benefit of hindsight he wished that he had asked further questions, and he accepted that he had made misjudgements.

30.4.15 It was relevant to the Tribunal's consideration that the First Respondent was a solicitor of some 40 years' standing, who prior to these events had been successful. He was for a long time a member of The Law Society on various committees providing an obviously useful service to society. During all of that history he was a man without professional or ethical blemish. The picture of him and his conduct created by the Applicant's case as a result of over-analysis of the documents was one that did not accord with the man who appeared before the Tribunal. There were layers of checks and balances put in place in relation to the Fund evidenced by the documents, including audits by BDO (which had given the operation a clean bill of health) and the suggestion in minutes that the directors had been doing their jobs. DL and NI recognised in their evidence that it was not unreasonable for the First Respondent to believe that apparently competent professionals in those positions were doing their jobs. That was precisely what the First Respondent would have and did reasonably believe, namely that those checks and balances were working as they should. From his first interview and throughout, the First Respondent had given a clear and consistent account that this was what he believed.

30.4.16 Allegation 1.2 related to the exceptional income. The First Respondent explained his thinking, which was that he did not claim to understand the trading activities that were said to be generating the credit line that he was told was going to become available. His only involvement was intended to be linking one entity with £100m funding that it wanted to invest in the mortgage market to another entity which had access to that market as a provider of mortgages. There was nothing unlawful on the face of that transaction. The First Respondent's evidence was that he actively considered the Yellow Card. It did not seem to him that the proposal that had been put to him had any of the Warning Card features of a scam. The headline points, as he informed the Tribunal in his evidence, were that no one was being asked to provide money; there were no advance fees; and no one as far as he could see particularly and including himself was being asked to provide bank details or offer endorsements as to the bona fides of any of the transactions. It was genuinely difficult for him to see where within what he was presented with there could be a fraud. The assessment that he made that this did not look to him like fraud was genuinely the assessment that he did make. The First Respondent deserved to be assessed, applying the burden and standard of proof as the Tribunal should, on the basis of his evidence in relation to that was the truth. There was no direct converse evidence that the First Respondent did not undertake that analysis and the account that he gave that this was a genuine analysis, whilst others may have come to a different analysis, was plausible. In terms of what the First Respondent represented to others in respect of this, he always expressed himself in a way that made it plain that he had reservations about the receipt of the exceptional income. He went so far as to suggest that other people should go to the source of the proposal, namely VM, to make their own assessment of the bona fides of the transaction and the likelihood of it proceeding. The Tribunal knew from the BT reports that that contact happened. That evidence corroborated the First Respondent's account that he expressed himself in relation to those matters in a cautious way. It was "over-analytical" and "too harsh a judgement" to characterise what happened to him in respect of that as in breach of Principles 2 and 6.

30.4.17 Allegation 3 concerned payments into office account. The weight of the evidence was that the representatives of the Fund expressly authorised the use of the funds as practice funding and expressly indicated that the Fund should be paid into office account. The funds properly lay on the office side of the account. Further, at the time the SRA investigators did not appear to believe that the money belonged anywhere other than on office account.

30.4.18 Allegations 1.4 and 1.12 were closely linked: allegation 1.4 concerned MV Rena; allegation 1.12 concerned what the SRA investigators were told. The First Respondent's evidence was that it was expressly agreed that the funding supplied in connection with MV Rena was the Firm's money to use. On 1 August 2012, DR wrote by email to one FB and the First Respondent. He stated that the First Respondent was "funding the case and investing into the action". Similarly on 6 August 2012, the First Respondent sent an email to DR, the contents of which some might describe as self-serving. It was however a contemporaneous document which the Tribunal might conclude accurately recorded the thinking at the time. That email referred to the Fund lending $5m to the Firm under the terms of the LFA. It stated that the amount borrowed became the Firm's responsibility to repay; the Firm was effectively investing in the case. The notion that the Firm was funding and investing in the case was consistent only with the notion that the money had passed over to the

Firm and had become the Firm's money. The Firm's ongoing obligation was to use "their monies" to invest in the case. It would have made no sense if the Firm was simply acting as a conduit for money which they held on trust. The First Respondent gave a "fairly vivid" and understandable account of how he accepted that this funding was subject to the same FF as the other funding. His evidence was that he would not have regarded as attractive funding on the basis that the Firm received the money as a conduit and trustee if by so doing he created a liability for payment of the FF. In his mind, the fact that the FF applied to this tranche of funding indicated that it enjoyed the same status as the rest of funding, and he approached it on that basis. The only evidence that the position might be other than this, relied on by the Applicant, was what the First Respondent initially said during interview. Mr Nesbitt acknowledged that during interview the First Respondent solely referred to mitigation of his losses in relation to what he said was a potential claim against the Fund. The First Respondent may not at that time have been thinking about the wider understanding that he had about the use of those funds and his mind was focused, no doubt with a sense of bitter resentment and grievance, on what the Fund had done to him. He therefore gave his answer which focused on what the Fund had done to him. That was not enough to establish that the account that he had provided of the express terms on which funding was advanced was wrong.

30.4.19 Was a Quistclose trust created in related to the MV Rena funds? The First Respondent reminded the Tribunal of the line the Fund's receivers had taken. As Mr Nesbitt understood it, they had not raised the creation of a Quistclose trust. If they had done so they would have sought by reason of that trust to assert that that this debt should take priority.

30.4.20 Allegations 1.5, 1.6 and 1.8 related to the conflicts of interest, which were admitted, save for breach of Principle 2 (lack of integrity). Mr Nesbitt relied on the decision of Hoodless v Financial Services Authority [2003] UKFSM FSM 007 at [19] for the definition of "integrity" as "moral soundness, rectitude, and steady adherence to an ethical code". In layman's terms it was often wrongly thought that a lack of integrity of necessity involved dishonesty. In fact, lack of integrity involved a lack of moral rectitude (per Hoodless). The First Respondent openly volunteered information to the SRA investigators concerning the circumstances giving rise to conflicts. In the Interim Report, the investigators seemed only to have picked up potential for conflict in relation to dealings with panel management. It was in their subsequent report that they raised issues regarding acting for Axiom and Tangerine. It was therefore fair to say that the SRA investigators did not seem to have initially spotted precisely what the First Respondent told the Tribunal that he did not spot. DL accepted that at least on that subject he thought that the account given to him by the First Respondent was genuine. This was much closer to the time of events and the assessment of the experienced investigator was that he thought the First Respondent was being open and honest. The First Respondent thought that his position when acting for Axiom and Tangerine was analogous to being asked to advise a commercial bank, whilst also being in a contractual relationship with that party. He accepted that he had misjudged the position. The Tribunal was invited to accept the investigator's evidence that this was genuinely the First Respondent's position, and that he just did not see the problem at the time. On that basis, there was no dishonesty in relation to this allegation and the conduct did not involve lack of integrity within Principle 2. A

genuine misjudgement such as occurred here did not result in finding that a person of previously good character lacked moral rectitude.

30.4.21 Allegation 1.8 concerned failure to act in the best interests of his client, Axiom. The Tribunal was invited to accept the First Respondent's spontaneous account of his conduct, repeatedly given, that he genuinely believed that the true intention of those who were directing the Fund was that they wished to be able to lend money to law firms undertaking streams of work such as his for general practice funding. They wished to expand their portfolio of lending from what was originally envisaged for commercial reasons which seemed to the First Respondent to be coherent and make good sense. They were under the expectation that they were going to make high levels of profit for their investors which would require substantial sums to be loaned. They needed to increase their loan portfolio to serve that purpose. The First Respondent was bemused from the first time it was suggested he had not acted in the best interests of Axiom. He thought that Axiom was using documentation which did not do what they were trying to do, for example did not provide security for the loans in terms of security documents. He offered to correct deficiencies and always acted in the spirit of trying to be helpful. He now appreciated that it was not in Axiom's best interests to act where there was conflict without making direct contact with the directors. This was a man of long-standing good character. There were two available explanations for his behaviour. Either he knowingly put himself in a position of conflict where he was not acting in the client's best interests, or on this occasion he simply misjudged the position. The most likely explanation, given the First Respondent's background, was that he simply misjudged the position. This misjudgement did not have the quality of lack of moral rectitude sufficient to give rise to a breach of Principle 2.

30.4.22 Allegation 1.10 related to the First Respondent's email exchange with DW of Wingate Solicitors. To those of a suspicious bent of mind the email exchange might have a "nudge-nudge, wink-wink" tone, but that was not the only way the exchange could be read. An alternative reading was that the First Respondent thought that DW's answers were not precise and accurate. He thought that should be corrected if DW, who had his own responsibilities as a solicitor, believed that that was true. It seemed that, on reflection, DW did believe that that was true. That construction of those documents was reasonable, and having heard from the First Respondent, the Tribunal should accept was the genuine purpose of the exchange.

30.4.23 Allegation 1.11 concerned the suggestion that false and misleading information relating to the SRA investigation was provided to the PII insurers. Witness evidence from DL, JW and the Second Respondent dealt with conversations said to have taken place before and at or around the time of the interview. The Tribunal was invited to the conclusion that the accounts from JW and the Second Respondent were more reliable than DL's account; he had little specific recollection of the conversations. The tenor of the way in which DL appeared to have conducted himself, at interview, in email exchanges with the First Respondent, and in his evidence to the Tribunal was that he would be inclined to be agreeable and affable. In that spirit DL may well have said what he was said to have said. The Tribunal had clear evidence from JW and the Second Respondent, to whom conversations with a SRA representative would not be an everyday occurrence and were more likely to stick in the mind. It was genuinely the Firm's position at the time that they were helping the SRA with their investigation, and that the SRA's assessment was in accord with their own

assessment, namely that the Firm had done nothing wrong. In those circumstances the way in which the PII form was completed was not fraudulent as characterised. It was inaccurate in that it was mistaken in the reference to "Monitoring Unit" rather than "Investigation Unit". This was a simple error that the First Respondent did not spot, as he explained. The Tribunal was invited to conclude "in the round" that the SRA's characterisation of the completion of the form as a breach of the Principles alleged was wholly over-analytical and did not pay proper regard to the general state of mind that the Firm's representatives held at the time as to whether the Firm was in trouble or not.

30.4.24 In relation to the allegations of dishonesty, it was important that the Tribunal stepped back to reflect on what it knew about the First Respondent. He had a blemish-free record of service lasting 40 years. JW was very clear that he had never known the First Respondent do anything dishonest, as far as he was aware. JW knows the First Respondent extremely well and did not give evidence seeking to protect the First Respondent. His assessment should be accepted as being reliable and accurate. The Second Respondent was not a man for whom there was currently much love lost between him and the First Respondent as could be seen from the witness statements. His written and oral evidence was that he did not know of the First Respondent every knowingly doing anything dishonest. Throughout the summer and autumn of 2012 the First Respondent trusted what he was told by other professionals. The trust that he placed in those people did not involve such errors of judgement as to place those errors in the category of breaches of professional conduct as alleged. If the Tribunal decided that there were misjudgements made of an order which did disclose breaches of professional duty, the Tribunal should draw back from the extra finding that these disclosed dishonesty. This was a man of previously entirely good character about whom several witnesses had testified to his honesty. It was plain from the way in which the investigations were conducted and from the interviews that he always sought to be helpful. The tenor of the interviews "plainly shouts out" at the Tribunal the consistency with which he had advanced the account of these events, which he had repeated to the Tribunal. Deploying, in the way that Mr Nesbitt invited, the burden and standard of proof, the Tribunal was invited to agree that when the First Respondent told it that these were honest judgements that he made at the time of these events, he deserved to be believed about that.

31. <u>Written Submissions of Gary Christianson (Second Respondent)</u>

31.1 Mr Christianson provided written closing submissions dated 16 July 2015. His attendance to make oral closing submissions was dispensed with by the Tribunal at Mr Christianson's request. The key points drawn from the written submissions were these:

31.1.1 The admissions made adequately and fully reflected the Second Respondent's culpability as shown by the evidence. The admissions were made at an early stage of the proceedings and should be taken by the Tribunal to indicate proper insight by the Second Respondent into the obligations incumbent upon solicitors, and to add weight to his evidence.

31.1.2 The Second Respondent's response to the allegations was predicated upon his limited role in the control and direction of the Firm. He did not say that as a result of his

modest 2% stake in the equity he was entitled to ignore the operation of the rules governing conduct. He is an experienced and well-qualified solicitor and knows that that is not the case. The extent of his stake was relevant to the amount of information that he received and the role he played within the Firm and its day-to-day operation. The SRA investigators clearly took the view that the First Respondent had the directing mind, assisted in financial control of matters principally by the Chief Executive, JW. The dynamics of the Firm viewed properly was consistent with the Second Respondent's case. The latter provided technical support on the basis of limited information as to the drafting of certain aspects of documentation under the First Respondent's direction coupled with a limited amount of administrative support while the First Respondent was on holiday. In aid of the contention that the role of the Second Respondent was essentially peripheral to the direction and control of the Firm, many of the salient features of the Applicant's case only became known to the Second Respondent during the investigation, for example, his not having seen the BT Report or the SOM prior to investigation and his lack of knowledge of the panel manager fee paid to the First Respondent. It was unreasonable to impute a level of awareness to the Second Respondent as to aspects of the transaction that could only have flowed from those documents.

31.1.3 There was no evidence adduced of direct dealings between the Second Respondent and TS. His dealings with DR were limited to having been copied in on a few emails when assisting with the redraft of some documentation at the First Respondent's request. This lack of evidence negated the contention that the Second Respondent had sufficient information to have been on notice to raise concerns about TS and DR.

31.1.4 The gaps in the information supplied to the Second Respondent were not isolated and irrelevant blips in communication within the Firm, but a clear and unequivocal indication as to the Second Respondent's limited role and the general lack of information he had at the time. He was only copied in to the considerable email traffic when he was asked to assist in the drafting of limited aspects of the documentation by the First Respondent. This adds credence to the assertions upon which his please are based that he was not aware at the relevant time of many of the issues giving rise to the allegations.

31.1.5 In relation to allegation 2.1, the Second Respondent had confirmed that he was aware of receipt of monies generally from Axiom. He was not involved in and would not have been expecting to be involved in decisions as to the use of and the accounting for those monies given his role in the Firm. He had no reason to believe that the monies received were not being dealt with by the Firm in accordance with the LFA. His belief as to compliance by the Firm with the terms of the LFA was closely considered under cross-examination and should be accepted as being reasonable and genuine. The Second Respondent had been in partnership with the First Respondent for many years, and had no reason to doubt his integrity or commitment to the maintenance of proper professional standards, particularly given the First Respondent's position within The Law Society.

31.1.6 The Second Respondent was not a party to the lengthy and involved negotiations leading to the conclusion of the LFA with Axiom. He accepted that he executed the LFA as a partner in the Firm having read the document. He was not involved in the utilisation or allocation of the monies received and as such was entitled to rely on the

First Respondent and Chief Executive given their greater knowledge of the LFA, to ensure that the terms were met.

31.1.7 The intention of the Firm to repay the money was the subject of close cross-examination. The Second Respondent's clear and honest belief was that the monies would be repaid. He had no reason to doubt the intention to repay by the Firm and given the projections made he was not recklessly running a risk as to that not being the case, nor was he putting his head in the sand to avoid considering the issue. He believed the Firm would trade out of the admitted financial difficulties it faced and make repayment.

31.1.8 Given all of the above, the Second Respondent could not reasonably be said to have at any stage been in a position to reach any conclusion as to the intentions of the fund manager. A greater degree of knowledge would be required on his part than has been demonstrated to show that he could reasonably have concluded that there was a risk of fraud being perpetrated on the Fund.

31.1.9 In respect of allegation 2.2, he accepted that given the requirements of the LFA, the monies received were not dealt with in accordance with the SAR. He is aware of the strict duties which are not delegable as to compliance with those rules and accepts the same. It was not made out on the evidence presented that he had gone beyond the admitted breaches such as to place him in breach of the Code of Conduct. He would have had to have a greater degree of knowledge of the handling of the monies to have acted in breach as alleged or at all. The Firm had in JW a senior figure dealing with the finances, and he operated the systems in place under the control and direction of the First Respondent. There was nothing to suggest that they would not handle the monies in accordance with the rules and the LFA. It was reasonable for the Second Respondent to believe without further enquiry that matters were being dealt with in an appropriate manner.

31.1.10 Allegation 2.3 stemmed from the way in which the MV Rena monies were dealt with. It was clear from the Second Respondent's evidence, which was not gainsaid by the First Respondent or at variance with the Applicant's evidence, that beyond being aware of the Firm having involvement in a project management capacity upon raising the reasonable query with the First Respondent as to what a Firm such as theirs was doing getting involved in a shipping case, he had no dealings with the same. He was unaware of the transfer of funds to the Firm's office account until so informed during the investigation. He had not had sight of the ledger. In the absence of any evidence linking him to the conduct of the case and the decision to transfer the funds to office account, the allegation was not made out. To have acted as he did was not a case of ignoring an obvious risk, rather an instance of reasonably relying on his colleagues, the First Respondent and Chief Executive.

31.1.11 The Second Respondent relied on his lack of contact with the investment manager as set out above in response to allegation 2.8. In particular, the Applicant drew attention in cross-examination to the use of the monies to clear the Firm's indebtedness to RBS and discharge the security held by them for £19,000 over his property. The Second Respondent was shown an email confirming that the funds were to be used for that purpose. Given his lack of involvement in the negotiations, his reliance on that email was reasonable. That he raised the question as to the use of the funds for that purpose

was in itself evidence of his instinctive reaction being to ensure that the monies were being properly used. That email on its own was not sufficient to put him on notice as to the wider issues alleged concerning use of the monies. The lack of wider knowledge, in particular lack of sight of the SOM, militated against making a finding against the Second respondent.

31.1.12 Allegation 2.12 related to the application for PII. The evidence was that the form was completed by the Chief Executive, JW. The Second Respondent was not involved in completion of the form. Delegation of completion to a suitably competent individual such as JW was a reasonable decision to have taken. It was not accepted that approval of the form for submission was a task ordinarily retained by partners in firms. The form was not signed by the Second Respondent. In the absence of better evidence linking him to completion of the form regardless of the content the allegation was not made out. The allegation required the Second Respondent to have permitted the First Respondent to provide false, misleading or incomplete information. Such an assertion did not accord with the structure and management of the Firm, how it was run and the role of the Second Respondent within it.

31.1.13 It was denied that the Second Respondent's conduct was either dishonest or reckless. Neither limb of the Twinsectra test had been met. His conduct was not such as would be viewed by ordinary members of the public as being dishonest, nor did he believe that to be the case. It was to be hoped that from the Second Respondent's evidence and cross-examination, the Tribunal had formed the view that the question of dishonesty did not arise. He had limited information, he did not take part in the negotiations, he was not copied into emails, and he did not see the SOM until the investigation was underway. These points rebutted the allegation of dishonesty, which was not made out on the evidence.

31.1.14 It was alleged that the Second Respondent was reckless. The Tribunal was referred to R v G and Another (above). The test to be applied was that there must be either: (i) a circumstance when the Respondent is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur; and it is, in the circumstances known to him, unreasonable to take the risk. In this instance the information available to the Second Respondent was such that it was not possible to say that he was aware of the risk being run. He had limited information concerning the matter throughout and had no sufficient reason from what was known to call into question the intentions of his colleagues or to believe that his actions were running the risks alleged. The admitted matters regarding conflicts did not show him acting recklessly. By accepting the breaches alleged in those matters, the Second Respondent had demonstrated his appreciation of the high standards governing the conduct of solicitors. Those breaches stemmed from a failure to step back from what was perceived by him as a technical exercise to improve a document rather than a wilful or deliberate effort either to expose the client to risk or to take advantage of the situation.

Findings of Fact and Law

32. The Applicant was required to prove the allegations, which were denied by both Respondents save where admissions are indicated below, beyond reasonable doubt. The Tribunal was mindful of the detailed submissions made by Mr Nesbitt on behalf of the First Respondent concerning the manner in which the Tribunal should

approach the burden and standard of proof. As Mr Nesbitt correctly identified, that approach had little bearing on the Tribunal's findings for the reasons explained below. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Summary of the Tribunal's Decisions on the Allegations

ALLEGATION AND PARTICULAR NUMBERS	FIRST RESPONDENT	SECOND RESPONDENT
Allegation 1 (Axiom Monies)	**Denied**	**Denied**
Underlying facts	**Proved**	**Proved**
1.1.1 and 2.1.1	**Proved**	**Proved**
1.1.2 and 2.1.2	**Proved**	**Proved**
1.1.3 and 2.1.3	**Proved - the Tribunal found that the First Respondent was reckless as to the fact that repayment was very unlikely to 6 April 2012 and that he knew that repayment was very unlikely after 6 April 2012**	**Not Proved**
1.1.4 and 2.1.4	**Proved**	**Proved**
1.1.5 and 2.1.5	**Proved**	**Not Proved**
1.1.6 and 2.1.6	**Proved**	**Not Proved**
1.1.7 and 2.1.7	**Proved**	**Not Proved**
Breach of Principle 2	**Proved**	**Proved (particulars 2.1.1, 2.1.2 and 2.1.4 only)**
Breach of Principle 6	**Proved**	**Proved (particulars 2.1.1, 2.1.2 and 2.1.4 only)**
Dishonesty	**Proved**	**Not Proved**
Recklessness	**No findings**	**Proved (particulars 2.1.1, 2.1.2 and 2.1.4 only)**
Allegation 2 First Respondent only (Representations)	**Denied**	**Not Applicable**
Underlying facts	**Proved**	
(a), (b), (c)	**Proved**	
1.2.1	**Proved from 6 April 2012 only**	
1.2.2	**Proved from 6 April 2012 only**	
Breach of Principle 2	**Proved**	
Breach of Principle 6	**Proved**	
Dishonesty	**Proved (from 6 April 2012 only)**	
Recklessness	**No findings**	
Allegation 3 (First	**Denied**	**Admitted, save as indicated**

ALLEGATION AND PARTICULAR NUMBERS	FIRST RESPONDENT	SECOND RESPONDENT
Respondent) / Allegation 2 (Second Respondent) (SAR)		**below**
Underlying facts	**Proved**	**Proved**
Breach of SAR Rules 1.2 (a), 1.2 (b) and 14.1	**Proved**	**Admitted and proved**
Breach of Principle 2	**Proved**	**Denied and proved**
Breach of Principle 6	**Proved**	**Denied and proved**
Breach of Principle 8	**Proved**	**Denied and proved**
Breach of Principle 10	**Proved**	**Denied and proved**
Dishonesty	**Proved**	**Not proved**
Recklessness	**Not applicable in view of finding of dishonesty**	**Proved in relation to the breach of Principle 8 only**
Allegation 4 (First Respondent)/Allegation 3 (Second Respondent) (MV Rena)	**Denied**	**Denied**
Underlying facts	**Proved**	**Not Proved**
Breach of Principle 2	**Proved**	**Not Proved**
Breach of Principle 6	**Proved**	**Not Proved**
Dishonesty	**Proved**	**Not Proved**
Recklessness	**No findings**	**Not Proved**
Allegation 5 (First Respondent) / Allegation 4 (Second Respondent) (Conflict)	**Admitted, save as indicated below**	**Admitted, save as indicated below**
Underlying facts	**Admitted and proved**	**Admitted and proved**
Breach of Principle 2	**Denied and proved**	**Admitted and proved**
Breach of Principle 3	**Admitted and proved**	**Admitted and proved**
Breach of Outcome 3.4	**Proved**	**Admitted and proved**
Dishonesty	**Denied and proved**	**Denied and not proved**
Recklessness	**No finding**	**Denied and not proved**
Allegation 5 (Second Respondent) (Conflict)	**Alternative allegation**	**Admitted, save as indicated below**
Underlying facts	**No findings**	**Admitted and proved**
Breach of Principle 2	**No findings**	**Admitted and proved**
Breach of Principle 3	**No findings**	**Admitted and proved**
Breach of Outcome 3.5	**No findings**	**Admitted and proved**
Dishonesty	**No findings**	**Denied and not proved**
Recklessness	**No findings**	**Denied and not proved**
Allegation 7 (First Respondent) (Conflict)	**Admitted, save as stated below**	**Alternative allegation**
Underlying facts	**Admitted and proved**	**No findings**
Breach of Principle 2	**Denied and proved**	**No findings**
Breach of Principle 3	**Admitted and proved**	**No findings**
Dishonesty	**Denied and proved**	**No findings**
Recklessness	**No findings**	**No findings**

ALLEGATION AND PARTICULAR NUMBERS	FIRST RESPONDENT	SECOND RESPONDENT
Allegation 8 (First Respondent)/Allegation 7 (Second Respondent) (Conflict)	**Admitted, save as stated below**	**Admitted, save as stated below**
Underlying facts	**Admitted and proved**	**Admitted and proved**
Breach of Principle 2	**Denied and proved**	**Admitted and proved**
Breach of Principle 4	**Admitted and proved**	**Admitted and proved**
Breach of Principle 5	**Admitted and proved**	**Admitted and proved**
Breach of Outcome 1.1	**Admitted and proved**	**Admitted and proved**
Breach of Outcome 1.2	**Admitted and proved**	**Admitted and proved**
Dishonesty	**Proved**	**Denied and not proved**
Recklessness	**No findings**	**Denied and not proved**
Allegation 9 (First Respondent/Allegation 8 (Second Respondent) (Assisting Conduct)	**Denied**	**Denied**
Underlying facts	**Proved**	**Not proved**
Breach of Principle 2	**Proved**	**Not proved**
Breach of Principle 6	**Proved**	**Not proved**
Dishonesty	**Proved from 1 June 2012 onwards**	**Not proved**
Recklessness	**No findings**	**Not proved**
Allegation 10 (First Respondent Only) (WE Solicitors)	**Denied**	**Not alleged**
Underlying facts	**Proved**	
Breach of Principle 2	**Proved**	
Breach of Principle 4	**Proved**	
Breach of Principle 6	**Proved**	
Dishonesty	**Proved**	
Recklessness	**No findings**	
Allegation 11 (First Respondent)/Allegation 9 (Second Respondent) (PII)	**Denied**	**Denied**
Underlying facts	**Proved**	**Not proved**
Breach of Principle 2	**Proved**	**Not proved**
Breach of Principle 6	**Proved**	**Not proved**
Dishonesty	**Proved**	**Not proved**
Recklessness	**No findings**	**Not proved**
Allegation 12 (First Respondent only) (False Information)	**Denied**	**Not alleged**
Underlying facts	**Proved, save as indicated below**	
Breach of Principle 2	**Proved**	
Breach of Principle 7	**Proved on a narrow point in relation to the sub-ledger**	

ALLEGATION AND PARTICULAR NUMBERS	FIRST RESPONDENT	SECOND RESPONDENT
	for MV Rena	
Breach of Outcome 10.6	**Proved**	
Dishonesty	**Proved**	
Recklessness	**No findings**	

Table 4

Reasons for Tribunal's Decisions

33. Allegation 1.1 - First Respondent (Denied)

33.1 It was not disputed that the First Respondent accepted money from the Funds, nor was the total amount accepted (£4,861,399.33) or the instalments by which the money was received in dispute. The Tribunal had to decide whether the use to which the monies were put were based on the available evidence were "improper" for the reasons set out in the Rule 5 Statement.

33.2 Had the Firm complied with the terms of the LFA pursuant to which the monies were purportedly advanced? The Tribunal found as a fact that the Firm had not done so, and, indeed, this was not in dispute. The First Respondent's case was that the LFA, although signed by him and the Second Respondent on 19 April 2012, was varied orally by DR of Tangerine in advance of signature. The fact of the variation was accepted by Mr Dutton on behalf of the Applicant during closing submissions.

33.3 The Tribunal found that the LFA was intended to protect the interests of the investment fund and of the ultimate investors in the investment fund as pleaded in the Rule 5 Statement. It was plain from the suite of documents, including the Offering memorandum and the SOM (January 2012) that that was the intention, although the Tribunal agreed that there was a question mark over whether or not the LFA as drafted would have provided the protection intended.

33.4 Particular 1.1.1: Did the First Respondent know that the Firm had not complied with the terms of the LFA? The Tribunal was directed to documentary evidence in which the First Respondent agreed with DR that the LFA did not fit the purpose for which it was required. There was an email from the Chief Executive, JW, which stated that the LFA did not apply to litigation cases. In his oral evidence, the First Respondent repeatedly used the word "predicated" when talking about cases to which funding was said to be allocated (indicating to the Tribunal non-compliance with the conditions precedent in the LFA for securing the release of funding on cases supported by documentary evidence in the form of reports) and he referred to the oral variation of terms, notwithstanding the contents of LFA clauses 20 ("Amendments and Waivers") and 22 ("Entire Agreement"). It was obvious that reliance on an oral variation of the LFA's terms would have been unnecessary if the Firm was complying with the original terms signed up to. The Tribunal therefore found that particular 1.1.1 was proved beyond reasonable doubt.

33.5 Particular 1.1.2: Did the First Respondent know that the LFA did not reflect the purpose for which the Firm intended to use the monies? The Tribunal found as a fact that LFA did not reflect the purpose for which the Firm intended to use the monies. The First Respondent entered into an agreement with Tangerine to use the monies in a way which the LFA did not permit. Tangerine had been given authority under the terms of the SOM to change the investment objectives. However, any major change to those objectives had to be referred to the investors so that they had an opportunity to withdraw their funds on giving 30 days' notice. The Tribunal found as a fact that the First Respondent tried to "wash" through that requirement (it was unnecessary for the Tribunal to make any finding as to Tangerine's knowledge – the representatives' conduct was not before the Tribunal for consideration). The First Respondent sought evidence in writing from Tangerine (and not from the directors of the Funds) regarding the variation of the terms of the LFA in order, as the Tribunal found, to cover his own back. Such evidence in writing from Tangerine was never received, which was unsurprising. This was ample evidence that the First Respondent knew that the LFA did not reflect the purpose for which the Firm intended to use the monies, otherwise written clarification of the LFA terms would have been unnecessary, and the Tribunal so found beyond reasonable doubt. The Tribunal found as a fact for the avoidance of doubt that the Firm did use the monies (and this was not disputed). Further, the Tribunal found as a fact that the intended and actual use of the monies was not properly documented by the First Respondent. The First Respondent attempted to make mileage out of the good order of the Firm's books, and in particular the client account. However the Funds' monies were not paid into client account as required by the LFA, but into office account. To that extent the good order of client account was noteworthy of itself but irrelevant to the pleaded allegations. The Tribunal accepted the evidence of JW and the Second Respondent at various times that SRA investigator DL had referred to the Firm's accounts as being in "apple pie order"; but that comment did not assist the First Respondent in respect of this allegation. It was clear from the evidence before the Tribunal that DL did not recognise the significance of the location of the monies in office account at the time when the comment was made, being early in his investigation. Further evidence for this conclusion could be found from the undisputed fact that DL was not told by the First Respondent about the existence of the MV Rena sub-ledger which should have been disclosed. The Tribunal therefore found that particular 1.1.2 was proved beyond reasonable doubt.

33.6 Particular 1.1.3: Did the First Respondent have no intention that the Firm would repay the monies within the time required by the LFA? Repayment was due in April 2013 being 12 months after receipt of the first tranche of monies. The First Respondent continued to borrow from the Fund, knowing what BT had observed regarding the difficulty of raising £250,000 to make repayment in their February and April 2012 Reports. In the first tranche of funding the Firm effectively borrowed and had to repay at the end of 12 months the original sum of £250,000 plus the FF of £125,000 and 15% interest on the whole. JW's evidence was that the Firm intended, ultimately, to wean itself off the Fund, suggesting to the Tribunal an overriding aim to maintain and expand the Firm rather than pay down borrowing. No money was repaid by the Firm at any point during 2012-2014 or indeed since (albeit that the Firm ultimately went into administration). The first tranche of funding was borrowed against conveyancing cases, the fees on which (on the evidence of the First Respondent) would crystallize within 3 months (JW said one month). This meant that the Firm borrowed £250,000 at

the rate of 65% (FF of 50% plus interest at 15%) in order to delay the issue of the Firm's declining liquidity for a short period. Looked at commercially, this was a decision that only a business in desperate need of cash would make. The Tribunal had concluded, after considering all the evidence that at the point of borrowing the first tranche of money the First Respondent's state of mind was such that he would have done anything necessary to secure the cash in the bank account. However, the Tribunal also believed that, at that same point, the First Respondent had persuaded himself that the Firm could and would repay the borrowing plus the FF and interest within 12 months. Unfortunately, once the extent of the borrowing increased in the dramatic way that it did, in an increasingly desperate attempt to keep this failing Firm afloat, the possibility of repayment disappeared and became irrelevant to the First Respondent's thinking. The Tribunal found that by 6 April 2012, the First Respondent knew that receipt of the exceptional income of £2m was so speculative that it could not be relied upon to repay borrowing from Axiom regardless of the terms of the undertaking given by him on 18 April 2012 as security for that borrowing. If the First Respondent had truly believed that payment of the exceptional income was "imminent" (relying on what he was told when he chased VM for information, as evidenced by the email trail) there would have been no need for him to borrow as relatively small a sum as £250,000 at an effective rate of interest of 65%. Applying his analysis regarding the MV Rena money, such borrowing would have been uncommercial. He had been told by BT in their Reports that borrowing of £250,000 was insufficient to keep the Firm afloat unless the exceptional income was received. Leaving aside whether LFA money should have been applied to non-litigation work anyway, there must have come a point when the conveyancing cases were completed (completion would not in the majority have been prolonged in the same way as, say, personal injury litigation). No money was paid back say 3 months after the conveyancing cases had been completed, because of the "rolling credit" element of the facility. The rolling credit argument might have made sense to the Tribunal but for the fact of the increased use of the facility from July 2012 (when the conveyancing money would have been banked). For example, funds were borrowed in July 2012 to pay wages. This made no sense if there was a genuine intention to repay the borrowing; the fees realised on completion of the conveyancing cases should have been capable of being used to pay wages. The picture was of a firm in dire straits.

33.7 The First Respondent said that the first tranche of borrowing did not have to be repaid until April 2013. However, using his own argument, there was no commercial purpose in borrowing ever more money from the Funds at expensive rates for as basic an item as wages rather than using money realised by completion of conveyancing cases for that purpose. There was little evidence here of the forward planning on which the Firm said it set such store. The impression left was instead of a Firm struggling to survive and living hand to mouth. It was, of course, necessary to look forensically at the data put before the Tribunal, to identify whether it was in actuality possible for the monies to be repaid within the time required by the LFA. It was clear to the Tribunal from that analysis that the Firm would have had to double its turnover within a short period in order to make the repayments, even entirely disregarding the need to continue to support the overheads in order to enable that turnover to be generated. The First Respondent relied upon his evidence and that of his right-hand man JW (and TH, the accountant) about the hopes for the performance of financial forecast analysis as evidence that they could make the repayments. Forecasts are, of necessity, predictions; some will be more accurate than others but all require careful

monitoring. There seemed to be no attempt to analyse the value of the continued borrowing in terms of a concrete plan for how repayment was to be made at the end of the 12 month period. In the Tribunal's opinion, the focus was entirely upon attracting cases to which the LFA money could be allocated, or as the First Respondent and JW maintained, "predicated" to generate further funding. The Tribunal noted that the First Respondent was minded to seek to extend the repayment terms to 3 years at the point at which he embarked on the re-drafting of the LFA (only a few weeks after the document had been signed and very early during its currency). The Tribunal concluded that this was an example of the First Respondent clutching at straws for survival, by giving the impression that he intended to make the repayments, but re-drafting the LFA to give him more time to do so. The Tribunal concluded from the evidence that once the First Respondent had secured the LFA and with it the loan facility, he worked hard to find a way to manage the facility in such a way as to keep the Firm afloat from month to month (looking at the pattern of borrowing) with a view to extending the repayment day as far as possible. The evidence before the Tribunal made it clear that the Firm's financial model in relation to the funding worked on the basis that the Firm decided how much money it needed and justified that amount by identifying cases to support the funding (rather than starting with the cases to which funding could be allocated under the LFA and making an application for that specific amount, with, perhaps, a small contingency). In April 2012 the Firm needed cash immediately in order to stay afloat. It carried out conveyancing work (in a department headed by the Second Respondent), and had been successful in securing new sources of such work as described in evidence. It therefore used the conveyancing cases as the justification for the early tranches of funding (as an aside not permitted by the LFA anyway) to reduce the immediate financial pressure. This was an easy, early fix giving the First Respondent some "elbow room". When he realised that he would not be able to make the repayments in full or part within 12 months, he dissected the LFA with a view to extending its terms as part of that exercise. The Axiom funding was in truth a permanent crutch for the Firm. Ultimately, the Fund was suspended on the 26 October 2012, and the expiry of the 12 month period in April 2013 was never reached, and no monies were ever repaid by the Firm. The Tribunal therefore found that particular 1.1.3 in relation to the First Respondent's lack of intention regarding repayment of the monies was proved beyond reasonable doubt.

33.8 Did the First Respondent know or was he reckless as to the fact that repayment was very unlikely? The First Respondent's evidence, supported by JW, was that he had forecasts to support the prospect of repayment of the money (see above for the Tribunal's comments on forecasts generally). The 6 April 2012 BT Report (read with the February 2012 Report to support applications for borrowing from RBS, and later Axiom) indicated that even if the Firm borrowed only £250,000, if it did not also receive the £2m exceptional income the Firm was going to be very stretched financially towards the latter part of 2012. This evidence was significant in relation to the First Respondent's state of mind regarding repayment. The Tribunal concluded in reliance upon that evidence that up to and including 6 April 2012 the First Respondent was reckless as to the fact that repayment was very unlikely. He was aware by then at the latest that receipt of the exceptional income was speculative; he said as much in his evidence. There was therefore a significant risk that the exceptional income would not be received and that the Firm would struggle to repay £250,000 plus any fees based on the forecasts analysed in the BT Report. In the circumstances known to the

First Respondent, for example the contents of the Submission Pack supporting the exceptional income transaction, which he knew had not been sent to BT allegedly because of a Non-Disclosure Agreement and which was therefore not covered in their Report, it was unreasonable for him to take the risk of borrowing from the Axiom Fund. He also knew that RBS had refused to lend more than £60,000 at very high rates. On and after 6 April 2012 the Tribunal found that the First Respondent knew that repayment was very unlikely; the likelihood of receiving the £2m exceptional income had effectively disappeared. Instead he turned to the Axiom Fund and that became the Firm's crutch. Once the maximum facility of £5m as appeared to be stated in the LFA had been reached, the First Respondent could not borrow from the Fund unless some money was paid back (which never happened) or the maximum facility was increased. This is what the First Respondent suggested in his evidence had happened with a facility of up to £10m (whereas there was no documentary evidence to support that assertion). The Tribunal's conclusion was that the increased figure came into play because there came a point when the First Respondent recognised that the Firm had borrowed more than £5m. The Tribunal therefore found beyond reasonable doubt that particular 1.1.3 (in relation to the First Respondent's knowledge or recklessness) was that he was reckless as to the fact that repayment was very unlikely up to 6 April 2012 and that he knew that repayment was very unlikely after 6 April 2012.

33.9 Particular 1.1.4: Did the First Respondent misuse the funds received by failing to apply them only towards "Eligible Legal Expenses" as defined in and required by the LFA? The evidence was that amendments to the LFA were attempted, driven by the First Respondent, but an amended LFA was never signed (save for in escrow by the First Respondent). The Tribunal therefore focussed its attention on the original, signed LFA. There was no disagreement between the parties as to what "Eligible Legal Expenses" were as defined in the LFA. If the funds received had been properly paid into and recorded in the Firm's client account, so that there was a fair estimate as to what each individual case required in respect of funding (particularly bearing in mind the wording of the ATE insurance, which specified that in each case the loan must be limited to £12,750), the First Respondent might have been in a better position evidentially. Each claim on every case had to be evidenced by an invoice, which did not exist. It was also clear from the relevant clause that "such expenses should not include any costs payable in respect of a panel firm's fees or any costs or fees payable to an opponent". If the First Respondent had received a chunk of funding and divided it between identified cases, deposited the funds in client account, deducted disbursements (for the avoidance of doubt excluding wip), that would in the Tribunal's view have been a proper use of the money (assuming, of course, that the funding itself was permitted under the LFA, which it was not for, say, conveyancing cases). Funding would then be available to each client in his or her client account to pursue his or her litigation case, giving each client protection in respect of the funding of their matter. In its forecasts, the Firm merely listed cases with, as an example, a notional amount of £250 against each conveyancing case (not covered by the LFA in any event). In reality there was no wip. Other types of case were dealt with in the same manner, but with variable amounts listed against them. Nowhere within the LFA was it specified that funding from Axiom could be used to purchase new cases; the funds were intended to be used solely for existing claims. An example of this was the industrial hearing loss claims deafness claims where £72,000 was sought from Axiom, and £68,490 received on 16 October 2012 (only a week before the Fund was

suspended). Those claims were not pursued by the Firm because they were considered not to be "worth it". In spite of this decision the £68,490 was not immediately returned once the Firm had identified that it was not to be used for the purpose for which it was borrowed, namely the funding of those claims for clients. The same point arose in relation to the monies used to pay off the Firm's borrowings from RBS charged on the Respondents' assets and for professional indemnity insurance. In the case of MV Rena, money was supplied for the specific purpose of that litigation. The money was placed into a separate office account, and although some of it used for that purpose, the majority of the funds were applied towards the general expenses of the Firm. The Tribunal therefore found that particular 1.1.4 in relation to the First Respondent use of the funds was proved beyond reasonable doubt.

33.10 Particular 1.1.5: Was the First Respondent on notice of the serious risk that the investment fund's investment manager, in arranging for the monies to be paid to the Firm, was acting fraudulently, or committing some other serious breach of duty, towards the investment fund and/or the ultimate investors? The documentary evidence confirmed that by 1 June 2012 the First Respondent had embarked upon his review and redraft of the suite of documents used by the Fund for the purposes of lending money to panel firms. This task had probably begun earlier than 1 June, in mid-May, but the Tribunal had not seen any concrete evidence to establish beyond reasonable doubt an earlier date. By 1 June 2012 the First Respondent had not only reviewed the LFA which he and the Second Respondent had signed, but he had also seen the January 2012 SOM. He was therefore aware that Tangerine was in serious breach of the LFA and therefore in serious breach of duty towards the Fund and its investors. Information concerning TS's professional, regulatory, and financial history was available to the First Respondent online by early August 2012, sufficient to prompt further enquiries. The First Respondent accepted in evidence that he had become aware of TS's wrongdoing - he had heard some news about it and had read at least one of the online Offshore Alert reports. His evidence was that he had spoken to TS or DR and had been told not to worry because TS was taking some sort of action to resolve the issue. In spite of this apparent concern, the evidence demonstrated that the Firm increased the level of its borrowing from the Funds after the First Respondent became aware of the reports concerning TS. The First Respondent was, he said, sufficiently concerned about the situation to suggest that TS should step back from Tangerine. However as soon as the Fund was suspended on 26 October 2012, TS, on the First Respondent's evidence, stepped back up to Tangerine, and the First Respondent acted for either TS or Tangerine in some personal capacity. At some point, the First Respondent even identified solicitors who could act on TS's behalf. The Tribunal therefore found that the First Respondent was on notice of the serious risk that the investment fund's investment manager, in arranging for the monies to be paid to the Firm, was acting fraudulently, or committing some other serious breach of duty, towards the investment fund and/or the ultimate investors.

33.11 Did the First Respondent fail to carry out any or any sufficient enquiries reasonably to satisfy himself that the payments did not involve any such conduct by the investment manager? The Tribunal found as a fact that the First Respondent did not carry out any or any sufficient enquiries. He did not contact anyone other than TS and/or DR to make further enquiries. They were not independent in all the circumstances. In particular, the First Respondent did not contact his then client Axiom which was the first obvious step for him to have taken, nor did he contact the SRA or the SDT to

find out whether any previous matters were recorded against TS as suggested by the online reports. These would have been simple and prudent tasks for the First Respondent, as a highly experienced solicitor, to have undertaken. The Tribunal therefore found that particular 1.1.5 was proved beyond reasonable doubt.

33.12 Particular 1.1.6: Did the First Respondent unreasonably risk the Firm being a party to transactions in fraud of the investment fund and/or of the ultimate investors, or which involved other serious breach of duty by the investment manager towards them (or one of them)? The First Respondent knew the substance of what was said in the SOM by mid-May 2012 and had received the detailed suite of documents by 1 June 2012. The majority of the funds were therefore received by the Firm after the First Respondent had full knowledge of the SOM's terms and those of the LFA which he and the Second Respondent had both signed. The First Respondent knew that DR and TS, the investment managers, were not complying with the terms of the SOM or the LFA. He also knew that DR and TS each had a considerable vested interest in continued receipt of the FF at the rate of 50% of the borrowing (which was not referred to in the SOM). The risks increased when the First Respondent found out about TS's history in August 2012, but in spite of this knowledge the Firm applied for £2,405,000 and on 13 September 2012 it received its largest tranche of money, £2,296,775. This funding was used to pay off the RBS borrowing. The Tribunal therefore found that particular 1.1.6 was proved beyond reasonable doubt.

33.13 Particular 1.1.7: It was pleaded that in all the circumstances, as the First Respondent well knew, the transactions pursuant to which the monies were received were dubious, and the monies should not have been accepted or used. The Tribunal found that in the light of its findings above particular 1.1.7, a catch-all, was proved beyond reasonable doubt.

33.14 Allegation 1.1: In light of its findings above, the Tribunal found allegation 1.1 as against the First Respondent proved by the Applicant beyond reasonable doubt. The Tribunal also found that the First Respondent acted without integrity in breach of Principle 2 beyond reasonable doubt. The Tribunal's findings above were sufficient to establish lack of integrity. The Tribunal also found that the First Respondent behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services, in breach of Principle 6. Members of the profession becoming aware of the First Respondent's actions would feel ashamed. Members of the public (for example, the investors in the Fund who were also members of the public) would not expect a solicitor to conduct themselves and their business in such a way. The public put all their trust in solicitors to behave properly and in accordance with the law and the rules and regulations of their regulators. The First Respondent had a duty of care to the investors from the point at which he began to act for the Fund. The public was likely to be shocked by the behaviour particularised at allegation 1.1.

33.15 Dishonesty (allegation 1.1). By the ordinary standards of reasonable and honest people, causing or permitting the Firm to accept, and use, the monies received as particularised in circumstances where it was improper for the First Respondent to do so for the reasons set out and found proved above was dishonest. The Tribunal took into account that the request for funding of £250,000 was at the beginning of the process and was stated to be required to fund conveyancing cases (which were non-litigation cases not covered by the LFA). Applications for funding were made in

respect of cases that had not at the time of application been purchased from the claims management companies. In respect of the MV Rena funds, the Firm received more money than it was expecting. The First Respondent's evidence was that he informed Tangerine that he did not need all of the money. He queried when giving evidence why he would want to pay a FF of 50% and borrow more money than he needed at a 15% interest rate only to have to place that money in client account and be unable to use it for practice funding. The money was placed in a separate account so that it could be "husbanded" to use the First Respondent's phraseology. At first blush this sounded a plausible argument; but on consideration it was superficial because no one would make a commercial decision to borrow on those terms unless they were desperate. The truth was that the First Respondent had nowhere else to go. Without the funding he could not source the work from the claims management companies and the Firm would sink. The Tribunal was mindful that with large amounts of volume work, and the forecasts by which the First Respondent said he was operating, the income for the Firm could theoretically be considerable and proportionately the FF much less as a percentage payment from increased income. However, the Tribunal also noted that in respect of the conveyancing fees estimated at £250 per case there was little scope for making any profit. The SOM had been drafted on the basis that it would provide investors with a higher level of capital security. The funding facilities were said to be "fully insured against the non-return of the loans by the law firms. The Investment Criteria set out the purpose of the funding. The Tribunal had ample evidence before it that the cases on which the funding was "predicated", to use the First Respondent's word, did not fall within the restrictions of the Investment Criteria in the SOM. The Tribunal was satisfied beyond reasonable doubt that both the 2010 and June 2012 SOM made it clear to any objective reader what investors were being asked to invest in, namely short-term loans to pay proper expenses on limited case types. The Tribunal was mindful that the Investment objectives could be changed by the Investment Manager on reasonable notice having been given to investing shareholders for the purpose of enabling investors to remove their funds if they did not find the revised investment objectives to be to their taste. That notice requirement overrode any clause stating that effectively the Investment Managers could do whatever they wanted. The Tribunal interpreted the First Respondent's evidence as saying that there was an intimation by DR that the LFA did not reflect what they were going to do because it was published before the amended SOM, so when the Firm returned the LFA in April 2012 duly signed they should have been more explicit about the fact that what they were doing was something else altogether from what was envisaged by the LFA, rather than sending a brief email stating that most of the document referred to "PI, of course and needs to be read as such". Even this statement was incorrect because the 2010 SOM referred only to financial mis-selling cases. The First Respondent's use of funding did not comply with the LFA and drove a coach and horses through the purported security for the investors being members of the public. The FF was "astonishingly high", as stated by Mr Dutton. There was no reference in the SOM to the fact that a FF of 50% of the borrowing was to go to Tangerine (by means of advance deduction from the loan payments) and then by further distribution to entities owned by TS. There was reference to "performance fees" (referred to by the First Respondent in his interview). It was however clear that "performance fees" meant something different to the Fund and its investors, as evidenced by reference to the hurdle of a performance target of 10% which was not expected to be met, resulting in the investment manager (Tangerine) potentially receiving no fees.

33.16 By those same standards did the First Respondent know that his conduct was dishonest? The Tribunal considered on careful analysis that the First Respondent's defence was constructed by him in such a way as to explain away the unexplainable, which went to his state of mind at the time. His position was that the LFA was not the entire agreement (in spite of clause 22 which said that it was) but was supplemented by an oral agreement between himself and DR representing Tangerine, the Fund's investment manager. The money was "predicated" to cases. The Tribunal did not accept these arguments. The Tribunal found that the First Respondent knew that what he was doing was dishonest. The convoluted lengths that he had gone to, to explain his actions provided evidence to support that conclusion; his aim was to defend the indefensible. It was the First Respondent who identified the need to amend the LFA to fit the circumstances relating to his Firm. He suggested that this was necessary by blaming the inadequate drafting of the original documents by the Fund's previous solicitors (although he was prepared to sign the LFA and procure the Second Respondent to do so regardless). This was clear evidence of the First Respondent's thought processes at the material time. The irony was that even if the LFA had been amended and agreed by all concerned, the First Respondent's conduct would still have been in breach of the terms of even the amended document. He gave evidence that he had experience of dealing with commercial lending contracts (although, as Mr Dutton pointed out, he tried to play down the extent of his experience, and the Tribunal accepted that submission). He therefore knew that only Axiom could agree to amend the terms of the LFA. The First Respondent had received no instructions from Axiom to amend the LFA. No retainer letter was delivered by the First Respondent to Axiom. The invoice resulting from this work was paid by Tangerine. The Tribunal was satisfied beyond reasonable doubt that Axiom was not involved in the proposed amendments to the LFA and did not know what the First Respondent was doing in their name. Further, there was no authority from Axiom to the First Respondent for him to deal direct with Tangerine in relation to this specific matter. When the First Respondent became aware of TS's background and the potential difficulties relating to him, he did nothing objectively to confirm the information one way or another. Instead he applied for more borrowing. An honest solicitor in these circumstances would instead have gone direct to Axiom, his client, to tell them what was happening and to find out whether they knew what was going on. Taking all of these factors into account, the Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt, objectively and subjectively on both limbs of the Twinsectra test. Having reached that conclusion it was not necessary for the Tribunal to make any finding on the allegation that the First Respondent was reckless.

34. Allegation 2.1 - Second Respondent (Denied)

34.1 In addition to being the 2% equity partner, the Second Respondent was the Firm's compliance officer ("the COLP"). He was also head of the Firm's conveyancing department, with fee earning targets to achieve. The Tribunal applied the same approach in respect of consideration of each particular in support of the allegation as it had for the First Respondent, the particulars being identical for both. The detailed particulars are not repeated below for that reason.

34.2 Particular 2.1.1: The Second Respondent was involved in the redraft of the LFA under the direction of the First Respondent. In particular he worked on the re-draft of the interest clause including the introduction of staged interest provisions dating from the

utilisation of loan monies and the terms of repayment. There was no evidence that the Second Respondent ever saw the SOM, which the Tribunal considered important in distinguishing the conduct of the Respondents. Over 100 hours of work was billed by the Firm to Tangerine; the Second Respondent contributed 6 hours to that total. The Second Respondent's evidence was that he did not know that the Firm had not been complying with the terms of the LFA. The Second Respondent struck the Tribunal (from the way in which he gave his evidence) as a meticulous, careful man in relation to his fee earning work. It was therefore highly unlikely that he embarked on suggesting amendments to the LFA, even limited to building on work the First Respondent had already done, without first re-reading the original document (which he had signed) and reading the draft amended document. To set against that knowledge, it was clear from the paper trail that the Second Respondent was copied into very few emails between the First Respondent and Tangerine (or anyone else). Those emails that he did see contained limited information. There was no evidence that the Second Respondent was told by the First Respondent or anyone else that monies received from the Fund had been dealt with other than in strict accordance with the LFA. The Second Respondent denied that anyone had given him that information and there was no documentary evidence to support the alternative. The Second Respondent's evidence was that he had not read the LFA in detail before signing it. The Tribunal had difficulty in believing that evidence for the reasons expressed above – the Second Respondent presented as a meticulous man in relation to his fee earning work and the Tribunal felt able to extend that conclusion to him being the type of individual who would not sign documents without reading them first merely because he was asked or required (whichever applied in this instance) to do so. The Firm could not have obtained the Axiom funding without the Second Respondent's signature on the LFA. His evidence was that he had known the First Respondent for in the region of 20 years. He signed the LFA knowing at the very least that its purpose was to obtain funding that was urgently needed by the Firm in order for it to survive without going into administration. On that basis he knew that at some point a significant sum of money was to be received into the Firm, which he knew was to be spent in some way. If it was not to be spent there was no point in borrowing the money. His case was that the Fund was entitled to rely upon the terms of the LFA that he and the First Respondent had signed, and that he was bound by those terms. He did not seek to shirk his responsibility in that respect. He said that as far as he was aware the LFA had been complied with and nobody had told him anything different. He did not know about any oral agreements with Tangerine. He said his involvement with DR was limited. He had no involvement with TS. The conclusion drawn by the Tribunal from the evidence of the Respondents and JW was that the Second Respondent did not want to know what was going on concerning the Firm's management (financial and otherwise). It was significant that no part of the amendments to the original LFA made by the Second Respondent undermined the terms of the original agreement. For example, the funding still had to be paid into client account. The Tribunal therefore found as a fact that the Second Respondent knew what the terms of the original LFA were when he signed the document on 19 April 2012 and thereafter, and that he knew that amendments were proposed by the First Respondent and added to briefly by himself which did not undermine the material terms of the original LFA. He knew the Firm was in financial difficulty and needed £250,000 to avoid administration. He also knew that the Firm's bank, RBS, had offered loans of only relatively small amounts. He knew from the LFA, as the Tribunal had found, that monies received had to be paid into client account and used

for the specified purposes. Shortly after signing the LFA, the Firm's financial position became better. Administration was no longer on the cards. This would not have been the case if the Axiom funding had been paid into client account as required by the LFA. The Tribunal accepted that the Second Respondent was told very little by the First Respondent and JW about what was going on, and there was little documentary evidence to link the Second Respondent to these events. However, the Second Respondent did receive some pointers and information, and chose not to ask questions that it might be pertinent to ask, for example, to the First Respondent and/or JW, has the financial situation improved, and what is it looking like for the next three months? With the Firm's borrowings secured to the extent of £19,000 on his home, any appropriately engaged and reasonable equity partner would have been expected to show even that level of limited interest. The Tribunal found that, at the very least in respect of funding borrowed against conveyancing cases, the Second Respondent knew that funding of significant amounts had been drawn down. The Tribunal found that he turned a blind eye to where that money had gone in terms of the account into which it had been paid and the use to which the money was put. There was no evidence that he asked, for example, how the funding was being allocated to his department's sale and purchase and remortgage cases. In his evidence he did not explain his lack of curiosity and presented to the Tribunal as being, at times, evasive in that respect. The Tribunal therefore found that particular 2.1.1 was proved beyond reasonable doubt.

34.3 Particular 2.1.2: The Tribunal reached the same conclusion in relation to particular 2.1.2 as it had reached in respect of 2.1.1, for the same reasons. The Tribunal concluded, after considering all the evidence, that the Second Respondent knew that the LFA did not reflect the purpose for which the Firm actually used the monies, namely practice funding. The Tribunal made no findings as to whether the Second Respondent knew that the LFA did not reflect the purpose for which the Firm intended to use the monies. There was no evidence to suggest that he had that level of advance knowledge, and the evidence indicated otherwise – he received limited information from the First Respondent and JW and he could be distinguished from the finding in respect of the First Respondent in that regard. It however followed from the Tribunal's finding that the actual use of the monies was not properly documented by the Second Respondent. It was, for example, not allocated to particular conveyancing cases. The Tribunal therefore found that particular 2.1.2 was proved beyond reasonable doubt.

34.4 Particular 2.1.3: After very careful consideration of the evidence, the Tribunal found that the Second Respondent had insufficient knowledge and information about the Firm's finances to enable him to form any intention as to repayment of the monies within the time required by the LFA or otherwise. Further, he did not know and/or did not have sufficient information about the risk to be reckless as to the level of likelihood of repayment. Even if the Tribunal had found that the Second Respondent was in receipt of sufficient information, it would have concluded from its assessment of the Second Respondent as he gave his evidence that he intended that the first tranche of funding should be repaid. The Tribunal believed that the Second Respondent would do his best to pay his debts. The Tribunal therefore found that particular 2.1.3 was not proved beyond reasonable doubt.

34.5 Particular 2.1.4: The Firm borrowed £2,405,000 on 13 September 2012. An amount of £1,477,500 from that borrowing was used in part to repay the £19,000 secured on the Second Respondent's home (a total sum of £1,677,500 was used to redeem the Firm's borrowings from RBS secured on the First Respondent's property). The Tribunal considered the evidence of the email exchange between the First Respondent and AL of Tangerine on 20 August 2012. This email was forwarded by the First Respondent to RBS, copied to JW and the Second Respondent the same day, to keep the bank informed of efforts to reduce the Firm's indebtedness. By this point the relationship with RBS seemed to have soured. The Tribunal had concluded that the Second Respondent may genuinely have believed that this was stand-alone borrowing that could be used for the purposes set out in the email i.e. repayment to RBS. Further, the wording of the email from AL suggested that the loan came from Tangerine. To that extent to the Second Respondent it may well have had the appearance of a loan standing outside the Axiom borrowing under the LFA. The Second Respondent would not necessarily have identified Tangerine as being connected with Axiom. The Tribunal therefore found that particular 2.1.4 was not proved beyond reasonable doubt in respect of this particular tranche of borrowing. However, with regard to the balance of the borrowings, the Tribunal had already found that the Second Respondent had general knowledge from the LFA that the funding was to be applied only towards "Eligible Legal Expenses". The Tribunal therefore found that particular 2.1.4 was proved beyond reasonable doubt for the same reasons as stated in relation to particulars 2.1.1 and 2.1.2, but not in respect of the funds of £1,477,500 referred to in the email thread of 20 August 2012.

34.6 Particulars 2.1.5, 2.1.6 and 2.1.7: The Tribunal did not have sufficient evidence to substantiate that the Second Respondent fell foul of these particulars. The Tribunal therefore found that particulars 2.1.5 – 2.1.7 were not proved beyond reasonable doubt.

34.7 Allegation 2.1: In view of its findings above, the Tribunal found allegation 2.1 as against the Second Respondent proved by the Applicant beyond reasonable doubt in respect of particulars 2.1.1, 2.1.2, and 2.1.4. The Tribunal also found beyond reasonable doubt that in respect of the same particulars the Second Respondent acted without integrity in breach of Principle 2 and behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6 for the same reasons as breaches were found against the First Respondent.

34.8 Dishonesty (allegation 2.1). The Tribunal found that by the ordinary standards of reasonable and honest people the Second Respondent's conduct was dishonest in relation to causing and permitting the Firm to accept and use the monies from the investment fund in the circumstances particularised at 2.1.1, 2.1.2 and 2.1.4. Reasonable and honest people looking at what had occurred would conclude that something suspicious was going on. However, the Tribunal also had to consider whether the Second Respondent knew that, by those same standards, his conduct was dishonest. He was an experienced solicitor and a 2% equity partner in the Firm. However the Tribunal had assessed the Second Respondent as he gave his evidence as being a meticulous, careful person in relation to his fee earning work, but lacking in engagement and the most basic of interest in relation to the financial management of the Firm, or indeed its management generally. On occasions he appeared to be obstructive, even belligerent. He struck the Tribunal as a solicitor who wished to keep

his head down and get on with what he was good at, namely conveyancing work. He did not appear to possess the requisite financial management skills or the strength of personality to stand up to the First Respondent, who on the Tribunal's assessment had considerably greater strengths in these areas. The evidence from DL and JW supported this assessment; they described the Second Respondent as quiet. The Tribunal noted that the Second Respondent disagreed when giving his evidence with the observation that he did not want responsibility and was not partnership material. The Tribunal took the view that the Second Respondent lacked insight in that regard. The Tribunal certainly did not see any evidence that he was equity partnership material. He demonstrated little willingness to assume responsibility for any aspect of the management of the Firm, and effectively handed the same to the First Respondent and JW. He was in reality just about on a par with an associate or salaried partner with no ambition to progress. This assessment resulted in the Tribunal being unable to find beyond reasonable doubt that the Second Respondent knew that his conduct in relation to allegation 2.1 was dishonest. The Applicant had therefore failed to establish dishonesty on the subjective limb of Twinsectra to the required standard and the allegation was not proved.

34.9 Did the Second Respondent act recklessly in relation to his conduct found proved at allegation 2.1? The Second Respondent knew from the outset that the Firm was in financial trouble. He accepted that if the funding had not come through, the Firm would have gone into administration. Had the Second Respondent taken notice of the warning signs identified by the Tribunal, had he taken even the most basic interest in the financial management of the Firm in which he was an equity partner, had he followed through on the commitments that he recognised that he had taken on when he signed the LFA, the outcome for the Fund and the Firm might have been different. The Second Respondent was aware of the risk of non-compliance with the LFA and that the LFA did not reflect the use to which the monies were put. He knew that the funds were being misused at least in part. He asked questions on occasions e.g. in relation to MV Rena, but not otherwise. He knew that as the COLP he needed to pay particular attention to compliance with rules and regulations within the Firm and he was aware of the risks of not doing so. The Tribunal had no difficulty in finding that the Second Respondent fell within the test specified in R v G and was beyond reasonable doubt reckless in respect of the conduct found proved at allegation 2.1.

35. Allegation 1.2 - First Respondent Only (Denied)

35.1 The Tribunal found that the First Respondent (a) caused or permitted representations to the Axiom Fund (then a prospective funder of the Firm as the LFA had not been signed by the Respondents) for the purpose of persuading it to provide funds to the Firm, to the effect that the Firm expected to receive £2m of income. Further, the Tribunal found that he (b) caused or permitted that income to be recognised in the Firm's management accounts contained in a draft due diligence report produced by BT, and (c) gave an undertaking to DR from Tangerine on 18 April 2012 that monies received totalling £238,368 would be repaid from this income when it was received. The Tribunal noted that the document referred to at (b) appeared to be projected Profit and Loss accounts (rather than management accounts as described in the Rule 5 Statement). In the Report the document was described as "Projected profit and loss accounts" and "Projected balance sheets", followed by "Cash flow forecasts".

Regardless of terminology, the documents were draft accounts. These findings were beyond reasonable doubt.

35.2 The £2m income, described in some of the documents as "exceptional income", was said by the First Respondent in his evidence to be payable as a fee because he claimed (with the assistance of VM) to have facilitated the introduction of a party with a "warehouse" line of credit of £100m to a party who could use that credit for mortgage advances (the Tribunal paraphrases what was apparently a multi-layered arrangement). The information about the income was provided by the First Respondent to BT, and they referred to the income when preparing their February and April 2012 draft Reports. The 2 February 2012 Report referred to the availability of the "facility" not being confirmed until the "trading of the financial instruments has been concluded in mid-February 2012". By 17 April 2012 (the date of the second draft Report and two days before the LFA was signed) the reference was to a trading loss having been offset by £2m exceptional income with the fee expected to be received in June 2012. It was suggested that VM had explained that the material credit line would become available by the end of May 2012 "at the latest". BT confirmed that they had seen no documentary evidence to confirm the income (documentation was said to be available only a few days prior to the payout). BT was unable to comment on the legality of the transaction (amongst other things) on the information provided. The First Respondent caused the representation because it came from him; he permitted it to continue by not correcting the position as receipt of the income became increasingly doubtful. On 18 April 2012, the day before the LFA was signed by the Respondents to seal the borrowing from the Fund, the First Respondent gave a conditional undertaking to DR of Tangerine, who at the time he believed to be the investment managers for the Axiom Fund, stated to provide comfort that the first tranche of lending would be repaid by the Firm out of the exceptional income.

35.3 The Applicant submitted that the exceptional income and the £100m line of credit were fictions and that the Submission Package in support of the transaction bore the hallmarks of fraud which solicitors were alerted to by the SRA in various warning cards, including a Yellow Card published in September 1997 concerning bank instrument fraud. The First Respondent firmly rejected those submissions. The Tribunal was unsure whether the transaction was genuine or not. It was surprised by the size of the fee of £2m and noted that there was no evidence before it of any legal work by the First Respondent or the Firm to underpin that fee. By the same token there was no evidence that VM and the First Respondent were in some way in league or that VM did not exist. The First Respondent, as a senior solicitor, and bearing in mind the contents of the Yellow Card with reference to the level of remuneration he apparently expected to receive, should however have been suspicious and should not have given the transaction the time of day, let alone rely upon it to found a conditional undertaking and/or to support statements to be made by BT in their draft Reports to secure further funding for the Firm. The First Respondent insisted that the exceptional income and the £100m line of credit were genuine and in support of that conclusion he relied on the Submission Package. During the course of the hearing, the First Respondent was asked to look again at the Submission Package. He agreed that his understanding of such transactions was limited. He was aware of the existence of the Yellow Card but said that he had no experience of bank instrument fraud. In spite of this, the First Respondent obviously had suspicions because he said he sent the Yellow Card to VM effectively for reassurance. As an aside, the Tribunal found that

VM was the last person from whom the First Respondent should have sought comfort in respect of the alerts in the Yellow Card; VM on the First Respondent's case was the person putting the deal together and presumably had a vested interest in it going ahead – it was not suggested that VM was a solicitor.

35.4 Looking at the chronology, at some time (the Tribunal did not know precisely when, but it would say for the purpose of argument 11 January 2012, being the date of the start of the email thread between the First Respondent and VM) this transaction came to life with mention of a £2m fee to be paid to the First Respondent. By February 2012, borrowings by the Firm with RBS totalled £1.7m secured by an "all monies charge" over the Respondents' assets. At that point the Firm required £250,000 of funding to see it through to the end of March 2012 if it was to stay afloat and assuming that it could manage creditor payments (according to BT). The Tribunal found that the First Respondent demonstrated, at best, huge quantities of "wishful thinking" in relation to the £2m fee, and with good reason – he was desperate to save the Firm and his reputation as a forward-thinking commercial businessman.

35.5 The Tribunal did not know whether the approach made by VM to the First Respondent was genuine or not, and could therefore make no finding on that aspect. VM had provided a witness statement, but did not attend the hearing to give evidence and subject himself to cross-examination. In those circumstances the Tribunal attached no weight to VM's written statement, and Mr Nesbitt did not invite the Tribunal to do so.

35.6 The Applicant's case in a nutshell was that the First Respondent knew that there was no prospect at all of receipt of the £2m and that he represented that it might be obtained in order to secure funding from the Fund.

35.7 The Tribunal found that the key stages were as follows:

- 06.12.11: The First Respondent received the supporting transaction Submission Package and flowcharts from VM, indicating that discussions were already underway;

- 11.01.12: By email VM informed the First Respondent (it was not clear who had prompted the email thread) that completion of the deal was "still in the 90% + area. Give it a few week(sic)". The First Respondent promptly queried with VM whether he meant a "week" or "weeks". The email chain continued on that day, making it clear that the First Respondent and VM had had a conversation; the First Respondent said that VM had "eased [his] anxiety somewhat!!". The Tribunal found that at this point in January 2012 the First Respondent was already seeking specific reassurance as to whether the income was to be forthcoming, and if so, by when;

- 02.02.12: An email from VM to the First Respondent confirming a conversation between them. VM said that "Matters should conclude during the week commencing 20th Feb. leading to immediate payout". It was suggested that the First Respondent's share/remittance would be in the order of not less than £4m;

- 03.02.12: First draft BT Report;

- 08.02.12: The First Respondent met with DR and signed a Non-Disclosure Agreement with Tangerine;

- 30.03.12: The transaction apparently continued into and through March 2012. On 30 March 2012 VM sent the First Respondent an email which contained phraseology that should have put the First Respondent on notice that receipt of the £2m was at the very least doubtful, for example, "the situation is based on sovereign contract…Sovereign (Principal) party takes precedent in the draw down of funds (sic)". There was reference to funds being available in mid-April and other activities that would be "attributed to your situation", including £3m available to the First Respondent by mid to end of June (year not specified). This email was produced by the First Respondent to the SRA's DL as evidence of the genuine nature of the deal;

- 06.04.12: The First Respondent instructed JW by email to send the "trading Diagram" from the Submission Package to BT which he described as disclosing a different type of trade "but gives a flavour of what happens". The First Respondent was very clear in that email that he suggested that did not forward the package itself. The word "DON'T" appeared in capital letters. The First Respondent said that the Package was forwarded to him under a non-disclosure agreement ("NDA"). This was the First Respondent's opportunity to provide BT with the full package of information. Purported reliance on a NDA did not hold water. As a professional services firm with a well-established and credible reputation, BT would have had a duty to protect the First Respondent's confidentiality as he was their client. He was seeking advice from BT who were preparing Reports to secure additional funding for the Firm. BT needed all the documents in order to assess the Firm's position accurately and properly advise the First Respondent. There was no suggestion that the First Respondent had told BT that he was subject to an NDA in respect of information about the £2m and no copy NDA was provided to the Tribunal (which did have before it the NDA signed with Tangerine). Even if there was an NDA, BT were bound by client confidentiality and needed the full documentary picture to assess objectively what they were being told by the First Respondent. This must have been well-known to a solicitor who describes himself as an experienced commercial solicitor;

- 17.04.12: Second draft BT Report;

- 18.04.12: Email JW to DR (Tangerine) incorporating the undertaking from the First Respondent to Tangerine. This email referred to a meeting between the First Respondent and VM having taken place "yesterday" (i.e. 17 April 2012), but the summary of discussions at that meeting were the same as the contents of an email from VM sent to the First Respondent "a couple of weeks previously". The undertaking from the First Respondent was specifically described as being "to give you some comfort on the Trade". The wording of the undertaking was somewhat vague in describing the funds from which repayment was to be made. It was not clear whether repayment was to come out of the £2m exceptional income or some other transactions with VM, which were either already in the pipeline or in prospect. The Tribunal found that the giving of a solicitor's undertaking gave credibility to the representation made by the First Respondent that £2m of exceptional income was to be received;

- 19.04.12: The Respondents signed the LFA for the Axiom Fund borrowing;

- The First Respondent continued to communicate with VM intermittently until July 2012, when on the papers before the Tribunal the communications petered out.

35.8 Taking all of the evidence together, having been told that payout would take place on 20 February 2012, by 6 April 2012 the First Respondent had every reason to be suspicious that the transaction would never take place. The augurs were decidedly unpromising. The Tribunal found that the language used by VM in his email to the First respondent dated 30 March 2012 was meaningless verging on nonsensical jargon. The Tribunal further found that the First Respondent did not intend to give BT the full accurate picture but solely sufficient information to enable a report to be prepared to secure future funding from RBS or as it turned out the Axiom Fund. The Tribunal could not say for certain that by 3 February 2012 (when BT provided its first Report) the First Respondent knew that the transaction was not going to happen. The First Respondent was still within the "few weeks" timeframe suggested by VM in January 2012. The Tribunal found that position had changed by 6 April 2012, partly due to the passage of time and partly because it was noteworthy that the First Respondent had instructed JW to send only one diagram (itself meaningless) from the Submission Package to BT for the purpose of preparing the final draft Report. The Applicant submitted that honest Solicitors did not become involved in matters such as this: the Tribunal disagreed with that submission. Some honest Solicitors do choose to become involved in such matters on occasion by mistake or otherwise. The Yellow Card existed to prevent or minimise the risk of such mistakes. The First Respondent was experienced in this field. His knowledge of the contents of the Yellow Card should therefore have been substantial. The terminology used by VM in his email dated 6 April 2012 and the content of the Submission Package should have alerted the First Respondent, and indeed did alert him because he was already anxious by January 2012. That anxiety apparently caused him to send the Yellow Card to VM. In his defence the First Respondent said in his evidence that he would have walked away if payment of advance fees or deposits, or access to deposits or client accounts was required. In the absence of such requests he was unsuspicious. The Tribunal did not accept that explanation as credible when coupled with the First Respondent's failure to disclose the full picture to his accountants working on his behalf.

35.9 Particular 2.2.1: Did the First Respondent have reason to suspect, and/or in fact suspected that the income related to a fraudulent or bogus transaction? The Tribunal found on the documentary and oral evidence that a number of the warning signs identified on the Yellow Card were present and obvious to a solicitor of the First Respondent's commercial experience. The undertaking gave no indication as to the date by which the money was to be received or the dates on which the trades would start; there was no timeline for the project which there would have been in the case of a genuine transaction. The undertaking was pointedly silent as to any concrete facts as to how the project was going to be managed to a successful conclusion enabling the First Respondent to receive his £2m fee. On the First Respondent's own case, he had always said that the exceptional income was "speculative". He attempted to distinguish the warnings on the Yellow Card from this transaction on the basis that two features were not present – but the Tribunal observed that it was not permissible to pick and choose which warnings one observed and which one rejected. The First Respondent had sent VM the Yellow Card, he said. He had therefore identified the

potential for the income to relate to a fraudulent or bogus transaction and seemed to have some reason for suspecting that to be the case, although it was unclear to the Tribunal what had prompted that rather odd action. His case was that he dealt with the potential for a problem by inviting BT to make further enquiries with VM. This struck the Tribunal as "buck passing". In any event the BT report made clear that it was advising on limited information and the First Respondent seemed wholly, if surprisingly, willing to take the risk of them doing so. It was clear that the First Respondent had identified a need for someone to make further enquiries, but he had decided that that someone should not be him. It was also notable that the First Respondent did not seek specific or even general advice from another solicitor at his Firm, or a contact at The Law Society or SRA, or some other solicitor acquaintance, preferring instead to rely on the opinion of VM, a non-solicitor with whom he intended to enter into the transaction under question. The Tribunal would have been more persuaded by the First Respondent's case if he had sought other independent advice or if he had sent the Submission Package to BT, who would no doubt have respected the confidentiality of the same. There was some evidence that the Firm had received the benefit of advice from a very experienced accountant closely linked to the Firm, sadly now deceased, who had provided guidance and advice on the financial forecasts. Advice could have been requested from that person although he could not be described as independent where the Firm's finances were concerned. Instead of seeking advice the First Respondent positively arranged for BT to be kept from the full Submission Package. The First Respondent acted in a way that was wholly consistent with having reason to suspect that there was something wrong with the transaction. The Tribunal therefore found that particular 2.2.1 was proved beyond reasonable doubt from 6 April 2012, namely that the First Respondent had reason to suspect from that date forward that the income related to a fraudulent or bogus transaction. This gave the First Respondent the benefit of the doubt in relation to the period from December 2011 to 5 April 2012. It was unnecessary for the Tribunal to decide whether or not the First Respondent in fact suspected that to be the case, bearing in mind that the particular was pleaded in the alternative.

35.10 Particular 2.2.2: Did the First Respondent have reason to suspect and/or in fact suspected that the Firm was very unlikely to receive the income? At this point it was useful to look at the key stages at paragraph 34.7. By 11/12 January 2012, the prospect of the income being received was still in the "90%+ area", with receipt "within a few weeks". On 30 March 2012 VM provided the rather less positive and speculative update on progress. There were no substantive emails after that date, so the Tribunal assumed that, by 30 March 2012, the trail of this income had largely gone cold. On any interpretation, the wording of the 30 March email suggested that the First Respondent's money claims would rank below "the sovereign contract", and "the sovereign principal party" would receive their money first (indicative of delay in the First Respondent receiving any money, even if the transaction was genuine and reached completion). The emails, of course, implied the possibility of some funds being credited to the "KH account" by mid-April 2012 on the basis that "trades had commenced" at some point in March 2012. There was the suggestion of other activities going on that would be "attributed" to the First Respondent's "situation". The email also included reference to further transaction where funds of £3m might be available but not until the middle or end of June 2012. It was noteworthy that there was no evidence in support of the existence of the deal, save for this email thread. The Tribunal carefully considered whether the VM email dated 30 March 2012 could have

influenced the First Respondent to believe that the £2m would be received by, say, the end of April 2012. However, it found that this lifeline had gone by 19 April 2012, the email chain having gone cold without apparently being revived by the First Respondent, the First Respondent having provided an undertaking to repay the first tranches of borrowings out of monies received from VM (whilst avoiding inclusion of the specific reference to the £2m exceptional income) and the Respondents having signed the LFA committing the Firm to repay the borrowed monies within 12 months. There would have been no sense in the First Respondent entering into the LFA on expensive terms on his own analysis if payment of £2m into his account was imminent. If the contents of 30 March 2012 email were to be accepted at face value, something should have been happening by mid-April 2012. In relation to the £2m, it remained unpaid to this day, as far as the Tribunal was aware. The Tribunal therefore found that particular 2.2.2 was proved beyond reasonable doubt from 6 April 2012, namely that the First Respondent had reason to suspect from that date forward that the Firm was very unlikely to receive the income. This again gave the First Respondent the benefit of the doubt in relation to the period from December 2011 to 5 April 2012.

35.11 Allegation 1.2: In light of its findings above, the Tribunal found allegation 1.2 as against the First Respondent proved by the Applicant beyond reasonable doubt from 6 April 2012 onwards. The Tribunal also found beyond reasonable doubt that the First Respondent acted without integrity in breach of Principle 2 and behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6. In both cases the findings related to the period from 6 April 2012 onwards. The First Respondent had reason to suspect that the income related to a fraudulent or bogus transaction. The Tribunal had identified a number of steps that the First Respondent could have taken to make further enquiries, but which he did not take. Instead he took a number of positive steps: he sent the Yellow Card to VM and instructed JW to withhold information from BT. How might the public perceive the First Respondent's actions? The public seeking advice from a solicitor such as the First Respondent or his Firm would probably be unaware that a Yellow Card containing warnings existed so would not necessarily be alert to fraudulent or bogus transactions. The Tribunal considered that the public would view the First Respondent's actions with considerable suspicion significantly, undermining the trust placed in him. A member of the public inexperienced in dealing with solicitors reading about this case in a newspaper would tend to look at providers of legal services globally, without necessarily distinguishing between solicitors, legal executives, barristers and so on. Alternatively, the reputation of the solicitors' profession may be diminished in the eyes of that member of the public resulting in a decision to seek advice elsewhere other than from a solicitor. Members of the public may be more wary about seeking legal advice if anxious that this is the sort of behaviour that they might encounter, both in terms of actions and omissions, when instructing a solicitor.

35.12 Dishonesty (allegation 1.2). By the ordinary standards of reasonable and honest people the Tribunal found that the First Respondent was dishonest as alleged for the reasons set out above. In particular, making representations concerning income that he had reason to suspect related to a fraudulent or bogus transaction and where the Firm was unlikely to receive the same would be considered to be dishonest by those standards. By those same standards did the First Respondent know that his conduct was dishonest? Having considered the documents and the oral evidence, the Tribunal

was persuaded that the First Respondent was aware of what he was doing and knew that he was behaving dishonestly. He needed money desperately to keep his firm afloat and grasped at any lifeline thrown to him. The First Respondent needed to take certain steps to protect the integrity of the exceptional income when dealing with others, including BT and the Fund. Notwithstanding the fact that the First Respondent drew attention to what he said were material differences between the warnings in the Yellow Card and this transaction, the Tribunal was not persuaded by that argument as it had found above. The warning on the Yellow Card had to be looked at as an entire document; it was not open to the First Respondent to "cherry pick" areas of difference to justify his decision to ignore the rest. If the transaction had come off, regardless of any decision of the Tribunal as to its nature, the First Respondent stood to receive £2m. He did not want any obstacle to stand in his way, just in case the transaction did come off (and that included whether the transaction was fraudulent or bogus). The First Respondent hid the true picture from those, such as BT, who might create obstacles by asking questions. He was not prepared to take the risk of not getting the funding. The only factor that made the BT report stack up was receipt of £2m. The funding was the difference between life and death for his Firm. The Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt, objectively and subjectively on both limbs of the Twinsectra test. Having reached that conclusion it was not necessary for the Tribunal to make any finding on the allegation that the First Respondent was reckless.

36. Allegation 1.3 - First Respondent (Denied)

36.1 SAR Rule 1.2(a) required solicitors to keep other people's money separate from money belonging to them or their firm; Rule1.2(b) made the same requirement as 1.2(a) requiring that money be kept safely in a bank or building society account identifiable as a client account; Rule 14.1 imposed the requirement that client money must without delay be paid into client account and held in client account. The LFA signed by the Respondents specified that the monies had to be paid into client account. It was obvious that this requirement was central to the security provided to investors by the SOM.

36.2 Did the First Respondent fail to pay the monies identified in allegation 1.1 into client account? The Tribunal found as a fact that the First Respondent did fail to pay those monies into client account. He knew what the LFA required of him in that regard.

36.3 If the First Respondent wrongly but honestly believed that the monies were office money, did the First Respondent fail to open an office account whose sole purpose was to hold the monies pending their use for an authorised purpose? The First Respondent's case was that he had an agreement with DR that he could pay the monies into office account to be used for general office overheads predicated on cases. The First Respondent was seized of the SOM by 1 June 2012. The appointed investment managers, Tangerine, had some authority to vary the terms of the investment; if the variation was substantive it had to go back to the investors for approval so that they could withdraw their funds on 30 days' notice if they wished to do so. Investors would view this investment as being particularly safe because it was in closely-regulated law firms as expressly stated in the SOM. The prerequisite was that the money must be paid into client account against allocated cases (setting aside for one moment that wip was expressly excluded). The monies would be allocated to

cases and could be expended on authorised disbursements. Each case was intended to have the benefit of an ATE to a maximum of £12,750 which would not have been available in non-litigation cases. To back up the ATE, there was intended to be an FGI to be called upon if a panel firm ceased to trade. In those unfortunate circumstances, if the monies had been allocated properly, they would either be protected in client account or expended on the case and covered by the ATE when the case was finished, either by the original or some other firm. The Tribunal noted that the Firm did not itself take out ATE and Tangerine was responsible for obtaining FGI. This detailed scheme was expressed to provide protection to the investors and, the Tribunal found, the clients who instructed the Firm to conduct their cases. As at 1 June 2012, the First Respondent knew that the Tangerine could not alter the SOM in such a fundamental way as to authorise payment of the monies into the Firm's office account without the approval of the investors so that they could make informed choices about their investments. By 1 June 2012 the First Respondent had seen LFA, the SOM and the Investment Management Agreement ("IMA"). At that point he knew that the SOM contained these devices to protect the investors' money. Prior to 1 June 2012, the First Respondent had been told by TS and DR (who had delegated authority to make decisions on behalf of the Fund) that he could pay the money into office account, notwithstanding the requirements in the LFA, which was an "entire agreement" with provision for amendments to be made only in writing [clauses 20 and 22]. This Tribunal accepted the proposition of the First Respondent that at least 7 out of 9 other panel firms say they were told the same thing. The Tribunal noted that saying that one has been told something is indicative but not conclusive proof that one has been told something; the evidence must still be tested. The Tribunal was left with the situation where the First Respondent wrongly paid the money into office account, but for reasons that will be explained below, did not have an honest belief that he was doing so. The Tribunal found the use of the words "honestly believed" in the allegation difficult; they seemed to the Tribunal to be an unnecessary complication. In the final analysis it made no difference because the First Respondent failed to pay the monies into client account which was a requirement that could only be varied in a specific way, as the First Respondent knew, and that variation did not happen. It was therefore unnecessary for the Tribunal to make any finding as to whether the First Respondent failed to open an office account whose sole purpose was to hold the monies pending their use for an authorised purpose. For the sake of completeness, the First Respondent opened no such account, save in respect of the MV Rena sub-ledger, which had its own problems as set out elsewhere. Further, he failed to keep adequate records of how the monies were spent. They went into practice funding or to pay off other borrowing in the main, and were undocumented.

36.4 Allegation 1.3: In light of its findings above, the Tribunal found allegation 1.3 as against the First Respondent proved by the Applicant beyond reasonable doubt, including all the Accounts' Rules breaches alleged. The Tribunal also found beyond reasonable doubt that in respect of the same allegation the First Respondent acted without integrity in breach of Principle 2, behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6, failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8, and failed to protect client money and assets in breach of Principle 10. The Tribunal found that the First Respondent had "run a coach and horses" through the relevant Accounts' Rules, which constituted acting

without integrity. Those Rules existed for the protection of client money, which was sacrosanct. The public expected solicitors to run their accounts in an orderly fashion in accordance with the SAR, so that liabilities and payments could be easily identified. To do otherwise was likely to diminish public trust and that of other professionals. There was evidence that the Firm had exemplary control of its office and client accounts save for in connection with use of the Axiom Fund monies, where it was demonstrated that the First Respondent applied completely different procedures. This comment did not detract from the undisputed fact that the Firm was in dire financial straits in early 2012. The Firm was perfectly capable of complying with Principle 8, but chose not to do so in relation to the funds received from Axiom. Given that background, these monies, to the exclusion of all else, were dealt with in a completely different way speaking volumes to the Tribunal when considering the relationship between the Firm and Axiom in the round. The First Respondent clearly acted contrary to Principle 10 because he paid the money into office account and it was lost to the client with a resulting claim against the SRA Compensation Fund.

36.5 Dishonesty (allegation 1.3). By the ordinary standards of reasonable and honest people the Tribunal found that the First Respondent was dishonest as alleged for the reasons set out above, but excluding the payments made from the Axiom Fund prior to 1 June 2012. Reasonable and honest people would not have concluded that the First Respondent's conduct in respect of those payments was dishonest. Such people would not have the necessary background knowledge to reach that conclusion. In respect of those monies, totalling £339,216 the allegation of dishonesty therefore failed at the first hurdle and it was unnecessary for the Tribunal to consider the subjective limb of Twinsectra. By 11 May 2012, the First Respondent was beginning to gain knowledge of the contents of the SOM, and he had full knowledge of the LFA, the SOM and the IMA by 1 June 2012. From that date onwards, the Tribunal found beyond reasonable doubt that by the ordinary standards of reasonable and honest people the First Respondent was dishonest. Objectively, given the background information that the First Respondent had by this date, a reasonable and honest person would know that the investment manager DR did not have the authority to agree an oral variation of the LFA to enable payments to be made into the Firm's office account and monies loaned used for practice funding. By that date the investment manager Tangerine had had ample opportunity to ensure that any variation was recorded formally in writing and/or any necessary amendments to the SOM were made, referring back to the Axiom Fund directors as required. The Applicant was able to rely on the entire agreement clause in the LFA in support of its case. Amendments, if properly made, should have been incorporated into the SOM, but they were not. In relation to the First Respondent's state of mind and knowledge, his case was that, amongst other things, Tangerine kept the Fund informed and investments were independently audited by BDO (in fact BDO reported on pre-2012 data, so this was a red herring). The First Respondent was careful in his use of language when giving evidence. He often referred to funds being "husbanded" and "predicated" on cases. The Tribunal concluded that the First Respondent used this language in an attempt to justify the unjustifiable, to give what occurred an air of formality and regularity that did not exist. The Tribunal was satisfied beyond reasonable doubt that the First Respondent knew that by the ordinary standards of reasonable and honest people his behaviour as set out above was dishonest. The Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt, objectively and subjectively on both limbs of the

Twinsectra test. Having reached that conclusion it was not necessary for the Tribunal to make any finding on the allegation that the First Respondent was reckless.

37. Allegation 2- Second Respondent (Admitted In Respect of Breach of the Accounts Rules 2011 Only)

37.1 The Second Respondent admitted that he failed to pay the monies identified in allegation 2.1 into client account or, if he wrongly but honestly believed that it was office money, failed to open an office account whose sole purpose was to hold the monies pending their use for an authorised purpose, and failed to keep adequate records of how the monies were spent, contrary to rules 1.2(a), 1.2(b) and 14.1 of the SAR. The Tribunal therefore found the allegation in respect of the underlying facts and breaches of the SAR, which were admitted, proved beyond reasonable doubt.

37.2 The evidence from JW and the First Respondent was that the Second Respondent was kept up-to-date with all important financial information concerning the Firm. The Tribunal found that to a large degree the only information that the Second Respondent was shown pre-June 2012 was that which he had to see in order to secure the funding, namely the LFA which he had to sign. The evidence was that the Second Respondent went to see the First Respondent concerning the MV Rena project to ask whether it was work that the Firm should be doing. He was reassured by the First Respondent's reply that the Firm was managing the project. Further, when funds were being borrowed to repay money to RBS, the email chain from AL of Tangerine to the First Respondent was copied to the Second Respondent, which again reassured him that all was above board. At critical times, the Second Respondent's explanation that he knew nothing made sense to the Tribunal. The Tribunal found that the Second Respondent knew so little because he was "asleep at the wheel". The First Respondent was clear in his evidence in answer to a question from the Chairman that he had ownership of the work and no evidence had been produced to suggest that the Second Respondent had ever seen the SOM. The Tribunal found that the knowledge of the Second Respondent was dependent upon what the First Respondent told him and the First Respondent told him what he wanted the Second Respondent to hear. In view of this finding, did the Second Respondent act without integrity, contrary to Principle 2? The Tribunal found beyond reasonable doubt that the Second Respondent did act without integrity. This conclusion followed from his admissions and the underlying facts. This was a very serious matter. The Tribunal also found beyond reasonable doubt that the Second Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6. The public and other providers of legal services did not expect law firm equity partners, or indeed solicitors more generally, to allow the cart to run off the road by failing to obey the Accounts' Rules in respect of sacrosanct client money. Did the Second Respondent run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial mismanagement principles in accordance with Principle 8? The Tribunal found that he did not do so. His lack of interest in the accounts and the running of the business, including the source of crucial funding for the Firm's future, where it was deposited and how spent, as the Tribunal had found above, were sufficient to establish a breach of this Principle beyond any doubt. Indeed, if the Second Respondent had adopted a different approach to management of the business, the outcomes might have been very different. He did not ask any questions; he did not fulfil his role in the business effectively, and he

appeared to have no grip at all on business finances or the accounts. As stated above, the Second Respondent was asleep at the wheel and the Tribunal considered that to be a serious matter in terms of protection of the public from harm and maintenance of the reputation of providers of legal services. Did the Second Respondent protect client money and assets in accordance with Principle 10? Just as in the case of the First respondent, he did not protect client money the borrowing was spent away having been deposited in office account. The Tribunal found beyond reasonable doubt that the Second Respondent failed to protect client money and assets in accordance with Principle 10.

37.3 Dishonesty (allegation 2.2). The Tribunal found beyond reasonable doubt that the Second Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. However the Tribunal did not find that the Second Respondent knew that his conduct was dishonest by those same standards. The Second Respondent did not pay sufficient attention to the financial management of the Firm to reach any conclusions as to honesty or dishonesty; he showed no interest and he did not care. The Applicant had failed to prove the dishonesty allegation on both limbs of the test in Twinsectra.

37.4 The Tribunal found that the Second Respondent's conduct was reckless in respect of its factual findings under this allegation. The 2nd Respondent signed the LFA and then showed no interest in the whereabouts of the large sums of money being received or the purpose to which they were put. These were not routine sums of money, but something special, something keeping the Firm afloat and out of administration. Applying R v G, the Second Respondent was well-aware of the risk that existed in relation to the protection of client money if it was not paid into client account promptly on receipt. He was, after all, the Firm's COLP. He was also well-aware of the result if client money was not paid into client account – it would be eaten up by office account for practice funding. This risk was acute when a firm was in financial trouble and had an overdraft – client money paid into office could be taken by the bank to clear the indebtedness. In all the circumstances it was unreasonable for the Second Respondent to take the risk of not asking questions, of not insisting on checking the accounts, and so on. He was held out as an equity partner and had a responsibility to pay attention to what was going on at the Firm. These were breach of Principle 8 matters, and were at the front of the thinking that led to the formulation of that Principle. The Tribunal therefore found beyond reasonable doubt that the Second Respondent was reckless in relation to his breach of Principle 8, supported by the underlying facts, only. He was not reckless in respect of the breaches of Principles 2, 6 and 10.

38. Allegation 4 - First Respondent (Denied)

38.1 This allegation related to the MV Rena monies. Did the First Respondent misappropriate or cause or permit the misappropriation of £643,054.33 (or thereabouts) of the payment of £859,054.33? This was the single litigation case to which the First Respondent specifically allocated funds. The monies from the Axiom Fund, paid via Tangerine, were placed wrongly into office account. Monies equating to approximately £216,000 were paid out to a sub-ledger of office account for use in the proceedings (JCL 8). The balance of £643,054.33 or thereabouts remained in office account and was used for office overheads. The First Respondent explained

what had occurred during his interview with the FI officers, a transcript of which had been provided to the Tribunal. The Firm became involved in the litigation in early August 2012 (it received the funds on 2 August 2012). The First Respondent said that the funding agreement was entered into with JCL 8 and various claimants. Money was paid into the JCL 8 account on 30 August 2012. Payments were to be made on a staged basis numbered 1 to 5, but the litigation did not progress past stage 2. The First Respondent stated at interview that the Firm did not request money from Tangerine; it "arrived" in the Firm's account. The First Respondent's evidence was that he asked Tangerine why they had sent him the money, and they said it was "towards the Rena case". The Tribunal found beyond reasonable doubt that the First Respondent was aware that the monies could not be used to pay office overheads by 30 August 2012 when some of the money was paid into JCL 8. The fact that some money was paid into JCL 8 was a clear indication that the First Respondent was aware that the money should not remain in office account. Some at least had been set aside to provide for its intended purpose, the MV Rena litigation. The Tribunal noted that the existence of the money was not made known to DL, the SRA investigator, on his first visit to the Firm, which the Tribunal considered to be significant. The First Respondent confirmed, again during interview, that the money was held in a "sub- ledger" and not the main office account. When DL commented that the money had been held in office account and it had "gone", the First Respondent stated that the money had been "spent", and did not accept that that meant that the money had "gone". The First Respondent's explanation as to why the money had not "gone" was that:

> "if the directors were in breach of the funding agreement with me and the firm we were under a duty to mitigate our loss against the directors. We had money in hand which we could have paid to New Zealand but we had no chance of recovery on that i.e. it has gone out of the jurisdiction so how are you going to get it back to mitigate your losses. We had an overall claim against the directors. By breach of that agreement and in law we are under a duty to mitigate. We could do that by utilising the money that was there for the Rena case that we could not pass on because we could not fulfil it and we had no chance of recovery of it so that would have been imprudent, you might say, and therefore we utilised it."

38.2 The Tribunal accepted, and indeed there was no dispute, that the MV Rena monies were paid into the Firm's office account. It was therefore the case that if the monies had been received in circumstances where if paid into the MV Rena case with the Firm as investors, as was asserted by the First Respondent, it would not have been received in accordance with the terms of the LFA. The Tribunal noted that this was the one occasion on which the First Respondent contacted Tangerine to say that they had sent him too much money. He asked to be allowed to send some back, but was refused. The First Respondent's position was that he was told the money had had to be sent to him because the Fund did not know when it would be able to send him more. There were already concerns about the Fund's liquidity and the dates coincided closely with news about TS's background being published online. The First Respondent said that the money had to be retained in office account; the funding cost 50% in respect of the FF plus 15% interest. His case was that no one would borrow money on such terms and then leave it sitting in client account without being able to use it. The Tribunal rejected that evidence as another attempt by the First Respondent to explain away what had happened. The Tribunal agreed with Mr Dutton's

submission that it was particularly unpalatable for the First Respondent to suggest as quoted above that when the Fund was suspended on 26 October 2012 he considered that the Fund was in breach of its duties to fund his Firm and that he could therefore use the MV Rena monies to discharge the Firm's overheads. A substantial chunk of the money was spent by the Firm well before the Fund was suspended and therefore before any alleged breach could have occurred. This assisted the Tribunal in considering the subjective element of Twinsectra. The Tribunal had no difficulty in finding that a substantial amount of money left office account well before the Fund was suspended. £859,000 was received by the firm on 2 August 2012. The total balance in office account on 31 August 2012 was £469,173.44. Between 2 and 31 August 2012 there was a net appreciation of £400,000 on the office account. The Tribunal agreed with Mr Dutton that the First Respondent's explanation in that regard was "palpably false". The Tribunal had received a preponderance of evidence to show that the First Respondent had spent over £400,000 of the money before the date of the alleged breach on which he relied. The Tribunal therefore found beyond reasonable doubt that the First Respondent did misappropriate or cause or permit the misappropriation of £643,054.33.

38.3 Allegation 1.4: In light of its findings above, the Tribunal found allegation 1.4 as against the First Respondent proved by the Applicant beyond reasonable doubt. The Tribunal also found beyond reasonable doubt that in respect of the same allegation the First Respondent acted without integrity in breach of Principle 2 and behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6.

38.4 Dishonesty (allegation 1.4). The Tribunal found beyond reasonable doubt that the First Respondent was dishonest in misappropriating or causing or permitting the misappropriation of the monies by the ordinary standards of reasonable and honest people. The Tribunal noted the "mitigation argument", but the lion's share of the money was spent before the date of the Fund's suspension. That argument therefore had no merit. Reasonable and honest people would consider the expenditure of the money on office expenses in these circumstances to be dishonest. Further, by those same standards, the First Respondent knew that what he was doing was dishonest. He said that the expenditure was for a "specific purpose". When cross-examined, the First Respondent's evidence was that: "I knew that the case that was being predicated on the Rena money would be predicated on that case". Mr Dutton persisted in his line of questioning to obtain an answer from the First Respondent. His question was "you knew that the specific purpose for that money was the MV Rena action?" The First Respondent replied that he knew that the money the Firm was borrowing from Axiom on a predicated case was the Rena action. After the question was put to him again, the First Respondent said that "the purpose of the loan was for us to be able to fund the Rena action". Mr Dutton asked the First Respondent whether there was a problem with use of the word "specific". The First Respondent suggested that Mr Dutton was trying to get him to say what "isn't actually what the truth is". He continued: "I said that the borrowing that we took from Axiom would be predicated on the pursuit of the Rena case" which the First Respondent considered to be "slightly different" from the funding having a "specific purpose". The First Respondent denied that he was acting in breach of trust by spending the funds in those circumstances and gave a long and complex answer to explain why. Those circumstances appeared to be that Axiom could not make staged payments due to not knowing from month to month what the

liquidity of the fund would be, so they had to send a lump sum in excess of £800,000 to the Firm in one tranche. The First Respondent's evidence was that he was told by DR that he had to treat this lump sum in the same way as he treated all other monies, in other words as "practice funding". He continued that DR informed him that he had to look after the money so that if and when each stage was reached the Firm could make the staged payments. The Tribunal noted that on the First Respondent's case, DR was silent as to what would happen to the money if staged payments to Rena never had to be made. The Tribunal did not find the First Respondent to be a convincing or credible witness when answering Mr Dutton's questions on this point. He appeared to the Tribunal to be evading the questions in order to justify the Firm's expenditure of the money on office overheads rather than on the Rena case. It was crystal clear to the Tribunal that the Rena litigation was the specific purpose for which the money had been loaned to the Firm, subject to the FF and interest. The Tribunal found therefore that the First Respondent did know that his behaviour in using the funding for office overheads was dishonest. The Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt, objectively and subjectively on both limbs of the Twinsectra test. Having reached that conclusion it was not necessary for the Tribunal to make any finding on the allegation that the First Respondent was reckless.

39. Allegation 2.3 – Second Respondent (Denied)

39.1 The Applicant repeated the allegation in respect of the MV Rena monies against the Second Respondent.

39.2 The Second Respondent's evidence was that he queried with the First Respondent why solicitors in Southport were dealing with a case in New Zealand. Following the Tribunal's assessment of the Second Respondent in the witness box, it would have taken the Second Respondent some effort of will to ask the First Respondent this question, and not merely accept what he was told at face value. The First Respondent provided an explanation which the Second Respondent trusted and accepted, just as he seemed to have trusted and accepted everything else that the First Respondent told him. The First Respondent explained that the Firm was merely "project managing" the case, which the Second Respondent accepted without asking anything more. The Applicant's case was that the Tribunal could infer that the Second Respondent knew that the money was to be used for the MV Rena litigation and therefore was a specific purpose trust. Their case was put on the basis that it was inconceivable that the Second Respondent was unaware that the Firm's overheads were being funded with the Fund's monies intended to be used for the MV Rena action. The Tribunal however considered that even if the Second Respondent looked at office account and saw that over £859,000 had been received in August 2012, he would not necessarily have known that it related to the MV Rena litigation because it was not stated as such in the accounts. The Second Respondent was not cross-examined on this point. His evidence was that he took no part in the decision and had no dealings with the matter. The Tribunal also observed that on this occasion the Second Respondent's only involvement was appropriate in that he asked why the Firm was doing the work. The Tribunal found that the Applicant was asking it to infer too much from the documentary and oral evidence. The Tribunal therefore was unable to find beyond reasonable doubt that the Applicant had proved this allegation against the Second Respondent.

40. Allegation 1.5- First Respondent (Admitted Underlying Facts and Breach of Principle 3

40.1 The First Respondent admitted that he acted for a client in circumstances where there was a conflict, or significant risk of conflict, between (i) his own interests and (ii) the interests of his client, contrary to Principle 3 (not allowing your independence to be compromised). He denied that he had acted without integrity contrary to Principle 2. He further admitted that he had acted contrary to Outcome 3.4 which required him not to act if there was an own interests conflict or a significant risk of an own interests conflict. The underlying facts were also admitted.

40.2 On 22 June 2012 the First Respondent drafted Instructions to Counsel to advise on various matters relating to Axiom, and in particular amendments to the suite of documents used for panel firms including the LFA. He had commenced work on the re-drafting of the precedent LFA between May and June 2012. The Tribunal paid careful note to the comparison of the original and amended versions of the LFA prepared by the Applicant's legal advisers. The First Respondent advised Tangerine Advice to use the re-drafted documents for two potential new panel firms in July 2012. The Instructions were sent to Counsel on 2 July 2012, and confirmed that the First Respondent was retained by Axiom. The First Respondent's Firm was therefore a borrower from his own client. Counsel was specifically instructed to advise regarding the chances of recovery of the loans, the FF and the insurance premiums. The First Respondent suggested that the FF was mentioned at clause 10 of the LFA only and that there was no authority for Tangerine to deduct the FGI premium. He enquired as to the interest rate applicable to the loans. He asked whether the absence of a monitoring clause in favour of Axiom and Tangerine was "prejudicial". If Counsel considered that the LFA and other documents were "not fit for purpose", he invited Counsel to comment on whether Axiom could recover the costs of re-drafting (which the First Respondent had already commenced). This line continued with the First Respondent suggesting possible consequences and querying whether they could necessitate a complete re-draft of the suite of documents. He questioned the enforceability of any of the separate matters in the LFA if a panel firm was presented with the LFA to sign and no other documents (as appeared to be the case with the First Respondent's Firm but Counsel was not told this). He asked whether there was a potential conflict of interest between Axiom and Tangerine (so the thought was obviously already in his mind in spite of the fact that he was himself already acting for both). He invited Counsel's input on his draft revised LFA, which included clauses which could be read as beneficial to the Firm. On 25 July 2012 the First respondent attended a conference with Counsel accompanied by TS of Tangerine. Between 22 June 2012 and suspension of the Fund, the Firm received the majority of the funding from Axiom, totalling £4,522,183.33. Counsel's written advice that the FF was recoverable from firms such as the First Respondent's was received in November 2012 after suspension of the fund. The First Respondent had also taken on the role of Panel Manager during this period.

40.3 The Tribunal found proved beyond reasonable doubt those elements of the allegation that were admitted by the First Respondent.

40.4 The First Respondent denied acting without integrity contrary to Principle 2. The First Respondent was well-aware of the rules relating to conflicts. There was evidence before the Tribunal that he had not held back from challenging others where he felt

they were acting in a conflicted situation. In those circumstances in acting where there was a conflict, or at the very least a significant risk of conflict, between his own interests and the interests of his client, the Tribunal had no difficulty in finding that the First Respondent had acted without integrity in breach of Principle 2. This was not a question of mistake or misunderstanding of the law, or misjudgement. The First Respondent was an experienced solicitor knowledgeable about the law, but he chose to act for Axiom (as well as Tangerine) in relation to amendments to a document and instructions to Counsel which on any interpretation had the potential to benefit his Firm e.g. extending the period of time in which the borrowing had to be repaid. In this regard the First Respondent's moral and ethical compass was significantly disabled. The Tribunal therefore found beyond reasonable doubt that the First Respondent acted without integrity in breach of Principle 2 in addition to his admitted breach of Principle 3.

40.5 Dishonesty (allegation 1.5). By the ordinary standards of reasonable and honest people was the First Respondent dishonest as alleged for the reasons set out above? The First Respondent borrowed over £4m from his client, Axiom. Based on advice from Counsel, for which the client was to pay, the First Respondent was minded to assert ultimately to the detriment of his client, Axiom, that he was not responsible for repayment of a significant element of what he had borrowed. The First Respondent did not inform Counsel in the instructions that his Firm had received funding into office account to use for office expenses (rather than into client account to use for specific litigation cases). The suite of documents had been re-drafted by the First Respondent in his own favour and he had advised Tangerine that those documents should be used for new panel firm members (to Axiom's detriment). The Tribunal therefore found beyond reasonable doubt that this was objectively dishonest. Reasonable and honest people would conclude that the First Respondent was manipulating a situation for his own ends.

40.6 By those same standards, did the First Respondent know that he was behaving dishonestly? The Tribunal found that the First Respondent knew that the conflict existed, and was so concerned to preserve the Firm's funding source for as long as possible that he exploited the same in an attempt to gain an advantage at the expense of Axiom. The existence of the conflict was an inconvenient truth which the First Respondent chose to put to one side for as long as possible. The Tribunal found beyond reasonable doubt that the First Respondent knew that he was behaving dishonestly. The Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt, objectively and subjectively on both limbs of the Twinsectra test. Having reached that conclusion it was not necessary for the Tribunal to make any finding on the allegation that the First Respondent was reckless.

41. Allegation 2.4 - Second Respondent (Admitted Save as to Dishonesty and Recklessness)

41.1 The Second Respondent admitted that he acted for a client in circumstances where there was a conflict, or significant risk of conflict, between (i) his own interests and (ii) the interests of his client, contrary to Principles 2 (lack of integrity) and 3 (not allowing your independence to be compromised). He further admitted that he had acted contrary to Outcome 3.4 which required him not to act if there was an own interests conflict or a significant risk of an own interests conflict. The underlying facts

were also admitted. The Tribunal found the underlying facts and the admitted allegations against the Second Respondent proved beyond reasonable doubt.

41.2 Dishonesty (allegation 2.4): There was no dispute between the Respondents that the First Respondent asked the Second Respondent to handle re-drafting of the LFA and administrative matters relating to the work during the First Respondent's absence from the office on holiday in June 2012. The Second Respondent effectively stepped into the breach while the First Respondent was away. By the ordinary standards of reasonable and honest people the Second Respondent's actions were not dishonest. The Tribunal found that he trusted what he was told by the First Respondent and had no reason to doubt the First Respondent's word on this aspect. It was therefore unnecessary for the Tribunal to consider the subjective limb of the Twinsectra test in view of its finding on the first, objective limb. The Applicant had not proved the allegation of dishonesty beyond reasonable doubt.

41.3 Recklessness (allegation 2.4). The Tribunal did not find the Second Respondent to have been reckless in regard to this allegation. He was unaware of the risk attached to his actions and merely stepped in to cover for the First Respondent for a short period of absence. The Applicant had not proved the allegation of recklessness beyond reasonable doubt.

42. Allegation 2.5 – Second Respondent (Admitted Save as to Dishonesty and Recklessness)

42.1 The Second Respondent admitted that he acted for two clients where there was a conflict, or a significant risk of conflict, between the interests of those clients, contrary to Principles 2 and 3 of the Principles and Outcome 3.5 of the SRA Code? The Tribunal found the allegation proved beyond reasonable doubt. The underlying facts were on all fours with those in respect of allegation 2.4 against the Second Respondent.

42.2 The Tribunal's conclusions on the allegation of dishonesty were that the Applicant had not proved the allegation of dishonesty beyond reasonable doubt, having failed to jump the hurdle of the objective limb of the Twinsectra case for the same reasons as were found in respect of allegation 2.4. The Tribunal's finding in respect of recklessness was also as for allegation 2.4, namely not proved beyond reasonable doubt.

43. Allegation 1.7- First Respondent (Admitted Underlying Facts and Breach of Principle 3

43.1 The First Respondent admitted that he took instructions from and/or acted on instructions from the representative of a client without keeping the client appropriately informed, in circumstances where there was a conflict, or significant risk of conflict, between the interests of the representative and the client, contrary to Principle 3 (not allowing your independence to be compromised). He denied that he had acted without integrity contrary to Principle 2. The underlying facts were also admitted. The Tribunal found the allegation and breach of Principle 3 proved beyond reasonable doubt.

43.2 The First Respondent admitted that he took instructions from and/or acted on instructions from the representative (Tangerine) of client (Axiom) without keeping the client appropriately informed, in circumstances where there was a conflict, or a significant risk of conflict, between the interests of the representative and the client. This allegation was an alternative to allegation 6, which the Tribunal did not now have to consider. The First Respondent was considering whether or not there was a potential challenge to repayment of the FF. It might assist to rehearse how the FF was managed administratively. The funding from Axiom was relayed to the Firm via Tangerine which deducted the 50% FF before sending the money on. The Firm therefore received the agreed funding less 50%. However the Firm had to pay back the full amount of the funding, plus the FF. The end result of this was that if repayments were made Axiom would receive the full amount of the loan, plus the FF retained by Tangerine plus 15% interest on the full amount of the loan. Tangerine and others would receive distribution of the 50% FF regardless of the performance of the Fund as a whole. If repayment of the FF was successfully challenged by the First Respondent (and other borrowers), Axiom would receive repayment of the loan less the 50% FF, Tangerine and others would retain the 50% FF, subject to any attempt by Axiom to recover the same direct. As Axiom would ultimately be responsible for payment of Counsel's fees, they were in effect paying for an advice which left both the First Respondent and his Firm and Tangerine and its associates in a better position than when they started and the investors in the Axiom fund in a worse position. The conflict was obvious. The First Respondent admitted that he had never contacted Axiom. No client care letter was sent to Axiom (although the First Respondent's evidence was that such a letter had been sent to Tangerine). The First Respondent said that Tangerine was his principle client to explain why the client care letter had not been sent to Axiom. The First Respondent confirmed that he did not receive any written or oral instructions from Axiom in respect of the proposed amendments. He had not received any written confirmation from Axiom that he could deal with Tangerine on Axiom's behalf. The Tribunal found the admitted allegation proved, and the breach of Principle 3.

43.3 Did the First Respondent act without integrity in breach of Principle 2? The First Respondent acted for Axiom. He said that Tangerine was his principle client, which was an admission of conflict in itself. Effectively he preferred the interests of one client over another. Tangerine paid the Firm's bills. Tangerine distributed the funding (which came from Axiom). This demonstrated persuasively to the Tribunal that the First Respondent did act without integrity in breach of Principle 2 in relation to the facts underlying this allegation.

43.4 Dishonesty (allegation 1.7). The Tribunal found beyond reasonable doubt that by the ordinary standards of reasonable and honest people the First Respondent was dishonest as alleged for the reasons set out above. Stating that one client was the principle client while the other client was paying for the services, and in particular Counsel's advice which worked to the non-principle client's detriment and potentially to the First Respondent's benefit, was dishonest by the ordinary standards of reasonable and honest people, particularly in circumstances where the client Axiom had never been contacted for instructions by the First Respondent. The First Respondent clearly acted on instructions from Tangerine without keeping Axiom appropriately informed as he should have done. The Tribunal ask itself how the First Respondent could take instructions, give advice, and take positive steps such as

instructing Counsel when the client Axiom had not given him any instructions at all. How did he know that what Tangerine was instructing him to do was what Axiom wanted him to do when he was acting in a position of conflict? The LFA was Axiom's document, not Tangerine's, and Counsel could advise on the document on Axiom's behalf as instructed, only if instructions had come from Axiom that he should do so. The conflict spoke for itself. These actions were beyond reasonable doubt dishonest by the ordinary standards of reasonable and honest people.

43.5 The Tribunal found beyond reasonable doubt that by those same standards, the First Respondent knew that what he was doing was dishonest. He knew that he had had no direct contact with Axiom to obtain instructions, to explore the conflict, to advise Axiom to seek independent legal advice (because the First Respondent viewed Tangerine as his principle client), to report to Axiom with a copy of his instructions to Counsel or to report to Axiom with Counsel's advice in November 2012 (even though the Fund had been suspended by that date). The First Respondent was seeking to amend the LFA to benefit himself, his Firm, and other firms that might sign up to the agreement at his instigation as Panel Manager (for which he also received a fee of £10,000 per month). It was noteworthy that the First Respondent ignored the new LFA in respect of himself but imposed it on other firms in spite of the fact that he had, apparently, identified numerous defects in the document. The First Respondent's own instructions to counsel reflected the level of his subjective dishonesty. On the face of it the First Respondent was using funding from his client Axiom to build a case against his client, Axiom. Counsel advised on 13 November 2012 that there was "serious doubt" as to the enforceability and recovery of the FF. In fact, by the time that advice was provided, the Fund had already been suspended, but Counsel did not appear to have been provided with even that most basic of information. It was clear that Counsel did not have the amended agreement because he assumed that ATE and FGI were in place. It was also clear that the First Respondent did not tell Counsel everything. The Tribunal found beyond reasonable doubt that the First Respondent knew that he was behaving dishonestly. The Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt, objectively and subjectively on both limbs of the Twinsectra test. Having reached that conclusion it was not necessary for the Tribunal to make any finding on the allegation that the First Respondent was reckless.

44. Allegation 1.8 - First Respondent (Admitted Underlying Facts and Breach of Principles 4 and 5 and Outcomes 1.1 and 1.2 and Allegation 2.7 Second Respondent (Admitted Save as to Dishonesty and Recklessness)
First Respondent

44.1 The First Respondent admitted that he failed to act in the best interests of his client, contrary to Principle 4 (a solicitor must act in the best interests of each client) and Principle 5 (a solicitor must provide a proper standard of service to his clients). For the reasons set out above the Tribunal found the admitted allegation and breach of Principles 4 and 5 proved beyond reasonable doubt. Further, breaches of outcome 1.1 (a solicitor must treat his clients fairly) and outcome 1.2 (a solicitor must provide services to his clients in a manner which protects their interests in their matter, subject to the proper administration of justice) were also admitted and found proved.

44.2 The First Respondent denied that he had acted without integrity in breach of Principle 2. However for the reasons explained in respect of the proceeding "conflict" allegations against the First Respondent, the Tribunal found the allegation of acting without integrity in breach of Principle 2 proved beyond reasonable doubt.

44.3 Dishonesty (allegation 1.8). The Tribunal found that by the ordinary standards of reasonable and honest people the First Respondent was dishonest in failing to act in the best interests of his client, Axiom. The Tribunal also found beyond reasonable doubt that the First Respondent knew that he was behaving dishonestly. The reasons for these findings were provided in relation to the proceeding "conflict" allegations against the First Respondent. The Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt, objectively and subjectively on both limbs of the Twinsectra test. Having reached that conclusion it was not necessary for the Tribunal to make any finding on the allegation that the First Respondent was reckless.

Second Respondent

44.4 The Second Respondent admitted this allegation, save as to dishonesty and recklessness, and the Tribunal found it proved beyond reasonable doubt.

44.5 The Tribunal's conclusions on the allegation of dishonesty were that the Applicant had not proved the allegation of dishonesty beyond reasonable doubt, having failed to jump the hurdle of the objective limb of the Twinsectra case for the same reasons as were found in respect of allegation 2.4. The Tribunal's finding in respect of recklessness was also as for allegation 2.4, namely not proved beyond reasonable doubt.

45. Allegation 1.9-First Respondent and Allegation 2.8 – Second Respondent (Both Denied)

First Respondent

45.1 It was alleged that the First Respondent assisted the conduct of the investment manager Tangerine despite being on notice of the serious risk that the investment manager was acting fraudulently, or committing some other serious breach of duty, towards the investment fund and the ultimate investors. The Tribunal referred to its previously identified cut-off date of 1 June 2012 when there was concrete evidence that the First Respondent became fully apprised of the terms of the SOM for the first time. The case was put on the basis that Tangerine's breach of fiduciary duty towards Axiom was the deduction of the 50% FF in respect of each tranche of borrowing, and that the borrowing was a pretext for enabling the deduction of fees, which would be repaid by the borrower to Axiom. In short, the funding to the firms was a pretext for the investment manager to take 50% out of the funds every time a loan was made. The First Respondent knew that this was not permitted under the terms of the SOM which he saw on 1 June 2012 (possibly before that date but the evidence was unclear). The First Respondent therefore assisted the conduct of Tangerine but not before 1 June 2012 when he was seized, as the Tribunal so found, of the terms of the SOM. The First Respondent did not alert Axiom or anyone else on 1 June 2012 or at all. Instead he embarked on the re-drafting of the LFA in such a way as to benefit his Firm and

himself. The Tribunal could not find as a fact that the First Respondent's actions enabled sums amounting to tens of millions of pounds to be taken - it did not have any evidence of the amount of money involved. It could however find as a fact that from 1 June 2012 to 26 October 2012 he was aware of the serious risk that significant sums of money were being taken because he was signing up other firms to the scheme as panel manager as well as taking significant sums of money out of the Fund to plough into his own Firm.

45.2 As particularised in the Rule 5 Statement, the First Respondent failed to act in the best interests of the Fund Master, in particular in failing to alert it to the various matters giving rise to concern about Tangerine's behaviour. The Tribunal found this to be the case after 1 June 2012 as above. The First Respondent relied upon clear audits from BDO in his defence. Those audits took place in respect of a different time period so were irrelevant. He also relied on Tangerine to report concerns to Axiom. It was in the view of the Tribunal beyond all belief that the First Respondent could have expected Tangerine to self-report to Axiom, and in any event there was no evidence that he had made any enquiries as to whether or not they had done so. The First Respondent took no action to contact Axiom himself despite the fact that as from at least June 2012 Axiom was his client (see above).

45.3 The First Respondent undertook work on drafting further funding agreements that provided for a liability to pay the FF, and caused other firms to enter into such agreements. The Tribunal had no difficulty in finding this fact proved. The First Respondent began work on drafting the agreements and instructing Counsel to advise in May/June 2012 (giving him the benefit of the doubt). At that point the First Respondent was on notice of the serious risk that the investment manager was committing some other serious breach of duty, namely breach of its fiduciary duties towards the investment fund.

45.4 The First Respondent was paid by Tangerine to act as panel manager for Axiom. He signed up other firms using the new funding agreement which provided for payment of a FF and did not comply with the SOM in the knowledge, as the Tribunal had found, of the serious risk of breach of fiduciary duty. At some point at around this time the Firm was involved in preparing new promotional literature for the scheme, in particular a PowerPoint presentation.

45.5 The MV Rena funding came from Axiom, but there was evidence that it had been agreed that the proceeds of the funding ("the winnings") would be divided three ways between Tangerine and others, albeit that the figures themselves had not been finalised. In his evidence the First Respondent said that JCL 8 was set up as an offshore company through TS, DR and one AK in Hong Kong in early August 2012. The First Respondent had requested that a clean company should be used as the vehicle. He did not know the identity of the beneficial owner of the company. The First Respondent accepted that JCL 8 had been paid £210,000 or thereabouts to pay on to New Zealand. He said that JCL 8 "would have received" the winnings. The First Respondent did not agree with Mr Dutton that the winnings were to be received by JCL 8 (a company independent of Axiom) to be held for its own shareholders. The First Respondent said that he disagreed because he was the only signatory on the JCL 8 account. There was an arrangement by which JCL 8 would pay any winnings back into the Firm to be held on trust. Those concerned could not decide who would be

paid what because it had not been established where the action would take place, in New Zealand or in London. The Tribunal noted that in order to comply with the LFA the action would have to take place in London. The ship owners had already issued their proceedings in London to try to limit their damages. The First Respondent was referred to the JCL 8 documentation during cross-examination. It was put to the First Respondent that he was aware that an investigative journalist was looking into TS's activities. The First Respondent relied on the fact that TS was not referred to in the relevant document. Mr Dutton drew the First Respondent's attention to the fact that AK was to hold 100% of the shares in trust for a Marshall Islands company, but the First Respondent's evidence was that he did not know about that company. The First Respondent said that the Firm was holding the money, but not for JCL 8 which was being used as a "device" whereby "we can use it as a conduit to pass money from ourselves through to New Zealand without our obtaining, having personal liability because that was the risk, if we entered into a contract to fund £2.5m and Axiom did not honour that then we would be personally liable. So we had to establish a device whereby and a conduit that we could pass the money through and that was JCL 8. I was the sole signatory on the account." He added that the identity of the beneficial owner of the JCL 8 account "would not matter because there would never be any residual money left in that account other than that under my control on the way to New Zealand and coming back it would immediately be transferred back up to Barnetts. The First Respondent agreed with Mr Dutton that if a company received, say, £1m of profit from an investment in a venture, the directors owed fiduciary duties to the company as to how the money would be dealt with in English law and that the profits were held for the benefit of the shareholders. The First Respondent disagreed with Mr Dutton that it did not make sense that he had entered into a venture where 100% of the shares were held for the Marshall Islands company, on the basis that under his understanding of the law any proceeds coming in might have a call on them by the shareholder. The First Respondent envisaged that a "substantial sum" would be received as winnings from this litigation. These winnings would be paid into the Firm's client account credited to the JCL 8 ledger. The First Respondent's evidence was that he would not have to account to JCL 8 for the winnings because he was holding the money on trust to be distributed. His evidence was that Axiom would be entitled to receive the return of the loan plus the FF plus interest. The First Respondent agreed that he was acting as Axiom's fiduciary at this point. His evidence was that he (although he used the word "we") accounted to Axiom for any profits made on the use of that money through the investment manager, Tangerine. The First Respondent's evidence was that "we" had to account to Axiom to repay the loan that Axiom had given the Firm to enable the Firm to proceed to pursue the action "like all our other cases." The First Respondent was to share the winnings out with others apart from Axiom, notwithstanding that Axiom carried the risk, in spite of the fact that both the First Respondent and Tangerine owed Axiom fiduciary duties. The Tribunal would at the very least have expected the First Respondent to discuss what was planned direct with Axiom.

45.6 The Tribunal found allegation 1.9 proved beyond reasonable doubt from 1 June 2012, the date by which the Tribunal found that the First Respondent had definitely read the SOM. It had reached this decision for the reasons set out above.

45.7 The Tribunal also found beyond reasonable doubt that the First Respondent had breached Principle 2 for the reasons explained above. If he had been acting with integrity he would have contacted Axiom to discuss what was proposed and would have obtained consent from Axiom to precede as he intended in principle even if the finer details were not agreed. Further, the First Respondent had behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6. For example, he had agreed with others how the proceeds of litigation were to be divided without reference to the funders of that litigation and his client.

45.8 Dishonesty (allegation 1.9). The Tribunal found beyond reasonable doubt that the First Respondent was dishonest as alleged by the ordinary standards of reasonable and honest people for the reasons given above. Reasonable and honest people would not expect a solicitor to enter into discussions concerning the division of the spoils without reference to the directors of the Fund who had facilitated the generation of spoils in the first place. The Tribunal's findings satisfied the Tribunal beyond reasonable doubt that the First Respondent was objectively dishonest.

45.9 By those same standards did the First Respondent know that he was behaving dishonestly? The Tribunal took careful note of the First Respondent's demeanour (which was not conclusive but which was indicative) when he gave his evidence. The Tribunal concluded that, when answering questions in this area, the First Respondent was evasive, whilst appearing to be cooperative. He dressed up his answers in jargon but when analysed they contained little of substance. It made no sense to the Tribunal that the investors would receive only the contractual amount of the loan, the FF and interest on the original loan, when others were anticipating receipt of significant sums of money to be divided between them. There was no evidence that Axiom knew what was going on - the First Respondent certainly did not tell the directors. The Tribunal found beyond reasonable doubt that the First Respondent knew that he was behaving dishonestly. The Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt, objectively and subjectively on both limbs of the Twinsectra test. Having reached that conclusion it was not necessary for the Tribunal to make any finding on the allegation that the First Respondent was reckless.

Second Respondent

45.10 Did the Second Respondent assist the conduct of the investment manager despite being on notice of the serious risk that the investment manager was acting fraudulently or committing some other serious breach of duty towards the investment fund and the ultimate investors? The Tribunal referred to the pleaded particulars. The Second Respondent would have had to be on notice of the matters giving rise to serious concern that Tangerine and/or its associates (TS and DR, in particular) were acting fraudulently or committing some other serious breach of duty towards Axiom and its investors in the manner pleaded. The Tribunal had insufficient evidence before it to be able to find beyond reasonable doubt that the Second Respondent had behaved as pleaded. He was not on notice of concerns about Tangerine at the material time. The Tribunal paid careful note to the evidence of the manner of the First Respondent's instructions to the Second Respondent to continue the redrafting of the LFA. The only document seen by the Second Respondent at this point was the LFA which he had signed in April. On that basis the Tribunal did not consider that the

Second Respondent had sufficient information to enable him to acquire the mind-set to act fraudulently. He lacked the relevant material information. This conclusion was supported by the Tribunal's conclusion in relation to the First Respondent and the dotted line drawn in respect of his knowledge at 1 June 2012. The Applicant had produced no evidence that the Second Respondent had entered into any agreement in relation to the division of the proceeds of the MV Rena litigation. The Tribunal therefore found that the Applicant had not proved this allegation beyond reasonable doubt.

46. Allegation 1.10-First Respondent (Denied)

46.1 In furtherance of his own interests and/or those of WE Solicitors ("WE") (and not those of his client), did the First Respondent encourage DW of WE to change information required by the investment manager and/or investment fund as to the ability of WEA to continue without further funding? The First Respondent's evidence was that it was "notoriously unreliable" to rely on a cash flow forecast of between 12 to 24 months. The First Respondent asked DW to "reconsider" and to consider alternatives, namely that there would either be a cash requirement, or not, over that period. DW effectively answered "neither". The First Respondent's evidence was that he was trying to pin DW down to what he did mean. The Tribunal noted that the Reports prepared by BT on the First Respondent's instructions were littered with cash flow forecasts over a 12 to 24 months period. The First Respondent was the panel manager responsible for providing guidance and signing up firms that wished to join the Axiom panel. The press coverage concerning TS was in the public domain in August 2012. The Fund was suspended on 26 October 2012. The First Respondent suggested to DW that he could run out of cash sooner than DW was forecasting, depending on growth and numbers of cases taken on. DW agreed with that suggestion, and in doing so said that he was "trying to balance not scaring them [the Fund]" whilst making it clear that "more funding was needed". DW invited the First Respondent to respond to the question "which approach would be more helpful". The First Respondent suggested that DW sent him a fresh email setting out a shorter time span for the cash requirement "maybe 3 or 6 months". The First Respondent did make it clear that it was DW's call. The Tribunal noted that the email trail started on 15 October 2012 with an email from the First Respondent to DW, copied to a member of Tangerine. The early part of the exchange related to the chasing of the return of DW's signed debenture (because by this point debentures were being entered into by borrowers). By 5 November 2012 (following the suspension of the fund on 26 October 2012) the First Respondent was emailing DW to inform him that the fund required urgent information, and raised a number of questions to be dealt with urgently. Those questions related to: the date funding commenced; the level of current borrowing; the models pursued; other sources of funding available; the envisaged date for repayments to the fund; the impact of additional funding not being made available; steps being taken to reduce costs and maximise settlements. DW responded that afternoon at 16:47, the day before the material correspondence forming the subject matter of this allegation, complaining about being "besieged" by requests for information deemed as urgent. He expressed himself sure that the Fund had all this information already, and as being "frustrated, and a tad worried, as to where all this is leading". DW asked the First Respondent to give him information as to "what is going on, why all these requests, and what the concerns are please?" The First Respondent replied at 17:15 on the same day stating that "it is frustrating for us all". The First

Respondent said that DR had to present that week to the Fund directors and was producing a report that he hoped would convince them to allow the Fund to continue. This report needed to contain all the necessary facts plus a narrative as to how good WE was. The First Respondent stated his own knowledge that the Firm was good, but informed DW that he had to get this over by reference to Lexcel for example. The First Respondent also referred to correspondence relating to an independent review by KPMG and the information from DW was also to be fed into that review. The First Respondent expressed it as being "in all our interests" for the Fund directors to realise how good the firms were and that they should be allowed to mature their cases and to pay back the investors. The First Respondent asked DW to "treat this email with the strictest confidence for obvious reasons". In response to DW's reply, the First Respondent thanked him and said "we all need to pull together on this one". On 6 November 2012 at 12:12 the material email, including the 12 to 24 months period, were sent to the First Respondent. At 12:54 the email included the time range for the firm to run out of cash of 6 to 12 months to support borrowing of £573,000, exclusive of interest. The funding model relied on new cases coming through to support the existing funding as it fell due for repayment, in order to effectively extend the repayment period. The First Respondent was acting as panel manager throughout this correspondence, and being paid by Tangerine for that service.

46.2 The First Respondent relied on forecasts for a time period in the BT reports when he described the forecasts for the similar time period in relation to DW's situation as being "notoriously unreliable". The First Respondent made that assessment without detailed information from DW such as WE's monthly management accounts. The First Respondent attempted to cover his own back by giving the encouragement to change the information, then describing it as DW's own call. This was yet another example of the First Respondent passing responsibility for decisions in which he had been materially involved to others. The conflicts were of particularly relevance. The First Respondent was acting for himself, acting as panel manager giving advice to DW, and acting for the Axiom Fund and Tangerine, plus he had his own vested interest because as panel manager (quite independent of his Firm and without the knowledge of the Second Respondent) he received £10,000 per month, and the Firm was a substantial borrower from the Fund. There was no evidence before the Tribunal that, in giving the advice that the First Respondent gave to DW, he was acting in the best interests of Axiom; the evidence was, in fact, to the contrary. For example, the First Respondent, if he had been acting in the best interests of Axiom, would have told DW that the funding model proposed did not accord with the LFA and was therefore not acceptable. He did not do that. In view of Axiom's liquidity difficulties, the Fund could potentially if independently advised require repayment within a shorter period than 12 months (or the extended period proposed by the First Respondent in his draft amended LFA. If DW required additional funds within 6 months, but could not repay until new cases received had been concluded, that would not assist Axiom. If DW thought that he might require additional funds within 12 to 24 months, Axiom's liquidity might have improved by then. The First Respondent's guidance to DW seemed to the Tribunal to be destined to place the Fund under more, rather than less, immediate cash flow pressure. It could also be said that DW's expectations of the level of funding were being elevated without reason. The Tribunal made it clear that there was no criticism of the First Respondent for needing money to keep his business afloat and taking such reasonable steps as were necessary to achieve that aim, as long as he also acted in the best interests of his client, Axiom. This was

where the conflicts became so important to the factual matrix. The Axiom funding had been a means to an end to be secured at all costs by the First Respondent. He wanted to keep the fund going on an illusory basis until such time as his Firm could rely on income from the cases and be weaned off Axiom (as JW suggested in his evidence). The First Respondent said, in evidence, that he was trying to obtain a true picture of where DW's cash requirement may or may not be. "He could have said that we do not need any more cash because we can be self-funding, or, as I was trying to tease out of him, I was trying to get the truth. He confirms that the previous answer had been incorrect and he gives the correct answer now." The Tribunal assumed that this answer from the First Respondent was the evidence that he wanted to give and that he wanted people to hear in response to the Applicant's case. It was clear that the First Respondent was making a decision that what DW had said in his 12:12 email was not the truth and has gone back to DW with his own, uninformed, opinion that DW was going to run out of money a bit earlier. The Tribunal noted that DW had sent the First Respondent a separate email asking whether the time period was enough and inviting a call to discuss how the response could be improved. It was therefore clear to the Tribunal that DW was being influenced by the First Respondent to write something different to what he had originally intended to write. The Tribunal found allegation 1.10 proved beyond reasonable doubt for these reasons.

46.3 The Tribunal also found beyond reasonable doubt that the First Respondent behaved without integrity in breach of Principle 2; he was prepared to encourage DW to change material information which the First Respondent knew to be urgent and important as was evident by the tone of the email thread, and which had to be provided to the Fund directors during that week in order, the Tribunal found, to further his own interests in respect of securing the future of the Fund from which his Firm was a significant borrower, and justifying his £10,000 per month fee as panel manager. The Tribunal made no finding as to whether the First Respondent was also furthering the interests of DW's firm WE – it did not have sufficient evidence to reach any conclusion on that point.

46.4 Did the First Respondent act in the best interests of each client in accordance with Principle 4? The Tribunal had no hesitation in finding beyond reasonable doubt that the First Respondent did not act in the best interests of each client. In particular, he did not act in the interests of his client, Axiom. He did endeavour to act in the best interests of himself and his Firm however. The First Respondent was, at the very least, trying to ensure that the Fund continued in the very short term i.e. 3 to 6 months being the period of time he suggested to DW, which would have been the only way in which he could have any hope of repaying his own Firm's borrowings and keeping it afloat. The Tribunal therefore agreed with the Applicant's assertion that the First Respondent was motivated by a desire that Axiom should continue to provide funds to panel firms, including his own Firm.

46.5 The Tribunal also had to consider whether the First Respondent was in breach of Principle 6. Beyond reasonable doubt he had behaved in a way that maintained public trust in him and providers of legal services. The public would find it difficult to trust solicitors who acted as the First Respondent had acted.

46.6 Dishonesty (allegation 1.10). By the ordinary standards of reasonable and honest people was the First Respondent dishonest as alleged for the reasons set out above? Encouraging DW to change pertinent, urgently required and important information was dishonest by the ordinary standards of reasonable and honest people, particularly where this was done with the aim of furthering one's own interests. The information was required to enable the Fund directors to make an informed decision as to whether to lift the suspension. It was crucial information in terms of protection of the investors. The Fund directors could not make an informed decision without accurate information. To add to the context, the First Respondent already knew that he was failing to comply with the LFA and that he was seeking Counsel's advice which might potentially result in the FF, at least, not being repaid to the Fund, resulting in a loss to the investors. The information he was encouraging DW to provide was the wrong information for the protection of the overall liquidity of the Fund which was already under significant pressure. The Tribunal therefore found beyond reasonable doubt that the First Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people.

46.7 By those same standards did the First Respondent know that his behaviour was dishonest? The Tribunal had no doubt in finding that he did know that his behaviour was dishonest. His sole objective was to secure future funding for his Firm in the short-term. If the Fund did not continue to trade, his Firm was back in very serious financial difficulty, but this time with increased borrowings. The Tribunal recognised that to a significant degree the Firm was the First Respondent's baby and it was understandable that he was unwilling to see it fail as a result of the downturn in the conveyancing market. That was not to excuse the First Respondent's actions. The Tribunal noted from the First Respondent's various accounts that he had made loans to the Firm and that he leased commercial property to the Firm for use as its headquarters. The First Respondent's finances were so closely intertwined with those of the Firm that it was essential that funding was available and remained so for the immediate future. The First Respondent received £120,000 in rent per annum at £40,000 per quarter, and £120,000 approximately per annum in drawings from the Firm plus £10,000 per month for acting as panel manager. This equated to £360,000 per annum. The Tribunal noted the First Respondent's evidence that for a short period of time the Firm did not pay him rent. It appeared that a further £500,000 was borrowed against the First Respondent's home at some point to plough into the Firm and he had made other loans of £124,000 according to the accounts. The Tribunal could see that the First Respondent was in a very tight corner indeed. The amount of money ploughed into the Firm was an indication of the First Respondent's motivation, namely to keep the firm afloat. He knew that unless Axiom continued to provide funding there would be no other source of funding and the Firm would fail. The survival of his Firm was his priority above all else. The Tribunal therefore found beyond reasonable doubt that the First Respondent knew that he was behaving dishonestly. The Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt, objectively and subjectively on both limbs of the Twinsectra test. Having reached that conclusion it was not necessary for the Tribunal to make any finding on the allegation that the First Respondent was reckless.

47. Allegation 1.11 – First Respondent and Allegation 2.9 – Second Respondent (Both Denied)

First Respondent

47.1 Did the First Respondent provide false and/or misleading and/or incomplete information to professional indemnity insurers in respect of the renewal of the Firm's professional indemnity insurance and/or suppressed material facts? The First Respondent signed a proposal form on 4 July 2013 in which he was asked whether the Firm had been subject to a monitoring visit from the SRA or been the subject of a visit or inquiry from the FIU (Forensic Investigation Unit) of the SRA in the last 12 months. The response completed by JW and signed by the First Respondent, replied "yes" and referred to a visit from the monitoring unit "as part of a wide-ranging investigation they are undertaking on the collapse of a fund lending money to Solicitors. We were a recipient of that fund and were more than happy to help them in their investigation. They have checked our systems from both a COLP and COFA perspective and left with the words, 'you have everything in apple pie order'". On analysis, the First Respondent would not have welcomed any increase his premium (which in 2012 was £300,000 and money from the Fund was used to pay the same). Cover might have been refused if the insurers had been informed that the Firm had in fact been subject to an investigation by the FIU, rather than merely helping out with a "wide-ranging" investigation.

47.2 As the point was in dispute, the Tribunal confirmed that, having reviewed the evidence, it had concluded that DL did say that the accounts were in "apple pie order". The money in client account was properly and efficiently dealt with by the Firm which had appropriate systems in place. The statement was therefore accurate in relation to client account; the problem was that the accounts did not reflect the true position in relation to the payment of the Axiom funds into office account. It was noteworthy that the Firm had carried out reconciliations twice a day. The argument on this point was in any event a red herring. Based on its assessment of the evidence, the Tribunal had concluded that the phrase "apple pie order" or words to that effect were used by DL but at the point at which it was said, DL was not aware of the true circumstances, namely that large sums of money from Axiom had been paid straight into office account. The Second Respondent was interviewed by the investigators from the FIU on 24 July 2013. The evidence from JW that the SRA investigators told him how to complete the form was not accepted by the Tribunal. The form was submitted before those SRA investigators attended at the Firm on 24 July 2013. His evidence could not therefore be correct on this point. The reason why the Tribunal considered that DL probably did refer to "apple pie order" is that in his interim Forensic Investigation Report he was complimentary about the state of the accounts and the phrase is in relatively common use and within the Tribunal's experience. It would not be an unusual comment for someone to make. The evidence from the First Respondent was that he was not the Firm's COLP at the time; the COLP was the Second Respondent. The First Respondent did not have a regulatory function within the Firm. He also confirmed in his evidence that the Firm did not have a COFA in 2012.

47.3 The Rule 5 Statement recorded a number of alleged non-disclosures on the PII form. The Tribunal found that the Firm had been notified of the commencement of the SRA's investigation by letter dated 27 November 2012. The commencement date of the investigation was not disclosed to the insurers. The insurers were not informed that the First Respondent met DL of the SRA at The Law Society's offices in Chancery Lane on 6 December 2012. The insurers were not told that the Firm received a letter from the Fund's receivers on 26 February 2013 demanding repayment of the monies advanced with an allegation that the Firm had used the monies in breach of the terms of the LFA. This letter notified the existence of an impending claim and should have been notified to the PII insurers. The insurers were not told that the receivers' solicitors wrote to the Firm's solicitors on 12 April 2013 with a warning about the First Respondent's conduct and potential liabilities arising from the same. The insurers were not told that the Fund's receivers commenced civil proceedings on 21 May 2013 against various defendants. Looked at in the round, when completing the form it might have been possible to overlook one piece of information, but not all the information referred to above. The Tribunal therefore found allegation 1.11 proved as against the First Respondent beyond reasonable doubt.

47.4 The Tribunal also found beyond reasonable doubt that the First Respondent acted without integrity in breach of Principle 2 for the reasons set out above. A solicitor acting with integrity would have disclosed all material facts on his professional indemnity insurance proposal form. Further, the Tribunal found that the First Respondent behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6. The public expected solicitors to disclose all material facts to insurers just as the public was expected to disclose all material facts when applying for car, house, or contents insurance. There was nothing unusual or complex about making such disclosure. It would significantly diminish the trust the public placed in solicitors and providers of legal services who became aware that solicitors, as officers of the court, might not comply with their disclosure obligations. The prime purpose of professional indemnity insurance was to protect clients and enable compensation to be awarded if their solicitors were negligent. Policies can be avoided by insurance companies in the absence of full disclosure of material facts, placing clients in a potentially vulnerable position. The reason for full disclosure was obvious: insurance companies needed to be able to make informed decisions about whether or not to provide cover, and if so, at what cost at the point at which insurance is applied for. If non-disclosure takes place, cover may be provided and premiums reduced because the insurer has not been informed of the true position. Potentially claims might have to be addressed to the Compensation Fund, resulting in a financial burden on the profession, including the majority of solicitors who give full disclosure.

47.5 Dishonesty (allegation 1.11). By the ordinary standards of reasonable and honest people the Tribunal found beyond reasonable doubt that the First Respondent was dishonest as alleged for the reasons set out above. Reasonable and honest people expected solicitors to give full disclosure of material facts on their insurance proposal forms, even if that resulted in a refusal of cover or increased premiums. Reasonable and honest people expected such behaviour of themselves and expected the same of solicitors. The Tribunal was also satisfied beyond reasonable doubt that the First Respondent knew that he was behaving dishonestly. His explanations for not having

provided full disclosure were unconvincing. The Tribunal was mindful that the First Respondent had failed to disclose a number of material facts. When he signed the proposal form on 4 July 2013 he could have been in no doubt that he was at best being economical with disclosure. The Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt, objectively and subjectively on both limbs of the Twinsectra test. Having reached that conclusion it was not necessary for the Tribunal to make any finding on the allegation that the First Respondent was reckless.

Second Respondent

47.6 Did the Second Respondent permit the First Respondent to provide false and/or misleading and/or incomplete information to professional indemnity insurers in respect of the renewal of the Firm's professional indemnity insurance, and/or to suppress material facts? The Second Respondent did not sign the form for professional indemnity insurance renewal. His evidence was that he did not ever see the policies of insurance. The limit of his involvement was to receive requests for information about claims from JW, and to provide this information. In answer to questions in cross-examination the Second Respondent was clear that he had no expectation that he would be asked to approve insurance declarations made on his behalf. There was no dispute between the parties that JW submitted the completed proposal form to the insurers. There was no evidence that JW showed the proposal form to the Second Respondent. He did not expect to see it. He had never filled in such a form in his career. He was unable to answer Mr Dutton's questions because he said that completion of such a form was outside his expertise. He was clear that he could not remember being asked on the specific occasion for information about actual or potential claims, but that JW would have been aware of their existence because it was he who notified the insurers. The Applicant had not established that the Second Respondent either knew of the matters represented or of any matters suppressed. The Tribunal did not find that, on the basis of that lack of knowledge, the Second Respondent failed to make the enquiries that any honest solicitor would have made in the circumstances to confirm the basis upon which professional indemnity insurance was being obtained and to confirm that the duty of good faith to insurers had been discharged on renewal. It was perfectly reasonable within a Firm for tasks such as this to be delegated without too many cooks becoming involved and potentially spoiling the broth. The evidence was that, for whatever reason, the Second Respondent had not played any part in this relatively routine, albeit essential and important, administrative duty within the Firm; these were tasks within the ownership of the First Respondent and JW. The Tribunal considered whether the fact that the Second Respondent was aware of the SRA investigation as from 27 November 2012 was of itself sufficient to place a responsibility on him to make additional enquiries. There was, however, no evidence before the Tribunal to suggest that he anticipated that the professional indemnity insurance proposal form would be completed otherwise than accurately by those to whom the task been delegated. The Tribunal was also mindful that the Second Respondent was a 2% equity partner and noted the balance of power in his relationship with the First Respondent. The Tribunal considered whether it was likely that the Second Respondent would have made enquiries of the First Respondent and/or JW on this topic. The Tribunal considered it highly unlikely that the Second Respondent would have asked questions concerning these matters; his oral evidence persuaded the Tribunal that he was not the sort of

partner who would ask such questions. The Applicant had failed to prove this allegation as against the Second Respondent beyond reasonable doubt.

48. Allegation 1.12- First Respondent (Denied)

48.1 The Tribunal was asked to decide whether the First Respondent gave false and/or misleading information to the SRA? This allegation related specifically to the circumstances surrounding the funding of the MV Rena litigation of £859,054.33. The sum of £643,054.33 should have been in client account in respect of this litigation at the time of the investigation. The First Respondent told the SRA investigation officers on 22 February 2013 that the Firm did not hold the balance because Axiom, in suspending the fund in October 2012, acted in breach of contract, and that the Firm was entitled to use the money to mitigate its losses. The First Respondent repeated this assertion when giving his evidence to the Tribunal. This allegation was therefore very narrowly pleaded. The Applicant put its case on the basis that, even if the explanation given by the First Respondent to the investigation officers on 22 February 2013 was correct, the explanation itself was untrue or misleading because the Firm had already spent part of the MV Rena funding on office overheads before October 2012. The office account balance including the MV Rena monies (which were paid into the account on 2 August 2012) and available overdraft facilities stood at £469,173.44 on 31 August 2012. By that point, £55,995.09 had been spent on the MV Rena litigation by means of payment to the JCL 8 account. It therefore followed that by 31 August 2012 at least £277,885 of the funding had been spent for other purposes before the alleged breach of contract could have occurred. The First Respondent was entitled to take a position at interview (and thereafter) that the SRA did not like. He could make legal arguments on his own behalf. The difficulty in this case was that he knew the legal argument to be untrue because the money had been used, in part, before the breach of contract allegedly arose. He should have given the SRA investigators all the information and then provided his justifications at the appropriate time. The Tribunal was aware that the First Respondent's case was that the Firm had fully cooperated with the SRA; however, the Firm did not tell the investigators about the MV Rena monies until 22 May 2013 when the explanation referred to above which could not be correct was provided by the First Respondent. The SRA should have been provided with all documentation relating to accounts for the purposes of their investigation. The Tribunal noted that the First Respondent was not present when the investigators came to the Firm on 27 November 2012. However, he gave oral evidence that he was fully aware of the investigation by the next day at the latest. He met with DL on 6 December 2012 in London. He therefore had ample opportunity to provide full and frank information to the SRA. The Tribunal found beyond reasonable doubt that the First Respondent gave false and misleading information to and failed to cooperate with the SRA on the narrow point as pleaded in relation to MV Rena.

48.2 Did the First Respondent act without integrity in breach of Principle 2? The Tribunal found beyond reasonable doubt that the First Respondent did so act. He attempted to justify his actions once the existence of the MV Rena monies had been discovered by the investigators by using an explanation which did not bear any scrutiny. A solicitor acting with integrity would have refrained from providing such an explanation in those circumstances. The Tribunal also found beyond reasonable doubt that the First Respondent failed to comply with his legal and regulatory obligations and deal with

his regulators in an open, timely and cooperative manner in breach of Principle 7. However this finding related only to the narrowly pleaded point in the Rule 5 Statement as set out above, and not more generally. The Tribunal recognised the extent of the information and cooperation provided to the investigators when they attended at the offices on 27 November 2012. However, once the First Respondent knew the scope of the investigation with the particular emphasis on Axiom funding, there was a failure to comply with legal and regulatory obligations and deal with the SRA in an open, timely and cooperative manner in relation to the MV Rena monies and the explanation provided to the investigators for why they had been spent by the firm.

48.3 The Tribunal found beyond reasonable doubt that the First Respondent was dishonest as alleged by the ordinary standards of reasonable and honest people, for the reasons set out above. Reasonable and honest people would expect a solicitor to give accurate information to their regulator and not information that was false and/or misleading. The Tribunal was also satisfied beyond reasonable doubt that the First Respondent knew that he was behaving dishonestly. Evidence of the First Respondent's knowledge is provided by what he said at interview on 22 May 2013. He distinguished between money having "gone" and being "spent" in a way that was in the Tribunal's view uncooperative, disingenuous and deliberately evasive, quite apart from being manifestly wrong. The First Respondent had developed a construct about being under a duty to mitigate his losses because Axiom was, he said, in breach of the agreement with him. What the First Respondent had neglected to remember was that a significant chunk of the money had been spent before any duty to mitigate losses, if such arose and the Tribunal did not have to make a finding on that point, occurred. This was sufficient to establish beyond reasonable doubt that the First Respondent knew that he was behaving dishonestly. The Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt, objectively and subjectively on both limbs of the Twinsectra test. Having reached that conclusion it was not necessary for the Tribunal to make any finding on the allegation that the First Respondent was reckless.

Previous Disciplinary Matters

49. None recorded against either Respondent.

Mitigation

50. The Tribunal gave those acting for the Respondents time to take instructions from their respective clients before being required to embark on mitigation and deal with costs.

51. Mr Nesbitt confirmed that the reality of the Tribunal's Guidance Note on Sanctions where there had been a finding of dishonesty was accepted. The Chairman invited Mr Nesbitt to address the Tribunal on any exceptional circumstances which might be taken into account to enable consideration of a decision not to strike the First Respondent of the Roll (the normal sanction for dishonesty). Mr Nesbitt stated that he had nothing to say on exceptional circumstances on behalf of his client.

52. Mr Christianson addressed the Tribunal on sanction on behalf of the Second Respondent. He referred the Tribunal to the reference from his client's current employer for whom he had been working for the last 18 months, ever since this "debacle" arose. His employer had had the opportunity to see the Second Respondent at close quarters. He had not been dealing with clients and had in effect been acting as a Practice Support lawyer. He had clearly applied himself diligently and had impressed his employer, giving the Tribunal a good insight into his current position, behaviour and conduct. The Tribunal had heard from the Second Respondent at length and had considered the matter, forming a complex judgment on the merits of the case put forward by him. The Tribunal had reached a decision regarding his recklessness and culpability and Mr Christianson did not seek to go behind the same. He asked that credit to be given for the insight that the Second Respondent had shown in relation to both his professional duties and his predicament. His position did change after service of the proceedings and he should be given credit for that. Whilst he disagreed with the extent of his culpability, there was acceptance of a considerable degree of culpability and his stance was vindicated regarding the allegations which were found not proved. The Second Respondent had been qualified for over 30 years and had not troubled the disciplinary procedure before. It hurt at his age to be before the Tribunal now. He had had a long and good professional career focused on his clients. He should have involved himself more in the management of the practice. He was significantly chastised by this experience.

53. The protection of the public featured heavily in the thoughts of any Tribunal at this point. The Second Respondent's current practising certificate bears 6 conditions imposed by the SRA. The net effect of the conditions is that he cannot be involved in management of the practice. Any client work that he undertakes for the firm of solicitors by which he is employed must be supervised. Any prospective employer must be informed of the conditions and the SRA must consent to his employment. Mr Christianson suggested that the Tribunal would readily understand that the idea of becoming a partner anywhere could not be further from the Second Respondent's mind. The public were protected by the fact that he was not undertaking client work under the terms of his practising certificate, and any client work that he does do will be supervised. The conditions are imposed annually and Mr Christianson would expect them to continue.

54. Mr Christianson submitted that the sanction to be imposed on the Second Respondent should be a financial penalty. Any such fine would have to be considered against the background of the significant costs order ultimately to be made. The Second Respondent had provided the Tribunal with a financial statement. It was not known what any property was worth until it was sold. The Second Respondent would also be responsible for capital gains tax and costs of sale of his property. He hoped that his current employer would continue to support him. Mr Christianson submitted that the conditions on the practising certificate protected the public and the level of insight shown by the Second Respondent militated against the imposition of a period of suspension.

Sanction

55. The Tribunal referred to its Guidance Note on Sanctions (3rd edition - December 2014) when considering sanction. It was the function of the Tribunal to protect the public from harm, and to maintain public confidence in the reputation of providers of legal services for honesty, probity, trustworthiness, independence and integrity. The Tribunal's focus was to establish the seriousness of the misconduct and, from that, to determine a fair and proportionate sanction. The Tribunal was mindful of the purpose of sanctions as set out by Sir Thomas Bingham, then Master of the Rolls, in Bolton v The Law Society [1994] 1 WLR 512. It also had in mind the recent decision in Solicitors Regulation Authority v Uddin [2014] EWHC 4553 (Admin), paragraph 35, namely, that the overriding objective of sanction is the need to maintain public confidence in the integrity of the profession.

56. The First Respondent's name would be struck off the Roll of Solicitors, no exceptional circumstances having been put forward either by the First Respondent or his Counsel on his behalf. The breaches were numerous and serious in nature, and included multiple findings of dishonesty. There were no exceptional circumstances that the Tribunal could or should take into account in order to mitigate the sentence. In order to protect the public from harm and maintain public confidence in the reputation and integrity of providers of legal services, strike off was the only sanction that the Tribunal could impose on the First Respondent.

57. In relation to the Second Respondent, the Tribunal first considered his culpability. The Tribunal found that his motivation was, in part, to keep the Firm afloat. The misconduct did not appear to be motivated by personal gain as such, although that was the result as the charge on his home was removed using monies loaned by Axiom, albeit motivated by the First Respondent's substantially larger exposure. If the Second Respondent had made the proper enquiries, he would have appreciated that the loan for that purpose came from the Axiom monies and not from Tangerine. His actions were not planned. He did not appear to have any direct control over the Firm's finances, as the Tribunal had found. The Tribunal was mindful of the Second Respondent's level of experience and the significant harm caused as a result of his misconduct. With that level of experience and the potential for harm, the Tribunal would have expected the Second Respondent to step up to the plate and take a much greater interest as an equity partner. This was particularly the case because the Second Respondent was the COLP. Substantial harm was done and millions of pounds belonging to the Fund were lost. The Tribunal was particularly concerned that the misconduct had continued over a period of time.

58. There were aggravating factors. It was a significant aggravating factor that the loan monies had not been repaid even as at the date of this hearing. The amount involved now stood at over £7m. Considerable harm was likely to have been caused to the reputation of providers of legal services, and in particular solicitors. These matters attracted considerable publicity. The issues in relation to TS had been made public back in 2012. Prospective and actual clients reading about solicitors behaving in such ways were likely to think again before seeking legal advice, or conclude that all solicitors were the same. This was particularly unfair on those who operated their businesses strictly in accordance with the rules and regulations imposed by their regulator. Many businesses run into financial difficulty at some point or other and

there was no such thing as easy money. If it sounded too good to be true it almost certainly was too good to be true, as both Respondents had found to their cost. The Tribunal had found in relation to 2 allegations that the Second Respondent had behaved recklessly in relation to the commission of breaches. Even as the Firm's COLP, he made no enquiries that would have enabled him to have remedied or indeed avoided what occurred. The Second Respondent sat on his hands for a long time when large sums of money were at risk; if he had not sat on his hands for so long the amount of money lost would potentially have been much smaller.

59. There were also mitigating factors. The Second Respondent was in no way the instigator or driver of the overall misconduct. The lack of information provided by the First Respondent to the Second Respondent left him in the uncomfortable position of being misled by someone he had known and trusted for a long time, and ill-equipped to take any significant action. This was to a degree the Second Respondent's own fault for lacking the engagement, curiosity, or the will to ask questions and/or stand up for right action when wrongdoing was taking place. The Tribunal was mindful that he signed the LFA and he singularly failed to carry out the obligations and commitments arising from that document. The Second Respondent was misled in respect of the email of August 2012 from Tangerine which appeared to provide authority for repayment of borrowings charged on the Respondents' homes. The Second Respondent had at least questioned the First Respondent in relation to the MV Rena action. He was perhaps too easily satisfied by the First Respondent's reassurances and another opportunity to remedy matters was missed. The Second Respondent had made relatively quick admissions where he felt it appropriate to do so and when he had received independent legal advice from a different firm of solicitors than that which the Respondents had initially jointly consulted. This was a single episode in an otherwise unblemished career. He appeared to the Tribunal to have appropriate insight in respect of the admissions that he had made, but limited insight otherwise. The Tribunal found the manner in which he gave his evidence to be verging on obstructive on occasions. He relatively quickly accepted the technical breaches of the SAR, and also admitted lack of integrity on the "conflict" allegations once he had received independent advice and with the benefit of hindsight. This placed him in a very different position from the First Respondent.

60. Looked at in the round, the Tribunal assessed the seriousness of the allegations found proved against the Second Respondent at level 7 on a scale of 1 to 10. The misconduct was therefore serious but not at the top end of the scale (unlike the misconduct of the First Respondent).

61. The full range of sanctions as set out in the Tribunal's Guidance Note on Sanctions was available. Bearing in mind the seriousness of the misconduct, this was not an appropriate case for the imposition of "no order" or a reprimand. The Tribunal gave serious consideration as to whether a financial penalty was appropriate. Mr Christianson made some persuasive arguments of which the Tribunal took careful note. However, those arguments were not in the final analysis sufficiently persuasive to convince the Tribunal that a financial penalty was appropriate. The Tribunal was concerned about protection of the public from harm, and in particular, maintenance of the confidence of the public in the reputation and integrity of providers of legal services. The reckless behaviour under consideration was, as mentioned above, potentially damaging to public confidence in the reputation of solicitors. Any investor

in the Axiom Fund on learning about these events was highly likely in the view of the Tribunal, to have their confidence significantly undermined. Paraphrasing the words of Lord Bingham in Bolton, solicitors must be capable of being trusted to the ends of the earth. These events were unlikely to foster such trust particularly in those who were not used to dealing with solicitors. The Tribunal had described the Second Respondent as being "completely asleep at the wheel". To the outside world the Second Respondent was held out as an equity partner with all the benefits and responsibilities that that title entailed. The fact that huge amounts of money had been lost was due, in part, to the Second Respondent's failure to do his job properly, to act as the custodian of client money that went with being an equity partner (let alone the COLP). He had a job to do as a partner which involved management, not only of those below him, but also of his peers, his majority equity partner and his Chief Executive. The Second Respondent had shown himself to be woefully unsuited to that task, no matter how good he was at his fee earning work. Compliance with Principle 8 was a crucial factor with all hands at the tiller in ensuring that firms were properly managed. The Second Respondent had fallen far short of what was required.

62. The Tribunal understood from one of the Second Respondent's references, which they had read carefully, that he was currently employed in assisting a firm in the improvement of their practices in the areas of residential property, family and wills and trust and estate law. These are areas where clients are likely to be particularly vulnerable due to the situations that they find themselves in and where they need most support. The Tribunal had no doubt that the Second Respondent is a very effective solicitor in terms of carrying out his work. However the Tribunal did have concerns relating to his ability to manage appropriately and to respond to situations such as working at a firm under financial pressure, which was not uncommon nowadays. After careful consideration the Tribunal had decided that the appropriate sanction was suspension from practice as a solicitor for a period of 6 months to commence on 20 July 2015. This period took note of Mr Christianson's arguments; without his mitigation the period of suspension was likely to have been 9 to 12 months. However Mr Christianson had persuaded the Tribunal that in view of the Second Respondent's employment, which was obviously being carefully supervised, a longer period would be unnecessary, disproportionate, and might well result in the Second Respondent's skills as a fee earner diminishing. A short period of suspension would enable the Second Respondent to reassess his position in peace and quiet following the conclusion of these proceedings, and to reflect upon where he had fallen down in respect of his professional obligations.

63. The Tribunal considered it essential for the protection of the public and, importantly, maintenance of public confidence in the reputation of providers of legal services, to impose conditions on practice on the Second Respondent on the expiry of the fixed term of suspension as follows. The 2nd Respondent may not:

- Practise as a sole practitioner, partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS); and

- he may only work as a solicitor in employment approved by the Solicitors Regulation Authority.

- The Tribunal granted liberty to either party to apply to the Tribunal to vary the conditions set out above.

Costs

64. Mr Dutton applied for costs on behalf of the Applicant jointly and severally payable by the Respondents in the total amount of £408,407.22 inclusive of VAT in accordance with the updated schedule handed to the Tribunal. The Applicant sought all of its costs as against the First Respondent in the light of the Tribunal's findings. In relation to the Second Respondent, the Tribunal's findings were that allegation 2.1 in parts had been found proved against him and that he was reckless. The Tribunal had made findings which went further than the Second Respondent's admissions but not to the extent of dishonesty or recklessness as alleged. The findings against the First Respondent were serious. The findings against the Second Respondent, going as they did beyond his admissions including breach of integrity, were also serious. Mr Dutton submitted that the case was "extremely difficult and complicated". On a case of this scale, with the contest that had been had, it was appropriate to instruct Leading and Junior Counsel. Costs had been reduced because the instructing solicitors had charged less than in their original estimate. The rates claimed were entirely reasonable. Statements of Means had been provided by the Respondents and updated information had been received from the First Respondent. In relation to the latter, in view of the findings there could be only one result in respect of outcome. In that case an award for costs was not a situation that would give rise to the risk of a solicitor being put out of practice who would otherwise stay within it. The outcome would normally be strike off and costs would follow the event. In the case of both Respondents the value of their properties was said by the Applicant to be greater than each had submitted to the Tribunal. The First Respondent transferred his London flat, which he had co-owned with his wife, to his wife's sole name. Were means to be relevant to the costs order as far as he was concerned, the Applicant submitted that it would be appropriate to make a full costs order. If he was unable to honour that costs order the trustee in bankruptcy might have to consider the property issue in relation to a possible transfer at an undervalue under the Insolvency Act.

65. The Chairman observed that the costs were very substantial and reminded the parties that the Tribunal Members were not costs judges. He indicated that the Tribunal would hesitate, unless everyone agreed, to summarily assess costs. The Tribunal was minded to send costs for detailed assessment with consideration to be given to the appropriate percentage apportionment of costs as between the Respondents and any interim payments to be ordered. Mr Dutton indicated that the Applicant would not stand in the way of detailed assessment. In the absence of the Respondents asking for summary assessment, perhaps on the basis that it would be more economical than detailed assessment, the latter seemed appropriate.

66. After taking instructions from his client, Mr Nesbitt confirmed that having received the indication from the Tribunal concerning detailed assessment, he recognised that this was at the Tribunal's discretion and had no observations to make on behalf of his client. He also considered that it was for the Tribunal to decide on the percentage apportionment of costs between the Respondents. He addressed the Tribunal on the subject of means with reference to the jurisprudence. The First Respondent had filed a

Statement of Means. There were pressures within his marriage that these proceedings had created as evidenced by his statement. The outlook was pessimistic.

67. The Chairman invited Mr Nesbitt and Mr Christianson to either work out a percentage apportionment of costs as between their respective clients or to make submissions to the Tribunal concerning how the percentage should be broken down. At the conclusion of detailed assessment the Respondents would then have an immediate answer as to how much they would each have to pay. The Tribunal rose again so that the advocates for the Respondents could discuss percentages in relation to the apportionment of costs. Following that discussion, the Respondents agreed an apportionment of costs following detailed assessment as between the First and Second Respondents at 85% and 15% respectively.

68. Mr Nesbitt addressed the Tribunal on costs. The Chairman indicated that the Tribunal did not need to hear from him on proportionality in terms of the number of hours engaged etc. as these were matters that would be dealt with by the experienced Costs Judge at detailed assessment (which the Tribunal was minded to order). Mr Nesbitt limited his address to the means of the First Respondent. The Chairman made it clear to the parties that there could not be a quantified order for costs at the conclusion of this hearing if costs were sent for detailed assessment. Inevitably however in light of the Tribunal's findings, some costs would be awarded in favour of the Applicant against the Respondents. The Tribunal would want to make a determination, applying the agreed percentages, in respect of a sum to be paid by each Respondent immediately by way of interim payment. In making that quantification, the Tribunal would take into account the fact that the full claim for costs may not be awarded on detailed assessment. Mr Nesbitt indicated that means would be relevant for the exercise of quantifying the interim payment. He referred the Tribunal to the First Respondent's Statement of Means and supplementary correspondence. The Tribunal was invited to read a letter dated 20 July 2015 from the First Respondent to those instructing Mr Dutton concerning family assets and in answer to questions posed by the Applicant. Mr Dutton made detailed submissions in relation to the family assets, their equitable ownership and gross and net value, rental and refinancing potential. There were substantial borrowings secured against the assets, for example to RBS. The First Respondent had a 50% share in the equity of assets in joint ownership with his wife. It was suggested that the First Respondent had, as a result of his wife agreeing to a charge being placed on the family home following the collapse of the Axiom fund, signed a deed of trust in which he relinquished his claim to the family property in London. This particular home had always been regarded within the marriage as the wife's property. Mr Nesbitt suggested that this property should not be factored into the Tribunal's deliberations on the First Respondent's means. The equitable value of the properties was modest when all was taken into account.

69. In terms of income, the First Respondent had undertaken some consultancy work since November 2014 which had generated income of about £30,000. In view of the Tribunal's findings, his prospects of future work within the legal profession were not good. His age was such that it would be difficult for him to reinvent himself. Mr Nesbitt invited the Tribunal to the view that he was in a weaker position than a younger man with more prospects of reinvention. The First Respondent's position, both personally and financially, was bleak following the Tribunal's findings. Mr Nesbitt invited the Tribunal to take the potential ultimate costs liability into account

when making an order for payment of interim costs. The Solicitor Member asked whether the First Respondent had any savings, shares and investments. The answer was that the First Respondent had devoted all his funds to building up the business. He did however have approximately £70,000 in a bank account.

70. Mr Dutton commented by way of submission. The Applicant's position was that the assets referred to were worth considerably more than had been suggested by the First Respondent. His starting point was the appropriate interim payment that should be paid by the First Respondent. Assuming an 85% award of £407,000 on detailed assessment, and applying the agreed apportionment, the First Respondent's contribution would be £346,000 and the Second Respondent's contribution £61,000. The normal approach for an interim payment would be around 50% of the amount likely to be awarded and in this case the cost figures were already at substantially discounted regulatory rates applicable to the Applicant's Counsel and Solicitors. The figures had been further discounted for budgetary reasons. Mr Dutton therefore submitted that an appropriate interim payment for the First Respondent would be £150,000, and for the Second Respondent £30,000.

71. The next question to be asked was what was the appropriate figure to order having regard to the means of each? The Applicant disputed the valuations of certain of the family assets on the basis that they were the First Respondent's valuations i.e. not independent. Further the First Respondent had not mentioned vehicles that he might own. He invited the Tribunal to make some allowance when deciding on the level of interim payment for undervaluation. Mr Dutton drew attention to the First Respondent's pension pot of approximately £600,000 from which he had drawn down in order to pay legal fees. Even if the Tribunal disagreed with Mr Dutton's suggested figure of £150,000 and applied some discount, the interim payment should be of a six-figure sum payable within 28 days. If the First Respondent was unable to raise the interim payment within that period it could be extended, and in any event he could draw down from his pension.

72. The Chairman indicated to Mr Dutton that the Tribunal had in mind an interim payment of approximately 33% of 85% of the costs.

73. Mr Nesbitt disagreed with the Applicant's suggestion that the assets had been undervalued. He noted that the evidence in support of the submission came from Zoopla valuations. In respect of one asset, he commented upon the maximum sale price for the street and the length of time for which a property in that street had remained on the market. In this area of England the price of expensive properties had been particularly depressed by the recession. The Chairman mentioned that the Tribunal was also alive to the possibility of capital gains tax liability on the sale of properties. Mr Nesbitt drew attention to possible returns in respect of rental income and the limitations attached to the same. He explained that the First Respondent faced the reality of living on zero income when his liabilities were taken into account. The prospects of finding a substantial interim sum were "non-existent". Realising funds from the commercial properties was a complicated process that could not be undertaken and completed in a few months. The only sum more readily available was the pension pot. The draw down would yield a sum in the region of £30-£35,000. If the Tribunal was contemplating making an interim order at the level indicated, this was not a sum that the First Respondent had any prospect of paying in the timescale

suggested. He would have to look at personal insolvency proceedings. He invited the Tribunal to make an interim payment order at a realistic level which he might be able to pay in line with jurisprudence (such as Merrick v Law Society [2007] EWHC 2997 (Admin) and D'Souza v Law Society [2009] EWHC 2193 (Admin)) within this jurisdiction having regard to means. Implicit in the jurisprudence was that this Tribunal should not seek to make orders that respondents would simply not be able to pay.

74. Following a further short adjournment, Mr Dutton and Mr Christianson agreed that the interim payment on account of costs pending detailed assessment from the Second Respondent should be £20,000, payable within 42 days. This represented approximately 30% of £61,000. The Tribunal also confirmed its approval of the apportionment of costs as between the First and Second Respondents at 85% and 15% respectively.

75. The Tribunal retired to consider its decision on costs. It carefully reviewed the Statements of Means and supplementary information submitted by the parties and the submissions made by their advocates. After that careful consideration the Tribunal ordered that the First Respondent do pay the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the SRA and to be apportioned as to 85% to the First Respondent as agreed between the parties. The Tribunal further ordered that the First Respondent do pay an interim payment of £115,000 on account of costs pending detailed assessment to the SRA by no later than Friday, 23 October 2015. This represented approximately 33% of the Tribunal's rough assessment of what might be awarded at detailed assessment. The Tribunal had taken into account all that Mr Nesbitt had said. However the evidence before the Tribunal made it clear that the First Respondent could afford to make an interim payment of this amount by the suggested date. He was not penniless, and had drawn down from his pension in order to pay legal fees. The Tribunal could see no reason why, when all allegations, including the allegations of dishonesty, had been found proved against the First Respondent, the burden of paying costs should fall on the rest of the profession who had committed no wrong doing. That was inequitable and disproportionate.

76. In respect of the Second Respondent, the Tribunal had decided that he do pay the costs of and incidental to this application and enquiry to be subject to detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Solicitors Regulation Authority and to be apportioned as to 15% to the Second Respondent as agreed between the parties. The Tribunal ordered that the Second Respondent do pay an agreed interim payment of £20,000 on account of costs pending detailed assessment to the Solicitors Regulation Authority within 42 days from 20 July 2015.

Statement of Full Order

77. The Tribunal Ordered that the First Respondent, RICHARD ANTHONY BARNETT, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation

Accountant of the Solicitors Regulation Authority to be apportioned as to 85% to the First Respondent as agreed between the parties.

The Tribunal further Ordered that the First Respondent do pay an interim payment of £115,000 on account of costs pending detailed assessment to the Solicitors Regulation Authority by no later than Friday 23 October 2015.

78. The Tribunal Ordered that the Second Respondent, solicitor, be suspended from practice as a solicitor for the period of 6 months to commence on the 20th day of July 2015 and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Solicitors Regulation Authority to be apportioned as to 15% to the Second Respondent as agreed between the parties.

The Tribunal further Ordered that the Second Respondent do pay an agreed interim payment of £20,000.00 on account of costs pending detailed assessment to the Solicitors Regulation Authority within 42 days from 20th July 2015.

79. Upon the expiry of the fixed term of suspension referred to above, the Second Respondent shall be subject to conditions imposed by the Tribunal as follows:

79.1 The Second Respondent may not:

79.1.1 Practise as a sole practitioner, partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS); and

79.1.2 The Second Respondent may only work as a solicitor in employment approved by the Solicitors Regulation Authority.

78. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 79 above.

DATED this 22nd day of December 2015
On behalf of the Tribunal

J. C. Chesterton
Chairman