SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11292-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DAVID CLINCH First Respondent

ROBERT ANDREW SCHOFIELD Second Respondent

Before:

Mr D. Glass (in the chair)
Mr L. N. Gilford
Mr M. C. Baughan

Date of Hearing: 20, 21 July and 9, 10 November 2015

Appearances

Mr Edward Levey, Counsel, of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH (instructed by Robin Havard of Blake Morgan LLP) for the Applicant

Jeremy Barnett, Counsel, of 6-7 Gough Square Chambers, London EC4A 3DE (instructed by Graham Small of LHS Solicitors LLP) for the First Respondent

The Second Respondent appeared in person on 20 and 21 July. He did not appear and was not represented on 9 and 10 November 2015.

JUDGMENT

Allegations

1. The allegations against the Respondents were that:-

1.1 The First and/or Second Respondent used, or permitted the use of, the client account of Hilton Legal Business Ltd, Solicitors ("the Firm"), inappropriately by utilising it as a banking facility for a client contrary to Rule 14.5 of the SRA Accounts Rules 2011 ("AR 2011") and Principles 2 and 6 of the SRA Code of Conduct 2011 ("SCC");

1.2 The First and/or Second Respondent acted in breach of an undertaking provided to third parties in breach of Principles 2 and 6 and Outcome 11.2 SCC;

1.3 The First and/or Second Respondent authorised payments to be made out of client account when not permitted to do so in breach of Rule 20 AR 2011;

1.4 The First and/or Second Respondent failed to return to third parties monies paid in breach of the undertaking provided to those third parties in breach of Rule 14.3 AR 2011 and Principles 2 and 6 SCC;

1.5 The First and/or Second Respondent acted in transactions which bore the hallmarks of money laundering and/or fraudulent financial arrangements in breach of Principles 2 and 6 and Outcome 7.5 SCC;

1.6 In relation to Allegations 1.1 to 1.5 (as amended) it was alleged that the First and/or Second Respondent acted dishonestly, although it was not necessary to prove dishonesty to prove the allegations themselves;

1.7 Further, and in the alternative, the First and/or Second Respondent acted recklessly.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included:

Applicant:

- Application and Rule 5 Statement dated 15 October 2014 and Exhibit MRH1;
- Applicant's undated Schedule of Costs.

First Respondent:

- Answer to Rule 5 Statement dated 24 November 2014;
- Signed Witness Statement of the First Respondent (undated);
- Signed Witness Statement of Donna Harper dated 6 November 2015;
- Personal Financial Statement dated 8 November 2015.

Second Respondent

- Letter from the Second Respondent to Blake Morgan Solicitors dated 24 November 2014;
- Signed Witness Statement of the Second Respondent dated 30 March 2015;
- Signed Statement of the Second Respondent pursuant to Rule 5(3) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") dated 31 March 2015;

- Personal Financial Statement dated 20 January 2015 with email to the Tribunal dated 15 June 2015.

3. **Preliminary Matter**

3.1 With the Respondents' agreement, the Tribunal was invited by Mr Levey to approve an amendment to allegation 1.6 to correct a typographical error. The allegation as pleaded referred to "allegations 1.1 to 1.4" but should have read "allegations 1.1 to 1.5". The Tribunal approved the amendment.

3.2 For practical reasons relating to his own availability on 22 July 2015, Mr Barnett applied for an adjournment of the hearing on 21 July 2015. Rather than commence the taking of the First Respondent's evidence on 21 July 2015, leaving him on his oath until the hearing resumed on 9 November 2015, the Tribunal, after hearing submissions from Mr Levey and Mr Barnett, and in the interests of justice and fairness to all concerned, agreed to the application. The Tribunal adjourned the hearing of these allegations to 9 and 10 November 2015. The costs of the adjourned hearing were reserved to the final hearing.

3.3 The Second Respondent informed the Tribunal and the other parties that he would not attend the adjourned hearing in November, and he did not do so. He left the hearing on 21 July 2015, it having been explained to him by the Tribunal that it was open to him to attend on 22 July, and on 9 and 10 November 2015 when the hearing resumed, in particular to make submissions in respect of mitigation and costs, admissions to some allegations having been made.

Factual Background

4. The First Respondent was born on 21 December 1960 and admitted to the Roll on 16 July 1990. At all material times he was the Firm's recognised sole practitioner: the Firm commenced trading in May 2009. At the time of this hearing, the First Respondent held a current Practising Certificate subject to conditions. The Second Respondent was born on 8 July 1963 and admitted to the Roll on 15 February 1988. At all material times he was a consultant at the Firm. At the time of this hearing, he did not hold a current Practising Certificate.

5. On 14 October 2013, the Solicitors Regulation Authority ("SRA") commenced an inspection of the Firm. Both Respondents were interviewed on 4 February 2014 by the SRA's Investigation Officer, Stephanie Young ("IO"), accompanied by the SRA's Investigation Team Manager, Ms Barker. The IO produced a Forensic Investigation Report ("FIR") dated 16 April 2014.

6. On 11 June 2014 the Firm was the subject of an SRA Intervention and the Practising Certificates of both Respondents were suspended. The suspension of the First Respondent's Practising Certificate was ended on 14 July 2014 (see [4] above).

<u>Introduction</u>

7. These proceedings related to the Respondents' involvement in what purported to be a loan scheme in which they acted for borrowers. The borrowers purportedly intended

to lend to third-party borrowers ("TPB") who were required to pay a deposit to the lender clients prior to the issue of the loan monies. A diagram designed to assist in explaining the roles of each party is appended to this Judgment.

8. A number of warning signs suggested that the transaction was a potential fraud:

8.1 Amounts of money of $110m and $1b were mentioned;

8.2 Payments were made to unknown third-parties;

8.3 Payments were made out of the jurisdiction;

8.4 Convoluted terminology was used.

9. The Firm's client account was used for the receipt and payment out of monies, even though the Respondents accepted that there was no underlying legal transaction in which they were acting on behalf of their clients IDL and LCH. The Respondents accepted that the use of the Firm's client account would assist in persuading the TPB that the scheme was legitimate.

10. The individuals purporting to run the scheme chose the First Respondent's small firm (where he was sole principal and for which the office address was the same as his home address) to act on their behalf.

11. Allegation 1.1

11.1 By reference to the Appendix, the scheme operated as follows:

- Hypotheek ("H") was understood by the Respondents to be a financier and primary lender of a proposed loan of $110m to the Respondents' client, IDL, introduced to the Firm by the Second Respondent. MB was a former director of IDL and SI a current director;

- Nordea Bank ("N") was a bank through which the primary loan would be transferred to the Firm's client bank account;

- IDL would lend money by way of secondary loan to LCH, another client of the Firm, who would then lend monies to a number of TPB, both individuals and organisations;

- Satex ("S") was purported to be an insurer and underwriter of IDL's primary loan repayments to H;

- The TPB were not the Firm's clients. They would make an advance payment of 5% of the value of their individual loans (or "deposits") to be paid into the Firm's sterling, euro or dollar client accounts. On receipt of the deposits, the Firm confirmed to the TPB that the deposits would pay for the insurance policy with S. Once insurance was in place, H could loan monies to IDL, who in turn would loan monies to LCH, which would facilitate the loans to the TPB;

- The Respondents would provide an "escrow" service to LCH; they and the Firm acted as an "escrow agent". The TPB would receive from the Respondents an assurance in the form of an undertaking that the deposit monies:

  > "… will be held strictly on the basis that the funds will be used for the purpose of procuring the insurance guarantee to support the funding of the loan from LCH to you. Failing which the funds will be returned to you".

  The Respondents accepted that this was the extent of the services provided by them;

- The Respondents had not acted for IDL and LCH on this type of loan arrangement before;

- It was accepted by the Second Respondent that: (i) instructions from LCH were purely to receive the 5% deposit from the prospective TPB and to pay those amounts out in accordance with instructions from their clients; (ii) the Respondents had no involvement in drafting any documentation or providing legal advice;

- At the stage of receipt of the loan monies, the Respondents would have been instructed to draft loan documentation between LCH and the TPB but: (i) this was discussed only on a verbal basis with LCH; and (ii) no loan monies were ever paid and therefore the stage at which any loan documents were to be drafted was never reached.

12. Allegations 1.2-1.4

12.1 The Respondents provided an undertaking to the TPB that the monies paid into the Firm's client account would be utilised for a specific purpose and only paid out in order to procure the insurance guarantee, as evidenced by sample letters to some of the TPB. The Firm in fact made payment out of those monies other than for the procurement of the insurance policy from S. Payments were made out of the Firm's sterling, euro and dollar client accounts through the Firm's bank Lloyds TSB ("the Bank") which were not in accordance with the undertakings given to the TPB. The total cash shortage on the client accounts was £530,220.90, €69,681.22 and $11,151.95, respectively.

12.2 On 1 April 2014 the IO wrote to the Respondents asking them how and when the deposits not used in accordance with the undertaking were to be returned to the TPB. No response had been provided by the Respondents by 16 April 2014, the date of the FIR.

12.3 The Second Respondent prepared a reconciliation of TPB monies, which showed that between 17 November 2011 and 28 May 2012 payments were made from the sterling, euro and dollar client accounts in the sums specified above for purposes other than the purchase of a policy of insurance from S. The IO set out in the FIR extracts from the ledgers of five TPB as examples of such payments. The Second Respondent confirmed on 17 March 2014 that all deposits received were identified as monies that should have been paid towards the insurance guarantee. Instead of acting in

accordance with the undertaking provided to the TPB, the Respondents followed instructions from their clients IDL and LCH regarding payment out of the TPB monies.

12.4 The TPB did not know that their monies were being paid out to parties not directly related to the insurance policy. The Second Respondent did not know the purpose of payments to MB, LCH, and Windsor Consulting Group ("WCG"), solely that the payments were made on clients' instructions. Further examples were set out in the FIR and discussed by the IO during interview with the Respondents.

12.5 Dr S and ACH (both TPB) complained regarding the failure of LCH to produce the loan funds. Dr S made his complaint to the First Respondent by letter dated 2 May 2012, to which the First Respondent replied on 14 May 2012 (Dr S later lodged a complaint with the SRA). Dr S suspected that the transaction was fraudulent and requested the return of the money he had paid to the Firm. The First Respondent informed Dr S that the deposit had been used to secure the insurance guarantee. However the Firm's ledger showed that payments had been made to a number of other recipients (it was unclear which TPB deposits were used for which payments). Dr S's money should have been returned to him on request, as should all sums not paid out in accordance with the undertaking to TPB that the payments were to be used for the specific purpose of payment for the insurance guarantee.

13. Allegation 1.5

13.1 Warning notices were available to the profession at the time the Respondents began their involvement with IDL and LCH. The Respondents accepted that they were aware of such notices. The Second Respondent accepted that the Respondents carried out no anti-money laundering checks on the Firm's clients IDL and LCH.

13.2 The Respondents stated that they relied on N's Proof of Funds document dated 28 June 2012 and Swift Wire Pre-Advice document dated 4 July 2012 for due diligence in respect of loan monies to be paid into the Firm's client bank account (if that stage had ever been reached). The funds relating to the total loan of $110m were never received.

13.3 Numerous unusual payment requests were made by the Respondents' clients in respect of transfers out of the deposit monies. For example, there was a series of substantial payments made to accounts in Russia and Italy, none of which were accounts in the name of S or H. The Second Respondent did not know whether the Russian and/or Italian accounts belonged to S, and simply followed instructions to make the payments, having raised enquiries with the clients about the payees. The Respondents relied on assurances from their clients that the payments were proper. No anti-money laundering checks were carried out against the Russian account (Pinto Patrizio "PP") prior to the transfer of funds from the Firm's client bank account to Russia; the Respondents did nothing to satisfy themselves that there was any connection between PP and S before paying out the monies. The Respondents had not satisfied themselves in accordance with the anti-money laundering warnings that it was appropriate to make payments to the accounts abroad.

13.4 Clear indicators to the Respondents that the scheme was inappropriate were:

- Borrowers were required to provide a deposit prior to receipt of the proposed loan;
- The verbose and confusing wording of the insurance policy;
- The non-disclosure agreement preventing the terms contained in any documents between H, S, or IDL being communicated to the TPB;
- The use of confusing and complex terminology;
- The Firm only had possession of email documentation prepared by the insurer S and primary lender H, and both were based abroad;
- The wording of documents included complex and confusing language and poor grammar.

13.5 Both Respondents (but in particular the Second Respondent) were included in email exchanges in some of the discussions between the Firm's clients, LCH and IDL, and S and H.

13.6 The loan documentation, believed by the Respondents to have been drafted by SI of IDL, was complex and confusing with poor grammar, as exemplified by an email of 15 November 2011 from S to IDL and the insurance policy to cover the first proposed loan of $35,750,000. The Second Respondent did not read the loan agreement, the document having been sent to the Firm for information purposes only. On 16 November 2011, S provided the Second Respondent with bank details for payment of the insurance policy premium to PP's Russian account. On 17 November 2011, the Firm transferred €381,285.76 from its euro client account to PP. S apparently encountered some difficulty in accessing those funds. Payments out were ultimately made as follows:

DATE	PAYEE	PURPOSE	AMOUNT
17.11.11	PP (Russia)	Insurance Policy	€381,285.76
10.07.12	NA (Italy)	H's Fees	$12,600
12.07.12	AAV (Italy)	Insurance Policy	$520,000
05.11.12	AAV (Italy)	Insurance Policy	$525,000
14.02.13	AAV (Italy)	COT Fee	$210,000

Table 1

13.7 On 8 December 2011, ML (of S) sent an email to SI, copied to the Second Respondent. The email contained grammatical errors, and reference to approval of a $110m transaction and a transaction of $75m. The Firm arranged further payments (set out at Table 1 above), supposedly to facilitate the additional loan facility of $75m, even though the original loan of $35.7m had not been received.

13.8 In an email exchange between 3 December 2012 and 19 February 2013 it was suggested that the loan could not be paid until a payment of $210,000 relating to the "cost of transfer tax" ("COT fee") had been made. Payment of the COT fee was

subsequently made by the Firm to a bank account purportedly belonging to S, named Azienda Agricola Vitivinicola ("AAV"). There was no evidence that the Firm had carried out its own research into S, its companies, and/or its associates.

13.9 On 14 March 2013, BT, who held himself out to be N's "chief financial officer", sent an email to the Respondents confirming that the $110m funds would be moved to the Firm's client account the next day. The First Respondent emailed BT in response, copied to the Firm's corporate bank account manager JJ and the Second Respondent, regarding payment of the COT fee, and making reference to the anticipated receipt of the loan monies which never materialised.

13.10 JJ raised concerns about the true identity of BT and the Respondents were unable to verify BT's position at N. The Second Respondent participated in an email exchange with H (representative El-Giovanni) and others between 8 May and 14 June 2012. He stated:

> "I am responsible for completing ALL AML [anti-money laundering] reviews under the regulations BEFORE referring the transaction to Lloyds TSB… I am obliged to confirm independently the status of [BT] within [N] AND that he has authority to act on transactions of this type."

13.11 The Respondents were unable to contact BT through N's head office switchboard. El-Giovanni explained that this was due to BT being located in the Turku branch office, and that N's head office was unaware of H's transactions. All attempts by the Respondents to contact BT proved unsuccessful.

13.12 A number of emails were sent by the Bank, and JJ in particular, to the Firm.

13.13 On 23 August 2011, JJ emailed the Second Respondent as follows:

> "Robert, how well do you know your client? Have you completed Robust KYB procedures? … the proposed cross border bank exposure appears v. significant. Without more detailed info into the background and provenance of the client this is likely to be treated as one of the numerous "funny money" transactions that we see?..."

13.14 On 17 November 2011, the Firm, having received the deposit payments from TPB, transferred €381,285.76 to the PP Russian bank account.

13.15 The Respondents' email exchanges with the Bank continued to illustrate the latter's concern and "grave reservations" about the transaction in which the Firm was involving itself. The Bank expressed its surprise that a firm as small as this one should be involved in a financial project of this sort. The Second Respondent, when asked what gave him and the First Respondent comfort to continue with LCH and IDL, stated that they "… were acting in a very limited role in the whole thing" and they were satisfied that the client had carried out appropriate checks. The Bank continued to raise concerns and enquiries, a number of which reflected the warnings contained in the SRA Warning Notices.

13.16 On 18 January 2012, JJ sent an email in relation to the original loan of $35.7m to the Respondents and a second email later the same day, in which he stated that he had concerns about the Firm's involvement in a number of transactions. On 19 January 2012 he wrote to the Second Respondent saying: "I have had the documents reviewed by our International Manager. His opinion is that it is a fraudulent "spam" document".

13.17 On 11 July 2012, the First Respondent sent JJ the N's Pre-Advice, which referred to the transaction and H's agreement to loan $110m to IDL for onward loans to LCH. JJ sent an email to the Respondents the same day and a further email the following day. Those emails expressed the Bank's conclusion that the entire financial project was, in their opinion, a fraud. For example, the email of 12 July 2012 stated "… therefore best advice is always to entirely decline to become involved".

13.18 On 12 July 2012, the Respondents arranged to send $520,000 to S, which represented 50% of the insurance premium due on a $110m loan from H. The balance of the premium, a further $525,000, was forwarded to S on 5 November 2012. Table 1, above, sets out details of the payments.

13.19 The Bank subsequently closed all the Firm's accounts indicating that the Firm would have to change banks.

14. Correspondence with the SRA

14.1 On 9 May 2014, the SRA wrote to the Respondents enclosing the FIR and requesting their observations. On 28 May 2014, Clyde & Co, instructed by the Respondents replied on their behalf. On 9 June 2014, a SRA Adjudication Panel decided to intervene into the Firm and to refer the Respondents' conduct to the Tribunal. The proceedings were received by the Tribunal on 20 October 2014.

Witnesses

15. Stephanie Young

15.1 Stephanie Young, the SRA's IO, gave oral evidence on her FIR dated 16 April 2014. In examination-in-chief she corrected an error at FIR paragraph 32 which should have read 28 May 2013 (not 2012). She clarified the source of her original figures and her later revisions. Subject to the amendment and clarification, she confirmed that the FIR's contents were true to the best of her knowledge and belief.

15.2 Ms Young was cross-examined by Mr Barnett on SRA warnings concerning High Yield Investment Fraud and use of client account as an escrow account, which she confirmed post-dated these underlying events. There was no cross examination by the Second Respondent. In answer to a question from the Chairman, Ms Young confirmed that the estimated total fees taken by the Firm in relation to this transaction were £11,700.

16. Second Respondent

16.1 At the request of the parties and with the agreement of the Tribunal, the Second Respondent gave oral evidence before the First Respondent.

Introduction and Cross-Examination by Mr Levey on behalf of the Applicant

16.2 The Second Respondent confirmed that the contents of his Witness Statements dated 30 March 2015 and 31 March 2015 were true and correct, and that he had no further evidence-in-chief to give. Due to a significant congenital, progressive eye condition, he was unable to read easily. He used specialist equipment and software linked to his computer to assist with that task. He had been able to read the documents in these proceedings. When necessary, documents were read to him during the course of his cross-examination by Mr Levey. The Second Respondent was aware of the SRA warnings of the signs of fraudulent financial arrangements and money laundering, including the warning notice headed "Fraudulent Financial Arrangements" issued on 6 October 2011. This "relatively straightforward" transaction had already started by that date. H was to lend money against an insurance policy from S, and it did not matter how the insurance policy was paid for. Provision for payment of arrangement fees and such like was not uncommon. The terms of this arrangement were that the TPB would pay for the insurance: the TPB agreed to this arrangement having been warned about the risk, and most of them were represented by advisers. The arrangement did not strike the Second Respondent as "odd". The non-disclosure requirement occurred "quite often" in commercial transactions. It was common for undertakings to be given. The use of solicitors (such as the Respondents) may have given legitimacy to the transaction. The Second Respondent understood the transaction and was satisfied with it.

16.3 The Second Respondent did not believe at the time that the transaction involved money laundering in spite of the fact that payments were to be received from third-parties where he could not verify the source of the funds. The payments largely came from UK/Irish clearing banks, except for one from Albania which was checked for money-laundering and one from the central bank in Vietnam. The money coming in was clean; it started off at a clearing bank and came from regulated people. He did not believe there was money laundering if there was a discrepancy between the account holder and the description on the account. The Firm was asked by the clients to send money to third parties who he considered to be related to the underlying transaction.

16.4 The Firm's retainer letter did not tell the whole story about legal services to be provided to the clients by referring exclusively to receipt and payment out of monies. Work was being done over and above that described. The retainer letter was technically incorrect and should, with hindsight, have been corrected. The Second Respondent had admitted providing a banking facility to clients because the facility was not related to the provision of a legal service, but was advisory. The Respondents were ultimately to be instructed to act by H and this was reflected in the level of fees charged. The Second Respondent did not accept that the Firm would not provide legal services until receipt of H's loan. The Firm provided legal services in September and October 2011 as evidenced by emails. In particular, the Second Respondent drafted a suite of documents for discussion with SI of Windsor Consulting Group ("WCG"). SI acted as the consultant to IDL and LCH, the Firm's clients in this transaction.

16.5 Mr Levey suggested that the TPB had no loan agreements in place. The Second Respondent disagreed. Each TPB signed an offer of finance term sheet, the template for which was prepared for LCH by the Second Respondent. The Firm's receipt of the signed term sheet triggered the opening of a file. Each signed term sheet included provision for payment for the insurance policy out of the deposit. The term sheet offer of finance was not a binding legal agreement: the borrower still had to pass due diligence.

16.6 The Second Respondent knew that undertakings must meet certain requirements and that breach of undertaking was taken very seriously by the SRA leading, potentially to disciplinary action. He was referred to an email dated 23 April 2012 from SI to PM (a TPB) and copied to the Second Respondent, which was intended to answer various queries raised by PM concerning his proposed loan from LCH. The email set out the respective roles and obligations of the parties, including the Second Respondent. The Second Respondent had to inspect the insurance policy (which looked "reasonably okay") and confirm that the lender was happy to lend against its terms. He was not concerned that the terms of SI's email to PM, a potential investor, could be construed as misleading. The email, which was not written by the Second Respondent, was correct; payment was made by the Firm on instructions directly to the account nominated by the insurer.

16.7 The same email stated that TPB deposits were to be held in the Firm's client account and could only be applied for the purpose of paying the insurance guarantee providers directly. The Second Respondent's evidence was that this was "according to SI". It was not necessary to correct the email because the correct information was provided by the Firm to the TPB and in this instance the TPB had legal advice. The retainer letter made it clear that the Firm was not advising on the scheme; the retainer was limited exclusively to deposit collection and payment for the insurance guarantee. The comfort to the TPB was that their monies would be used to procure the insurance guarantee, which was what the Firm did. He disagreed that collection of the monies by the Firm gave comfort to TPB that monies would not be paid out to LCH or IDL. The funds were to be used to procure insurance, which, it was assumed, included an element for fees.

16.8 IDL paid the Firm for the work it was doing from the TPB monies. The wording of the "comfort letter" to TPB might not have been sufficiently explicit. Clause 2 of one such letter referred to the funds being "held strictly on the basis that the Funds will be used for the purpose of procuring the insurance guarantee required to support the funding of the Loan". The word "strictly" included the Firm's legal fees. The insurer, on its instructions, was paid directly for the insurance guarantee, with surplus money used to pay for IDL's time and the Firm's fees. The Second Respondent explained that 3.5% of the deposited funds were to be used to procure the insurance policy and the balance of 1.5% used for fees. The drafting of the letter could have been clearer and was "very poor". The letter should, perhaps, have included the words "and associated commission and fees"; the Second Respondent regretted that it did not do so.

16.9 The Second Respondent was questioned about payments from Dr S's deposit, which included as an example a payment to MB for Mortgage Express. The Second Respondent said that the payment was made on instructions from MB. Looked at in

isolation the payments out listed in the FIR were "very misleading". The deposits received from the TPB were paid into a general pot in client account and aggregated as part of the overall facility to pay for the insurance policy. Payments were made in July and November 2012 to the insurer S for that purpose. At the end of 2011 payment was made for the policy for the $35.7m loan, ultimately aggregated into the $110m loan. The Second Respondent looked at the policy issued and on risk from 15 November 2011. It contained unusual features in relation to S (the insurer) that he had never come across before. He searched S on the Internet and relied on information from the client. Use by an insurer of a personal email address (virgilio.it in this instance) might seem unusual. He read the details on the first page of the document and skimmed through the rest of the document. The Second Respondent did not recall reading the references to conflicting governing laws. He was not decided even now as to whether clause C [of the policy] was "gibberish" as put to him by Mr Levey. At the relevant time he was not concerned about the contents of individual clauses, but only that H agreed to lend against that security. He disagreed with Mr Levey's suggestion that he was not telling the truth. He had received an email from El Giovanni and "plenty of emails" from H saying that the document was acceptable and they were waiting for clearance to release the loan funds. He relied on El Giovanni's email as properly representing H's position and the Proof of Funds document from N.

16.10 Mr Levey questioned the Second Respondent about the email dated 23 August 2011 from JJ referring to "funny money". The Second Respondent's evidence was that this email had "nothing to do with this transaction". A further email exchange took place between the First Respondent, the Second Respondent, the Bank, and others on 22 and 23 November 2011. JJ asked the Respondents for confirmation that they had undertaken, to their entire satisfaction, all the necessary Corporate Governance requirements, as to the provenance of the funds ($35.7m), and final destination. The First Respondent sought reassurance from the Second Respondent. The latter relied on the statement in the Proof of Funds letter from the then proposed lenders, Citibank, that the funds were clean as being all that was required. He was asked about JJ's email to the Second Respondent, copied to the First Respondent, dated 2 December 2011 in which JJ referred to the continuing need for "extreme caution on any dealings which involved Russia" and commented that he had "grave reservations about the transaction". The Second Respondent's evidence was that JJ had "misunderstood the position" and thought that the Firm was expecting money from Russia. In any event, the first payment had been sent to the Russian PP bank account by this point. This was the only transaction in which the Second Respondent had been involved when the Bank had ever expressed grave reservations.

16.11 The Second Respondent was questioned about further correspondence with the Bank between 5 December 2011 and 18 January 2012. He was asked to consider an email from El Giovanni dated 17 January 2012, with attached the Proof of Funds slip from Citibank for $35.7m. The Second Respondent understood El Giovanni to be the Chief Executive of H's Milan branch office with decision-making powers (H was understood to be based in Holland). The Second Respondent repeated that he was not concerned that El Giovanni sent emails purporting to be from Citibank from a personal email address. He never met El Giovanni but might have spoken to him on the telephone once. The Respondents liaised at all times with SI, who in turn dealt direct with El Giovanni. Spelling mistakes in documents (with direct reference to the

exemplified mistakes in the Proof of Funds letter) "occurred". In January 2012, the Second Respondent asked the Bank whether it would contact Citibank to confirm the transfer and JJ replied on 18 January 2012 that the Bank would normally do nothing at all in such circumstances. The Respondents therefore relied on the note about clean funds on the Citibank Proof of Funds. It was noted that in a later email that same day JJ referred to the result of his own Google search against the Proof of Funds reference as "MT 103/23 scam". The Second Respondent carried out the same search and his evidence was that "presumably" it threw up the same result. He could not recall whether the search revealed the reference as indicative of fraud. The Respondents were however sufficiently concerned to ask the client to comment on JJ's email. The Second Respondent did not think it odd that the Proof of Funds was signed by as senior a person as the "authorised Chairman of Citibank".

16.12 The Second Respondent had read the Proof of Funds from beginning to end. It seemed "to cover all the bases from a banking point of view and looked okay". The clients checked it and were satisfied, so the Respondents relied upon their clients. The Second Respondent was asked about the thinking behind his request to JJ on 19 January 2012 to contact "Citibank Vienna" to see if JJ could verify the transaction. His evidence was that the Bank's advice about not making payments out at this point was superfluous because a payment had already been made for the insurance policy. The Second Respondent spoke to the First Respondent to explain the situation but could not remember what he said.

16.13 The Second Respondent did not accept Mr Levey's suggestion that his judgement was clouded because he did not want to lose the client in anticipation of greater fees. The Second Respondent wanted to do his job properly. He wanted to do a proper job, and the wording on the Citibank Proof of Funds was sufficient as an anti-money laundering check. The client said that Citibank could be trusted. The Respondents voiced their concerns with their trusted clients at meetings. Citibank was ultimately taken out of the equation and N became involved (as the bank distributing funds for H), but this event raised no suspicions. With hindsight the Second Respondent conceded that the Respondents now looked "rather stupid". The Firm continued to take money from the TPB, paying out the same on MB's instructions to various accounts throughout 2012.

16.14 The clients satisfied the Second Respondent that this was not a fraudulent transaction by speaking with their contact at H, passing information on during meetings with the Respondents, and by giving assurances. The clients told the Respondents that this was not a fraud, with specific reference to the unusual features identified in the Proof of Funds document. The Second Respondent recalled the clients explaining that matters could be sorted out and the transaction continued. While these discussions took place TPB continued to deposit monies with the Firm which were paid out. The Second Respondent believed that insurer S was based in Milan, close to H's offices. ML, S's broker, gave his passport to the clients who showed a copy to the Second Respondent. ML organised the issue of the insurance policy. He could speak pigeon English and was not Italian in origin. ML emailed the Second Respondent on 16 November 2011 to provide what turned out to be Russian bank account details in the name of Pinto Patrizio ("PP") in order to receive a deposit. The Second Respondent did not check PP's identity. Mr Levey drew the Second Respondent's attention to the quality of the written English in ML's email which was not on headed notepaper. When the Second

Respondent queried the relevance of the Russian bank account, he was told by SI that there were issues with S receiving money into their Italian bank account and the money should therefore be paid by the Firm to the Russian account. The Second Respondent's position was that when he asked a client a question he could expect to receive the right answer.

16.15 The Second Respondent did not appreciate at the time that the payment to the PP account was in breach of his undertaking to the TPB. He thought the letters to TPB, which he had prepared, were "comfort letters" not undertakings. The payment of $506,500 to S on 17 November 2011 ultimately arrived in the PP account, having initially been reported as missing or stolen. The insurance policy for the $35.7m transaction was put on risk.

16.16 On 13 December 2011 ML, S's broker, sent an email to an individual CA, copied to SI, the Second Respondent and El Giovanni, with bank details for payment of a fee for the benefit of El Giovanni of $6,400. CA was believed by the Second Respondent to be the friend of IM who had introduced SI to ML (all at various points participated in the transaction). The Second Respondent made no comment on whether this was an "odd" chain of communication. The Second Respondent did not know what El Giovanni's fee was for. The Respondents did as instructed by the client in respect of what was a comparatively small amount. There were always specific email instructions from the client whenever a payment had to be made, although those email instructions were not always immediately apparent from the documents. The Second Respondent did not know anything about "Banco Posta" in Italy, nor did he know to what "NEMESIO ANNUNCIATA" referred (the account name to which H's fees were paid). He complied with the instructions and showed the First Respondent the emails accompanying the requirement for payment. Despite comments in an email dated 17 December 2011 from ML to SI, copied to the Second Respondent, suggesting that $35.7m was to be credited, the loan monies were never received by the Firm. A second deal for $75m was in contemplation at this point. It was suggested that the deals would complete in January 2012 and a meeting in Italy was proposed. By 21 December 2011 funds were said to be ready for transfer, subject to currency conversion. The Second Respondent continually asked the clients what was going on and the clients continually liaised with S. From 1 December 2011 onwards, the Second Respondent received, on occasions, 10-20 phone calls a day from TPB (numbering 24 by this point, some of whom did not call) asking when they were likely to receive their funding. The calls came from a limited number of the TPB and sometimes lawyers. Concerns about the calls were raised with the clients.

16.17 In January 2012, preparations for receipt of the $35.7m had been completed and the Bank was waiting for the money to come in to the Firm's client account. The Second Respondent disagreed that the excuses for delay received from H via El Giovanni were unbelievable. For example, on 6 January 2012 El Giovanni sent an email to the First Respondent regarding the wiring of the money to the Firm's Bank and the provision by the Firm of a screengrab in respect of transfers. Reference was made to an outstanding fee to be paid to ML by IDL. The Second Respondent did not know what the fee was for as it was negotiated by the clients. SI responded with agreement to the opening of an account with El Giovanni subject to the management of time constraints, and suggested an alternative, including the transfer of other funds to the Firm. SI was a former Deloittes' Chartered Accountant. The Second Respondent had

known and done work for SI since 2007 and was aware that SI had been struck off for fraud (he did not know the actual date of strike off, save that it was prior to their first meeting). The fact that he knew SI to be a fraudster gave him concern to some extent, but SI was not at that time involved in what he did previously. The Second Respondent denied that he knew that the transaction was a fraud. The deposit of $35.7m was always expected to be received at the Firm or a corresponding account, regardless of the implication in the email exchange with El Giovanni on 12 and 13 January 2012 that the transaction might go elsewhere. The monies did not arrive in spite of the payment for the insurance policy having been made. When asked by the Lay Member whether he had enquired about the trustworthiness of his clients with the possibility in mind that the fault was with them, the Second Respondent said that he was "too trusting" and "took SI too much at face value". When the $110m did not arrive, SI told the Second Respondent that he had discussed the position with the lender H and S was prepared to issue the security that H wanted. There were various TPB coming into the scheme and more funding was required. The way to go forward as far as SI and IM were concerned was to proceed with the $110m transaction, which "seemed okay" to the Second Respondent. The problems that arose when transferring funds to the Firm's Bank on the $35.7m deal would not arise on a $110 million transaction because the clients assured the Respondents that the $110m deal would happen. The Second Respondent told the TPB what was going on and they agreed that they would wait for the larger payment. When they asked how the deal was progressing, the Second Respondent gave them honest answers and gave them as much information as he could.

16.18 ML's email dated 20 February 2012 said in terms that it came from a private email address. The Second Respondent referred to his previous answers on this topic. Mr Levey highlighted features of the email, including reference to the Financial Services Authority ("FSA"). H had apparently complained in relation to the difficulties in transferring funds to the Firm's Bank. SI explained this to the Second Respondent as the missing of a window of opportunity for making payment. The Second Respondent did not know why S or H would be in communication with the FSA. He read the documents, which corresponded with what he had been told by the clients. The Second Respondent strenuously denied that he knew that the transaction was a sham. He was asked why, by email on 7 May 2012 some months later, S was so keen to progress the transaction. The Second Respondent's evidence was that S was presumably making money out of providing the insurance guarantee. He did not know anything about the "trustees" referred to in emails on 7 and 9 May 2012. It was possible that SI, MB, and IM were the trustees but he did not know. He was told by S (ML) to send the "Insurance charges fee" and "Mr Giovanni charges fee" to the Banco Di Napoli, San Marcellino branch for account "Azienda Agricola Vitivinicola". He had received similar instructions in relation to the previous transfer and had asked S where they wanted the money sent to, so he was not troubled on this occasion because the information came from S.

16.19 On 14 May 2012, S sent the original insurance binder for guarantee funding on behalf of IDL dated 26 January 2012 to the Second Respondent from a private email address. The Second Respondent was instructed to inform El Giovanni "to verify the policy" and return it to S if he was satisfied with it. The Second Respondent agreed that the date of the document would be "slightly odd" but for the fact that the policy was for $75m. The policy was to be processed for use further down the line when the $75m

loan was agreed and discussed. The premium had not been paid in spite of the date; the policy was not live until the premium had been paid. The Second Respondent had read the document but not in any detail, again being concerned only that the policy was acceptable to the lender. The Second Respondent consistently gave the same answers regarding his lack of recollection of the details of the policy and the level of his inspection of the document.

16.20 The First Respondent received the letter of complaint from Dr S dated 2 May 2012. He and the First Respondent discussed the letter, were concerned about its contents, and put together the letter of response sent on 14 May 2012. They did not hear from Dr S again for over 12 months; he appeared to have accepted the explanation. The Second Respondent was asked about the comment in the letter that the First Respondent did not believe this to be a case of money laundering or "suspicious transactions". The Second Respondent's evidence was that the Firm's Bank had suspicions related to the Citibank transfer and not the transaction in general.

16.21 The sum of $520,000 was released for the $110m facility in July 2012. The Second Respondent believed that BT looked after H's accounts at N Bank and his title was Chief Financial Officer. An email from the Second Respondent to BT was returned undelivered, and the telephone number dialled disconnected once he keyed in the extension number. In an email dated 24 May 2012 the Second Respondent invited El Giovanni to provide him with alternate contact details. On 30 May 2012, the First Respondent sent an email to the Second Respondent regarding discrepancies in a telephone number, with the suggestion that the Second Respondent called the number to see what happened. The Second Respondent thought that not being able to get hold of BT was odd "to a degree". He spoke to SI about his concern, and SI said he would see if he could get in contact but he never came back to the Respondents. The Second Respondent was taken to various documents evidencing continuing attempts to contact BT. He had ignored an email from El Giovanni dated 6 June 2012, which suggested that UK Banks could not be trusted and that the monies might be confiscated. He did not accept the customer service contact details provided by El Giovanni on 8 June 2012 or follow up the suggestion to speak to the financial account officer. The Respondents were unhappy with the information provided. However, the Second Respondent was clear about what the Firm was being asked to do and was not "gullible". An email "out of the blue" from CA dated 8 June 2012 informed the Second Respondent that the information given by El Giovanni was incorrect and continued that, following the difficulties in making contact with BT, "I agree with you that a visit to Milan is now essential". He thought that CA may have telephoned him at some point and the Second Respondent may have suggested that a trip to Milan, where El Giovanni and ML were based, was essential in order to resolve the outstanding issues.

16.22 El Giovanni was informed by the Second Respondent that the Second Respondent had to contact BT via N Bank's main switchboard number or that BT needed to contact the Firm's Bank. El Giovanni's 8 June 2012 email made it clear that he could not put the Firm in touch with BT directly. The Second Respondent wrote back to El Giovanni that day to clarify the extent of the UK regulations with which he had to comply before referring the transaction to the Firm's Bank. He had to confirm independently the status of BT within N Bank and that BT had authority to act on transactions of this type. He explained how this might be accomplished and that

without the verification required he could not proceed further. This response had been agreed with SI. The First Respondent knew what was going on, and the Second Respondent was open and transparent with him. He had no reason to hide anything. On 14 June 2012, El Giovanni suggested that the monies be transferred to the Firm's Italian bank account because UK protocols regarding anti-money laundering were the source of delay. The Firm wanted to use their UK account and did not want to open an Italian bank account. They told El Giovanni that this proposal was not acceptable. A dead-end was reached on contacting BT. The Second Respondent knew that he had not received a satisfactory response to his questions about BT's identity and that he did not have sufficient information to have any confidence that BT was a genuine officer of N Bank. He did not accept that by proceeding with the transaction nevertheless, he knew that he had breached, for example, the anti-money laundering obligations and his professional regulations. The Respondents had tried to verify that BT was the appropriate person to satisfy themselves that the funds were clear and clean. The Second Respondent relied on the N Bank certificate of Proof of Funds, knowing that N Bank was *bona fides*. Various events happened and the Respondents decided that they had been given sufficient information and made the next payment in July 2012. The Second Respondent disagreed that he was not acting honestly. The First Respondent knew that they were trying to contact BT and that they had not done so and he was aware of the N Bank Proof of Funds dated 28 June 2012 and the Swift Wire Pre-Advice dated 4 July 2012.

16.23 On 11 July 2012 the First Respondent wrote by email to JJ at the Bank with the Proof of Funds and Pre-Advice from N Bank. This email referred to the requirement contained in the Pre-Advice for bank-to-bank verification of the two documents, which JJ was instructed to instigate so that the drawdown could take place and the loan monies be transferred to the Firm's US$ client account. The Second Respondent was satisfied with the available documents, even though he had not made contact with BT. By email later that day, JJ referred to the wording on the attached documents as being "somewhat vague and grammatically confusing, (similar to the features of the document that we discussed last year)". He explained that bank-to-bank contact was not a requirement for funds to be received into the Firm's account. JJ added "if you are happy with the background to this transaction, having undertaken all the necessary due diligence re Money Laundering requirements, then presumably you can simply instruct them to remit the funds to your account?" He commented that he had tried to ring the telephone number on the document but that the line was dead. The Second Respondent's evidence in respect of trying the number themselves was that he assumed that "we would have done".

16.24 A further email was sent by the First Respondent to JJ, copied to the Second Respondent, on 11 July 2012 at 17:01. The First Respondent queried the bank's position and referred to the Firm as being unable to afford "any delay in clearance of the funds or other delay from a banking perspective". The First Respondent asked JJ to confirm that this would not be the case should bank-to-bank contact not be provided. There was no further contact between the Firm and the Bank on this topic. The Second Respondent denied that he knew that he was not acting honestly when he decided to proceed with the transaction in these circumstances.

16.25 The First Respondent sent an email to the Second Respondent dated 29 August 2012 timed at 08:24. It was put to the Second Respondent that the contents of the email indicated that the First Respondent knew by 29 August 2012 that there was a risk, which the Second Respondent accepted. The First Respondent enquired about the whereabouts of the funds which the insurance policies had been bought to secure. The Second Respondent did not know why the First Respondent had reached this conclusion at this point. The Second Respondent's evidence was that the First Respondent was referring in his email to funds paid to the clients. The monies had been paid to the insurer but the First Respondent's email referred to the monies deposited over and above payments to the insurer to pay for the policy (1.5% of the deposits).

16.26 The Respondents were receiving numerous telephone calls every day from TPB and it was becoming increasingly more difficult to answer their questions. This was expressed in the Respondents' email to SI and others on 8 September 2012. By that date the Respondents were becoming very concerned because no monies had been received. On 5 November 2012, another $525,000 was paid to AAV, authorised as with all payments by the First Respondent. Further delay in remitting the funds to the Firm was explained by other transactions in a queue. On 19 December 2012, El Giovanni informed SI in an email (copied to the Respondents by SI on 20 December 2012) that payment of the COT fee of $210,000 was required to enable the $110m transaction to be completed. This was the explanation given for why the funds had not been moved to the Firm's account, and as described by the Second Respondent was "delay upon delay". The Second Respondent denied that there was confirmation by this point that the transaction was a fraud. He further denied that he thought the contents of the email from N Bank dated 14 January 2013 forwarded to him the following day by SI marked: "FYI as discussed" was "extraordinary". This email repeated that the delay in transferring the funds was due to the requirement for payment of the COT fee. Mr Levey drew to the Second Respondent's attention a number of discrepancies and mistakes in the email. The Second Respondent conceded that, looked at now, the contents of the email were "unusual", namely that the nature of the payment was not identified at the outset. The Second Respondent did not know what had been agreed by H with N Bank and/or SI regarding payment of the COT to explain the correspondence between them. Having made other payments, the deal would have stopped if the COT fee was not paid on the client's instructions, placing everyone in a more difficult position. The Second Respondent agreed with Mr Levey that payment of the COT fee was not payment to procure an insurance policy.

16.27 The Second Respondent was unable to answer questions concerning the email dated 29 January 2013 from SI to N Bank (copied to the Second Respondent) addressed to BT. That email referred to the trustees (funding the insurance guarantee and related loan costs) having approved the funding of the required COT fee subject to receiving certain information and confirmation. SI was the driving force on behalf of IDL, not "trustees" and there was no trust. On 7 February 2013, S replied to an email from SI to H on 5 February 2013, stating the mechanism for the payment and providing bank details for an Italian bank account for that purpose. The money for the COT fee came from TPB. SI may have described TP borrowers as trustees. El Giovanni suggested that payment of the COT was to be made to S due to "they new banking system with taxies (sic) Banks in Finland charges (sic)…" The Second Respondent discussed this email with SI. The Second Respondent asked SI what he thought because it was an

unusual request. They decided that the monies had to be paid to complete the transaction. He was guilty of relying on what SI said all along and taking it at face value. Revised bank details for the AAV account were sent, consistent with earlier bank details, and on 14 February 2013 the COT fee of $210,000 was paid to that account. JP Morgan on behalf of the Firm's Bank queried the destination of the payment (which was not an account for S but a vineyard). S said in terms that AAV was the account created to receive funds from anywhere in the world and in respect of Italian taxes. The Second Respondent observed that he must have been satisfied that the funds were being properly paid out because they were transferred. He did not realise that there was a serious risk of being caught up in a fraud, although the Respondents had been concerned for some time. He did not accept that he proceeded knowing full well that it would be a breach of his professional obligations and dishonest.

16.28 In answer to a question from the Tribunal, the Second Respondent confirmed that the Respondents worked from home offices about a mile apart, and worked together occasionally. They exchanged emails through a central email address. All post went to the First Respondent's home address. The Second Respondent had not previously come across a COT fee, and believed it to be a bank transfer fee. It was a huge amount but not percentage-wise. He did not enquire whether any such fees were payable in Finland.

Cross-Examination by Mr Barnett on behalf of the First Respondent

16.29 The Second Respondent agreed that the First Respondent had taken him in when he was left in a difficult position. In 2010 his previous firm moved offices and neglected to tell him they were moving. His office and files were left intact. He approached the First Respondent who took him into the Firm as a consultant on an 80/20 fee sharing arrangement plus a management fee. They had each worked as a solicitor for approximately 25 years and had run their own practices. The Second Respondent's practice employed 55 staff and had a turnover of over £2m. He had his own clients and proceeded with his work as if nothing had happened when he moved to the Firm to work under the First Respondent's umbrella. His work was primarily property; he handled his cases for his clients and referred corporate clients to the First Respondent. The First Respondent had final responsibility for the practice which he took seriously. In effect he supervised the Second Respondent, but from a practical point of view the First Respondent knew that the Second Respondent was an experienced property lawyer and relied on the latter to tell him about essential matters.

16.30 The Second Respondent agreed that it was probably right that there were 43 emails and 2 documents in the bundle that the First Respondent had not seen prior to the beginning of the SRA case. The first version of the comfort letter was not seen by the First Respondent until May 2012. The Second Respondent decided which documents the First Respondent should see. "In fairness" and with hindsight he should have sent every document to the First Respondent. They discussed the transaction frequently but he did not recollect specifically telling the First Respondent that SI was a struck off Chartered Accountant. He did not know whether he told the First Respondent about IM's background. He agreed that SI and IM were very plausible fraudsters. When the SRA served the letter with the FIR, both Respondents were being represented by Clyde and Co. SI and IM agreed to come to Clyde & Co's offices to explain what had

gone on. After that meeting it was agreed that they were both very plausible. The penny dropped when the letter came from the SRA and they prepared their response. SI had been a very senior partner in Deloittes but left in disgrace. He did not disclose this when the Firm took him on as a client. The Second Respondent did not think it relevant to tell the First Respondent about SI, who left Deloittes in 2004 and was very successful between 2004 and 2007. The Second Respondent did not accept that he should have told the First Respondent about SI's background. The Second Respondent met SI and IM well before the First Respondent did so. In total they met 5 or 6 times, and the First Respondent always tried to attend the meetings if practical. Both Respondents accepted explanations from SI and IM: the First Respondent accepted explanations, in part because the Second Respondent accepted them. As a result he felt some responsibility towards the First Respondent.

16.31 One TPB, Master, dealt direct with the First Respondent, but 99% of the TPB spoke to the Second Respondent. In the main they also had advisers. All came to SI before the Second Respondent got involved. The Second Respondent was asked to write the letter of comfort because one or two of the first TPB asked for the deposits to be used to purchase the policy. The fee for the work was approximately £11,000, but the amount of time spent was a lot more than that. Their hourly rate for that type of work was then £175 per hour. The Second Respondent normally agreed his fees on a transaction basis. The transaction fees in this instance were agreed on the basis that there would be no fees at the start but that they would be back-loaded. Fees were to be agreed on individual loans and paid by the TPB from their loans. The First Respondent did not receive every single email or document but nothing was hidden from him by the Second Respondent. He was the Principal, the Second Respondent trusted him implicitly, and he had to make the transfers. It must be true that to a certain extent there must have been documents that the First Respondent did not see, wanted to see, or, with the benefit of hindsight, should have seen.

16.32 In answer to questions from the Tribunal, the Second Respondent confirmed that he had known SI since towards the end of 2007. He had an extremely successful property company in London after leaving Deloittes. He was declared bankrupt in the property crash of 2006-07 but retained a large house. The Second Respondent was involved in selling that house for him and there were surplus funds. SI went bankrupt independently in 2010, and received an automatic discharge a year later. The Second Respondent did not think he told the First Respondent that SI was a discharged bankrupt. The Second Respondent asked SI why it was necessary to carry out the transaction via IDL and LCH (rather than just the one company) but he could not now recall the answer. The TPB term sheet was a Practical Law precedent document prepared by the Second Respondent; the template included headings and definitions and the terms were filled in by SI or LCH. Some detail was the same for each TPB and additional wording was inserted in some cases. The Second Respondent was given the term sheets in order to open a paper file. They were not actual files for clients on the system as such, but he had a paper file for each TPB. The Solicitor Member observed that in the case of Dr S, the loan fee was £25,000 to be added to the loan balance and paid back by drawdown. The loan security deposit was 5% which was to be retained until the final payment of the loan and then set off against the balance due. All costs in connection with the loan were to be paid to the lender and added to the loan on drawdown to cover the costs of the bank or insurance guarantees etc. This seemed to indicate that the 5% paid to the Firm by the TPB was not for the

insurance guarantee. The Second Respondent replied that this was the first term sheet used and the situation changed. The Solicitor Member noted that Dr S said he was not aware of the insurance bond and this accorded with his term sheet. There was no reference to the apportionment of the 5% deposit in any document. The Second Respondent agreed that there was no such reference; the 1.5% was to pay for IDL's time as commission. The deposits were received by the Firm as solicitors for LCH, not for IDL. The letter of comfort went from the Firm on behalf of LCH because they were acting for LCH and IDL and had control of both parts of the transaction. The Solicitor Member suggested that money was received on behalf of LCH because they made the offer to TPB, but IDL had the obligation to pay for the insurance guarantee, not LCH. The deposits were internally transferred within the Firm's client account from LCH to IDL to pay for the policy. The Respondents did not believe there was any conflict of interest between ICL and LDH in the transaction because they were working towards a common aim and SI was working as a consultant for both companies.

16.33 The Second Respondent was invited by the Tribunal to deal with any points arising, and he accepted that invitation. Many of the allegations were admitted. The reason for going through the procedure was to decide whether the Respondents acted recklessly or with a lack of integrity or dishonestly. Having gone through it all, it was quite a damning story from beginning to end and he accepted that. The Second Respondent sat down yesterday after having sat in court for quite a long time trying to make head or tail of what had happened and why the Respondents did what they did. The only conclusion he came to was that he had given far too much trust, particularly to SI, relying upon what he told the Second Respondent and what he said. There were numerous occasions where they questioned the situation, got obviously unsatisfactory responses, and nonetheless continued. The problem that they had was that once they had made the first payment in December 2011 they were on the escalator and it was difficult to get off then. They asked a lot of the right questions and did not necessarily get the right answers. It was difficult because they had borrowers chasing them all the time, desperate to get the funding that they required. The Respondents had regular meetings with SI and IM to go through things and they gave the Respondents answers to questions. They were plausible. With the benefit of hindsight the Respondents looked very stupid, naïve and so on. He accepted on the definitions in the authorities from Mr Levey that he probably acted recklessly. He did not think that he lacked integrity and he certainly was not dishonest. At all times he tried to do the best for the clients, to achieve what they could achieve, and he looked "pretty stupid" now, unfortunately. He wanted to say thank you to the Tribunal for the way it had treated him bearing in mind his difficulties, which he much appreciated.

17. <u>First Respondent</u>

17.1 The First Respondent confirmed that his undated Witness Statement served in compliance with the Tribunal's direction dated 9 March 2015 was formally adopted as his evidence.

Cross-Examination by Mr Levey on behalf of the Applicant

17.2 Neither Respondent had any direct experience of the use of insurance guarantees in a transactional context nor did they have any direct experience of such a transaction, in this case was for tens of millions of dollars. The First Respondent practised for many years as a corporate lawyer dealing with very large businesses. He had experience of dealing with transactions ranging from £500,000 to tens of millions of pounds. In terms of the headline value of this particular transaction, it was not substantially more than he had dealt with in the past. His experience of larger transactions led him to appreciate that, to a degree, the figures did not have any impact or effect on the documentation under consideration. Professional indemnity insurance cover of £3 million was in place, with no liability for insurers above that figure. In September 2013 the First Respondent effected a management buyout by a client which was private equity funded with bank debt of £17m. The First Respondent knew that SI was a former partner in Deloittes but did not know that he had been struck off. The Second Respondent did not tell the First Respondent this.

17.3 Remuneration for the Firm for the transaction was effectively "back end loaded". The Second Respondent carried out the initial work, with the indication from his clients that the bulk of the legal work would arise when the loan funds were received and went out to the TPB. The Firm would be instructed to prepare a suite of legal security documents to cover the loans. This was where the bulk of the legal fees would be made. The Second Respondent negotiated a "basic retainer" with the client, because he had been involved in drafting some documentation with them. All payments made in relation to this transaction were necessarily authorised by the First Respondent. During the course of the transaction both he and the Second Respondent had concerns. He had not taken much notice of the SRA warning notices in respect of this transaction. He was, however, more generally aware of the warning notices published by the SRA. The First Respondent did not Google SI's name. He believed he did ask SI why he had left Deloittes, and he answered that he had set up his own property business.

17.4 The insurance policies were sent to the Firm as a requirement of the information sent to TPB. The First Respondent had not seen them and had to ask for copies which the Second Respondent produced. He would have "turned the pages of the documents" but little else. The First Respondent was made aware of the transaction in around July 2011.

17.5 The retainer letter dated 27 September 2011 was from the Second Respondent as a Consultant of the Firm to IM of LCH. The First Respondent knew that the Firm had been retained by the client. The Second Respondent explained to the First Respondent the terms on which the Firm was retained but did not show him the retainer letter. The First Respondent did not ask the Second Respondent for a copy of the retainer letter. The Second Respondent was an experienced lawyer who knew his clients well and understood the terms of the transaction as explained to him. He drafted the retainer letter reflecting his understanding. The First Respondent did not accept that his approach in not obtaining a copy of the retainer letter was either "reckless" or "cavalier" because he did not know that the Second Respondent had drafted or sent out a retainer letter. Had he been aware of the fact he would have asked for a copy. The fact that such a letter had been drafted and sent out came to light some months

later, during the SRA investigation. He presumed that the Second Respondent had put retainer letters in place and assumed that they existed, but he had not seen them. The First Respondent was aware of the Second Respondent's history. He knew that the Second Respondent was a discharged bankrupt and that at the time of this transaction there were a number of professional negligence claims outstanding against him. He was only a consultant in the Firm, and any liability arising out of this transaction on the face of it rested with the First Respondent in those circumstances. There was insufficient professional indemnity insurance cover in place to meet fully any liability above £3m, resulting in a potentially significant shortfall for those who lost money which the First Respondent would have to cover. Against that background, the First Respondent accepted that he was "somewhat cavalier" in respect of his professional obligations in not seeking a copy of the retainer letter which he assumed existed.

17.6 In spite of the fact that the First Respondent had not seen the retainer letter at the time, he understood that the scope of the work was as stated in the letter, namely limited "exclusively to the deposit collection and payment for the insurance bond". The letter to the TPB said that the Firm was holding their monies to pay for the insurance bond. The First Respondent was aware that there was no guarantee that the TPB would secure the loan sought. His evidence was that this was an "odd situation", but each TPB signed a term sheet setting out the structure of the transaction and what they had to do, which covered both the initial loan to secure the insurance guarantee and the fact that there would be further due diligence, so there was no guarantee that they would ever receive a loan.

17.7 The First Respondent was aware of the terms of the offer to the TPB and the way the transaction was structured. It was for the TPB to take advice on the structure and the risk associated with that and to make his own decision. The First Respondent appreciated the point put to him by Mr Levey, namely that the transaction was "remarkable", but private equity houses made loans to enable transactions to happen by raising money from the TPB before making the loan onwards. In the same context these clients raised funds from TPB to enable them to facilitate the loan they were seeking from the un-associated lender. This did not strike the First Respondent as "particularly odd". He was used to dealing with venture capitalists, and did not think it was a remarkable transaction or out of the ordinary. Mr Levey put it to the First Respondent that his analogy was false; a private equity company may borrow money in order to lend the same but does not borrow money from the person it is going to lend to. The First Respondent agreed with this statement and saw the difference, but still did not consider the transaction to be remarkable. He had not seen this type of transaction before or since, and on that basis he did not know whether this was exceptional because he had nothing to compare it against.

17.8 The First Respondent was referred to Dr S's term sheet dated November 2011: he confirmed that he saw one of these term sheets at some point. The loan to Dr S was for £5m, approved in principle. Dr S was to pay a deposit of 5% (£250,000) of the loan in order to enable the lender to be able to lend money to him. The terms provided for the deposit to be maintained until final repayment of the loan and then set-off against the balance due. The First Respondent accepted that the structure of the arrangement was that Dr S would provide £250,000 to support a loan that there was no guarantee he would ever receive. The loan was subject to Special Conditions in the

form of further due diligence. There was no provision for repayment of the deposit of £250,000 if Dr S failed further due diligence. The First Respondent did not know that the TPB were "exposed and vulnerable", as suggested by Mr Levey. His answer was based on the contents of paragraph 11 "Independent Legal Advice", which made it clear that the TPB was advised to seek independent legal advice. The First Respondent was aware that Dr S had discussed with a solicitor before signing the terms. The First Respondent would have presumed that the solicitor would have considered and discussed each condition with him, fully advising him as to the potential risks, before allowing his client to sign the document. Mr Levey asked the First Respondent to put himself in the shoes of the lawyer advising Dr S, to which the First Respondent responded that he would ask the client why he was even contemplating doing this. He would have informed Dr S that this was a very risky transaction and that he entered the transaction at his own risk. It was accepted by Mr Levey when put to him by the Tribunal that the term sheet did not refer to the insurance guarantee, with the caveat that the First Respondent knew that this was how the transaction was structured.

17.9 When the scheme was explained to the First Respondent in July 2011 there was no requirement to send the deposit monies to IDL/LCH's lawyers; by August 2011 this had become a requirement. The Second Respondent said that the role of the Firm was to provide comfort to the TPB that their deposit monies were to be held safely in pursuit of the insurance policy. The moment any money touched the Firm's client account, the First Respondent had to be involved. He accepted that he satisfied himself of the purpose for the payments into client account, and that he knew that the TPB were placing comfort in the fact that their monies were being held by the Firm. The First Respondent did not know until May 2012 what TPB were being told.

17.10 The First Respondent was asked to consider the template LCH proof of funding Letter to be sent to TPB, with which he confirmed he was content by email to SI on 3 May 2012. It provided for monies to be retained in client account strictly on the basis that the funds would be used for the purpose of procuring the insurance guarantee required to support the funding of the loan. It referred to what would happen in the event of failure, and envisaged the return of the funds to the TPB. The proof of funding letter also provided for the Firm to pay the funds directly to the third-party insurer once it had checked that the terms of the guarantee were agreed and were acceptable to the primary lender for the purposes of the loan to LCH that would provide the funds for the loan. Clause 5 included the Firm's confirmation that the funds would only be used in the procurement of the insurance guarantee in support of the principal loan to enable LCH to make the loan to the TPB. The First Respondent's evidence was that there was a template letter drafted by the Second Respondent approximately six months earlier which had been used on numerous occasions without the First Respondent's knowledge. He first met the client on 20 April 2012 and was asked to look at the template letter shortly afterwards. By this time the letter had been and was being used. There would be no consistency if the First Respondent had tried to move substantially away from these terms. SI was very keen to stick closely to the template that the First Respondent had produced but to try to tidy it up so that it looked professional. The First Respondent's template was based on the Second Respondent's original drafting six months previously. From May 2012 the First Respondent was happy for the deposits to be used strictly for the purpose of securing the insurance guarantee and paid direct to the third-party insurer.

17.11 The First Respondent asked for a copy of the insurance guarantee. The first of the two insurance binders was dated 15 November 2011. The First Respondent read this document, which was predated and sent to him at his request so that he could comply with clause 3 of the template proof of funding letter, in respect of documents to be seen by the Firm. He read the document out of professional interest for 5 to 10 minutes. Mr Levey took the First Respondent through what he suggested were a number of oddities which must have been noted by the latter. These included matters such as the discrepancy in the dialling code for Milan, the domain name of the insurance company, and the reference to multiple laws (Italians Laws (sic), United Kingdom law, "the laws of the England" (sic)). The last point struck the First Respondent as odd. He noticed how badly the document was drafted and understood that the document had been translated from Italian into English at SI's request. The First Respondent knew from experience that such translations could be full of inconsistencies and poor grammar. One looked at the terms of the agreement rather than the summary at the beginning, and on that basis the document was drafted subject to English law. He had never previously come across an insurance policy which on its face was subject to both Italian and English law.

17.12 Mr Levey suggested that on the face of the document the bond of $35.7m was in consideration of the premium paid, which was odd in view of the fact that the Firm was holding the TPB money in order to pay the premium. The First Respondent agreed. He was unable to explain "International Banking Day" as referred to in the document. Setting aside the translation, the First Respondent did not recall thinking that this clause was odd when reading the document at the time.

17.13 The First Respondent was familiar with the way in which insurance policies operated. Mr Levey observed that in respect of payment of claims the Bond provided that, even if the obligations were invalid and unenforceable against the borrower, whenever the obligations become due under specified events, the guarantor agreed that the submission of the claim by the lender containing their sole confirmation that a default had occurred will be considered by the guarantor as sufficient proof of default. On the face of it there was therefore no validity to be established before payment out under the Bond would be made on the say-so of the insured. The First Respondent said he had come across this in other transactions, namely repayment on demand and on insolvency.

17.14 The First Respondent repeated that he had not seen the Indemnity Bond Binder until May 2012 at his request. At that time he was aware that no monies had been received from the lender. This document was dated some 6 months earlier and appeared to have been drafted in anticipation of receipt of the funds. The client proceeded with the larger transaction of $75m.

17.15 Mr Levey analysed the correspondence passing between the Firm and its Bank, and in particular JJ, considering the detail of the email chain commencing in August 2011. The First Respondent said that the Second Respondent did not discuss JJ's concerns about "funny money" transactions in August 2011 when the concerns were first raised. The First Respondent was copied into email correspondence between the Second Respondent and the Bank on 22 November 2011. JJ referred to the need to carry out Corporate Governance requirements as to the provenance of the funds and their final destination. By email dated 23 November 2011 to the Second Respondent,

the First Respondent raised his own concerns with regard to the Firm's anti-money laundering regulation procedures and requested information. The Second Respondent replied direct to the Bank, copied to the First Respondent, confirming that he was happy with the details that he had received from the client and referring to documentation available and to be received on transfer of the funds. There was reference to a "loan agreement" in that email; the First Respondent did not know to what this referred. The First Respondent asked the Second Respondent if he had a copy of the document and he said that he did. JJ emailed the Second Respondent, copied to the First Respondent, on 2 December 2011 requesting further information, advocating "extreme caution", and expressing "grave reservations about the transaction". The First Respondent's evidence was that he understood, and this had been explained by the Second Respondent in his evidence, that JJ had confused this transaction with something else that he and the Second Respondent had been discussing with a director of IDL. That director was seeking to raise funding separate to this transaction. There was some confusion around this time about which transaction JJ was referring to. Mr Levey referred to the email from JJ to the Second Respondent, copied to the First Respondent, dated 5 December 2011. This email did refer to the transaction under discussion, and included a number of ancillary questions which the Second Respondent was required to answer. This included, for example, a request for clarification as to why the Firm had been picked to act, bearing in mind that the size of the transaction was abnormally large compared with the Firm's ordinary course of business. The First Respondent accepted that this email again raised concerns. JJ wrote to the Second Respondent, copied to the First Respondent, referring to the Firm's high duty of care as to the provenance and legality of the funds and requiring confirmation from the Second Respondent that he was happy with and understood the underlying transaction. On that basis there was nothing further for the Bank to do; monies would be received into the sterling account as a "push" transaction. The First Respondent accepted that the Bank was telling the Respondents that the transaction was their responsibility. He did not ignore written warnings.

17.16 On 18 January 2012, the First Respondent sent an email to JJ, copied to the Second Respondent, regarding the non-receipt of the monies. At some point JJ had been sent a copy of the transfer slip from El Giovanni dated 17 January 2012 relating to the transfer of $35.7m. The transfer slip included the reference MT103/23 and purported to be from Citibank. JJ responded by emailing the Respondents the same day pointing out his concerns and stating that they had been confirmed. He referred to the Google search of "MT103/23" with the result that it was a scam. He drew to the Respondents' attention other errors within the document. The First Respondent confirmed that either he or the Second Respondent had carried out the search with the result that there were numerous references to this being a commonly used code in relation to banking scams. The First Respondent made further enquiries with the Second Respondent and his clients. The First Respondent was now aware that he was involved in something about which he did not have sufficient detail, and to which he was not close enough. His Bank was telling him to stay away from the transaction because it bore the hallmarks of a scam. In each situation that arose, the First Respondent either contacted the clients directly or, 9 times out of 10, the Second Respondent contacted the clients who would drive up to meet with the Respondents to explain what was going on and to reassure them that everything was in order and that there was no scam with a view to progressing the transaction. The First Respondent did not accept that

he knew at this time that SI was a fraudster. SI did not instruct separate lawyers on the transaction. However, having met SI a number of times, he was a highly intelligent and articulate individual, as was IM. They both had substantial experience of dealing with international transactions. SI also had experience of drafting legal documents. The First Respondent understood SI to have been a senior partner at Deloittes for many years and IM was a former senior banker. They had connections throughout the UK and internationally whereby they could quite conceivably put together a transaction of this size and nature without recourse to lawyers, believing they had the requisite experience themselves. The First Respondent knew this from what he had heard from the Second Respondent about the clients and from meeting them himself.

17.17 JJ advised the First Respondent to close the $ account and open a new one to protect the Firm's position because those concerned had the Firm's bank account details. JJ informed the First Respondent that, should the $35m arrive in the account, given the facts discovered, the Bank would have no option but to return the funds. He also asked for information concerning a transaction for $36,000 between the Firm and IDL. It was likely that if advised to Google a name by JJ, either of the First and Second Respondent would have done so, and it was possible that he did so in this instance. He could not recall the search results. The First Respondent informed JJ the same day that his concerns were noted, that the Second Respondent acted for IDL, and he asked what needed to be done to close the account and open a new account.

17.18 In answer to a question from the Tribunal, the First Respondent described the reassurance being given to him by the clients. IM was an ex-senior banker, said to have a lot of experience in international deals. He convinced the First Respondent, (both through the Second Respondent and directly in meetings) that scam references such as this were continually thrown up and in this instance they were misleading. IM was dealing directly with the people who produced the insurance guarantee and the funds and they would reassure the Bank that everything was *bona fides* and above board. In meeting these individuals, they were extremely convincing professional men who spoke clearly and confidently and persuaded the First Respondent that the deal was both legal and going to happen. In hindsight and given time, that was clearly not the case. At the time, and in the context of these warnings, the First Respondent was not simply "fobbing off" the Bank; he allowed his clients to meet with him and to give him an explanation for what was going on and those explanations were credible in the context of the warnings. The First Respondent decided that they could proceed with the transaction.

17.19 On 19 January 2012, JJ informed the Second Respondent by email that there was nothing further that the Bank could do in terms of verification. He voiced his opinion that the transfer slip was a fraudulent spam document. The First Respondent expressed his own concerns to the Second Respondent by email dated 26 January 2012, in which he expressed his concern not to be involved with any kind of scam. He denied that it was his concern to retain the client on the prospect of future fees produced by the onward loan transactions. The fees were not going to be substantial. The Firm would produce a precedent suite of documents which would be replicated on all transactions. There would be very little legal work involved and a modest fee on each transaction would be charged. He had not given much thought to what those fees would be, but they would not be enormous.

17.20 The First Respondent was asked by the Tribunal to explain the process for the sum of $36,000 being received and paid out of the Firm's client account. When monies were transferred anywhere other than to S, the First Respondent queried the payment with the Second Respondent. His evidence was that this was effectively IDL recharging set up fees (its internal fee for having put the structure together, sourcing funding etc.) and taking its cut from the deposit monies received. The First Respondent wanted to know from the Second Respondent the reason for paying the monies out. He did not, and still does not, know whether the split in the deposit funds was ever explained to the TPB. It appeared to the First Respondent that the documentation he received had already been executed. He agreed with the Tribunal that not all of the deposit monies had been received or disbursed by May 2012. However he did not read, for example, the Insurance Guarantee Bond in detail because he received it, at his request, solely for the purpose of drafting the template letter and events had already taken place by then. At that point the loan went up from $35.7m to $110m and no monies had been received into client account. The inference was that Citibank were in funds to transfer the monies, and that the Firm's Bank was being overcautious, reacting to red flags being raised by their external people and trying to cover their own backs. In that context the $35.7m insurance guarantee was superseded. If the First Respondent had known that it existed in December 2011/January 2012 he would certainly have asked about it, but he was not given that opportunity. He should have walked away from the transaction in January 2012.

17.21 The Lay Member asked the First Respondent whether he had ever previously been warned in such a way by a Bank during the course of his career. The First Respondent answered "no". He had never run his own bank accounts before, having always worked at big firms. He knew JJ from emails and correspondence, and he was a property (not a corporate) banker. IM and SI almost worked as a "tag team". The First Respondent accepted the Second Respondent's assurances that IM and SI were tremendous clients and honest people. The Second Respondent had come across IM but he had not been a client and the First Respondent did not think that the Second Respondent had met him before this transaction. The Second Respondent was hoodwinked by MB and SI, and the First Respondent was in turn hoodwinked by the Second Respondent, SI and IM. When questions were raised about a scam after the clients had seen all the paperwork, IM (the banker) would take the lead supported by SI. The First Respondent regretted to say that he was taken in, that he believed them, they were exceptionally credible individuals, and he was completely and totally taken for a ride.

17.22 The Second Respondent's understanding was that he was to authorise payments from the third-party deposits to the insurer, S to pay for the policy. On 16 November 2011 the Second Respondent contacted ML by email to say that he was endeavouring to transfer $506,500 to his account. He did not understand the bank details sent to him for the transfer by ML so he requested specific information. ML responded by email the same day addressed to "Dear Mr Robert". Bank details were provided for payment to a Russian bank, for an account in the name of "Pinto Patrizio". The First Respondent confirmed that he authorised the payment. He was concerned when he received the payment details, but made the payment. He made enquiries of the Second Respondent and his clients concerning the identity of PP, and was told that this was a trading name of S, that the account details were correct, that they had been checked and verified, and that this was where the money was to be sent. There was a

suggestion that the monies had been stolen, or had gone missing, but they were eventually received. The First Respondent had not been copied into the correspondence or told by the Second Respondent of the misplacement of the monies.

17.23 On 13 December 2011, further bank details were provided by S for payment of $6,400 to "Banco Posta" to the account name of "NEMESIO ANNUNCIATA". Without checking the records the First Respondent could not remember whether he had transferred money to this bank. If he was asked to make the transfer after he had been given the bank details and had checked what the money was for with the Second Respondent and his clients, he would have done so.

17.24 By January 2012 the payment of $506,000 had been made, but the loan funds had not been received by the Firm. The transaction was therefore effectively abortive. The Bank had informed the Respondents that the transaction was a fraud. On the evidence available at that time the First Respondent did not decide that the Firm must withdraw from the transaction immediately, but with the benefit of hindsight he now recognised that that should have been his position.

17.25 IDL's account statements revealed that a £36,000 payment was made on 6 January 2012. There were a number of other payments, including a $12,600 payment to H on 10 July 2012. All the payments were authorised by the First Respondent. Mr Levey referred him to examples of further payments from 31 January 2012 onwards, including to MB, LCH and WCG. The First Respondent explained that the payments were not consistent with the role that the Firm played in the transaction, namely providing comfort to TPB that their monies would be used only directly to pay for an insurance policy. The 5% deposit was divided between what was required to pay for the insurance policy and what was required to pay the clients the set up costs that they had incurred for putting the scheme together. From the Firm's end that was calculated at 3.5% of monies received to be sent to S for the insurance guarantee policy with the balance to be paid to the clients for their expenses and costs incurred by them. That gave no comfort to the TPB, save that the wording of the Firm's letter said that the deposit was to be used to procure the insurance guarantee. This was explained to the First Respondent by the Second Respondent on the latter's request, but he did not know whether that information had been passed on to the TPB. The wording of the letter that he had drafted informed the TPB that the monies would go directly to the insurance company. If the month of May 2012 was taken as the relevant date, there were numerous payments other than to an insurance company in June and July onwards recorded on the IDL account.

17.26 Using as an example a letter sent to a TPB in September 2012, the wording of which the First Respondent had approved in May 2012, it was stated that the funds from TPB would be held strictly on the basis that they will be used for the purpose of procuring the insurance guarantee and that the Firm would pay the funds directly to the third-party insurer. When asked why the First Respondent thought it was appropriate that TPB were being misled, he replied that he did not know that they were being misled, and misleading them would be inappropriate. Further examples of such payments were given in the Rule 5 Statement. The First Respondent agreed that these monies were paid away on clients' instructions contrary to what was said in the letter sent to the TPB. Without knowing what was said to the TPB (other than in the letter) he had done what the letter, which was supposed to comfort TPB,said that he

would not do. The First Respondent accepted that the payments authorised by him as listed in the FIR (having been taken from a reconciliation prepared by the Second Respondent) as having been paid for the purpose of the purchase of the insurance guarantee policy were not paid to an account in S's name. In respect of the payment of the Firm's fees, the First Respondent authorised the same to be transferred from client account to office account, contrary to what the TPB had been told. Payments were made online by the First Respondent: it would be necessary for him to type in the details of the account to which the payment was being made, so he would have known that it was going to MB, for example. The Lay Member asked the First Respondent why he thought that payments to IDL had anything to do with the insurance guarantee policy. The First Respondent explained that the third-party borrowings were negotiated by LCH, but IDL was the company that negotiated the loan. The monies were therefore transferred from LCH to IDL to enable them to make the insurance guarantee payments. IDL was the company tasked with procuring the insurance guarantee. Dr S was not told by the Second Respondent that the money was to be processed in this way.

17.27 In February 2012, the second deal commenced, involving the loan of $75m. The First Respondent was concerned that the Firm had parted with $506,000 in November 2011 without receipt of the $35.7m; he raised his concerns with the clients. Further sums of $520,000 were paid out on 12 July 2012, $525,000 on 5 November 2012 and $210,000 on 14 February 2013. The Second Respondent provided reassurance to the First Respondent in relation to the non-receipt of the $35.7m. Between February and May 2012 it was decided to scrap the $35.7m transaction and proceed with a total deal of $110m. The second insurance policy was sent by S to the Second Respondent on 14 May 2012. The First Respondent was supposed to see this document but he did not do so.

17.28 On 10 July 2012 the First Respondent paid out $12,600 in respect of H's fees to the NA account in Italy. He agreed with Mr Levey that payment of these fees was inconsistent with what TPB were told regarding how the Firm would use their monies. He made the payment because he thought it was necessary to move the transaction forward. The first and only TPB that the First Respondent dealt with directly was involved in a project overseas, represented by French lawyers. There was a meeting with the clients around 10-11 July 2012. The clients told the First Respondent that the transaction was back on track; that it was definitely going to happen for the increased amount of $110m, that they had on-board a new third-party borrower ("Master"), who wanted to deal with the First Respondent directly; and, that the payments for the insurance policy had to be made. This was confirmed by the TPB's lawyer from a well-known practice in Paris. He said that his clients were very anxious to get the monies deposited with the Firm, for the insurance policy to be put in place, and for the principal monies to be released to them. Payments were made from July 2012 to February 2013 because the First Respondent was being pressured by clients in a face-to-face meeting and being told by them that the deal was back on, was viable and was going to happen. He was under pressure from the TPB through their lawyers to ensure that the payments were made, and that they had to be made to move the transaction forward so that the money could be released to him. He was faced with a dilemma as to whether to ignore what his clients were telling him and risk being sued by them.

17.29 The First Respondent was asked to consider what Dr S wrote to him on 2 May 2012. Dr S confirmed his understanding of the terms on which his monies had been deposited, which was consistent with what he had been told by the Firm in the comfort letter. Dr S told the First Respondent that he had no right to be paying out this money other than in accordance with what the Firm had told him. The First Respondent replied to Dr S on 14 May 2012. He did not believe that he had misled Dr S by what he said in that response. The First Respondent listened to his clients, weighed up what they said carefully, took note of the various clients he was dealing with as professional people who knew in detail what was going on, in particular on the banking side, and put reliance on IM and what he was telling the First Respondent in convincing terms. The First Respondent would not have written to Dr S in those terms if he had not believed in what he was writing. At that time he had not realised that there was a fraud. The First Respondent accepted that the transaction itself had been superseded, he had paid out $506,000 in respect of a policy, the purpose of which was to procure $35.7m, but the $35.7m had never arrived. He had not told the Dr S that the loan had not arrived, but he did know that they had procured the insurance guarantee.

17.30 The line of cross-examination turned to the whereabouts of BT. The First Respondent did not recall a conversation with the Second Respondent concerning difficulties in tracing BT in May 2012, but there was an email chain of 30 May 2012 in that regard. The purpose of the enquiries was to satisfy the Respondents that BT was the person he was said to be. If he was not that person, it would not have been appropriate and the Firm would not have had authority to pay out the money. The First Respondent left it to the Second Respondent to sort out the means of identification of BT. It was necessary to speak to BT via N's main switchboard to avoid the possibility of a false telephone number being provided. The Second Respondent had discussed with the First Respondent the need for a visit to Milan to resolve the issue by means of a brokered meeting for the Respondents and their clients with El Giovanni. At this point they were trying to square the circle – there were gaps that needed to be filled. The need to identify that the officer of the bank was the person who he said he was, was extraordinary in the First Respondent's experience. This was going on around 13 June 2012. On 28 June 2012, Proof of Funds was received from N Bank. This document claimed that the bank had in its deposits $110m and was signed by OG (Controller/Chief Accounting Officer) and BT (Chief Financial Officer). The First Respondent could not say definitely that he saw the document at the time. The email trail showed that the First Respondent had seen the document by 11 July 2012 when he emailed the same, with the Swift Wire Pre-Advice dated 4 July 2012, to JJ. He must have looked at the Proof of Funds when he sent it to JJ. The First Respondent suggested in his email that the Firm's Bank should contact the Turku branch of N, which was contrary to what had previously been suggested by the Second Respondent and rejected by El Giovanni. The First Respondent asked the Firm's Bank to do this in order to comply with bank verification requirements. They needed to satisfy themselves that BT existed, or that at the bank level everyone was comfortable with the arrangements. Alarm bells began to ring for the First Respondent on receipt of JJ's response on 11 July 2012. The Second Respondent confirmed that he could not get through on the telephone number given (JJ had reported that the line was dead). The hunt for BT was over by 11 July 2012.

17.31 On 12 July 2012, the First Respondent paid $520,000 for the insurance policy to AAV. He thought the payment was odd, but this was why the Respondents got their clients in to discuss face-to-face. During the meeting they assured the Respondents that the Proof of Funds and Swift Wire Transfer were *bona fides*, they had satisfied themselves that they were *bona fides* documents, the funds were available, and they were clear in their instructions that the money was to be sent and that the transaction would complete. The monies had to be sent that day because the recent TPB, Master, was insisting that the money be sent because of the pressure they were under in respect of their overseas project. To have not sent the monies put the First Respondent in a position of conflict with his clients and with the potential for being sued by the TPB for not carrying out instructions. During the meeting, the First Respondent put to his clients the fact that payment to AAV appeared to be inconsistent with the letter sent to TPB. The clients said that the AAV account was a genuine account for S, as confirmed to them and that was where the monies were to be sent. The First Respondent felt that he was in a very awkward position, and the monies were sent in accordance with the instructions he received. The First Respondent did nothing at the time to satisfy himself that the AAV account was genuine because he had always trusted the people he dealt with and his own clients. He was "overwhelmed" in the meeting with the clients. In his opinion he could do nothing else at that time other than to comply with his clients' instructions. He did not accept that making the payment out showed a "reckless" and "cavalier" regard for his professional obligations. He was exceptionally gullible and was taken in because he still at that point believed that there was a transaction to complete and it was extremely important to both his clients and the TPB (the only one who he dealt with directly) for the monies to be transferred immediately.

17.32 The First Respondent set out his views on the transaction in an email to the Second Respondent dated 29 August 2012. He queried the whereabouts of the loan monies that the guarantees had "paid for". By this date the First Respondent was highly suspicious. The First Respondent had a hand in drafting an email from the Second Respondent to IM, SI and MB on 30 August 2012. Both the Respondents were receiving between 5 and 10 telephone calls each day from TPB asking about the whereabouts of their monies/loans as mentioned in the email.

17.33 On 5 November 2012 the First Respondent paid out $525,000 for the insurance policy to AAV. The clients came up for a meeting and gave the First Respondent reassurances that the deal was still proceeding. The second tranche of money from the TPB was in and had to be paid out to secure the deal. With hindsight, the First Respondent was foolishly convinced that the transaction needed to be finished. He was told in unequivocal terms to make the payment. The First Respondent denied that he knew at this stage that the money was not being used in the furtherance of a genuine transaction. In answer to a question from the Chairman, the First Respondent said that as the transaction went on he became more sceptical of what he was being told. By November 2012 Master was on the scene. As a result of the project they were working on they were under enormous pressure to start the scheme. They insisted on sending monies to the Firm for the purpose of getting the insurance guarantee policy in place as soon as possible. The First Respondent's own clients convinced him that they were doing everything they could to ensure that the deal completed. The First Respondent realised now that he was being "horribly lied to" by his clients, although he did not seek to use this as an excuse. SI's email to the Respondents dated

30 August 2012 sought to protect them by limiting their involvement and trying to make it clear in the email, and in the letter to TPB, that the Firm had a limited role in the transaction. The First Respondent took his clients' word that the money was being paid to S's account, and raised the issue direct with El Giovanni who confirmed that this was one of a number of S's accounts, albeit that he was identified only by an email address. SI said that he had met with El Giovanni and that he was satisfied that S was a genuine organisation and that the account details were correct. He agreed that the paperwork from El Giovanni was "damning". At the time, in meetings, with "that sort of golden carrot dangled in front of you all the time" that this was a genuine transaction that was going to complete with a serious TPB on board and so on, the clear instructions were that this payment had got to happen in order to complete and get the funds released. El Giovanni said that it was quite common not to use S's name on accounts, and short of calling El Giovanni a liar, the First Respondent had to accept that and go back to SI and IM to ask them whether the information was correct. The First Respondent did no due diligence on the identity of AAV beyond asking SI and IM. He did not accept that this was a "reckless" and "cavalier" approach to his professional regulations because he satisfied himself to the best of his ability that where he had sent the monies was the correct place to send them. He did not know whether the fraudsters were some or all of his clients and/or El Giovanni. He repeated that he tended to trust people and did not expect to be lied to. In that context he had no one else to ask. Each time a hurdle was put up SI and IM got over it or round it. The introduction of the corporate borrower, Master, increased the pressure to get the transaction completed and get the funds released. The answers received in response to the hurdles were convincing enough. He observed that there were a number of emails before the Tribunal which the First Respondent had not seen before. He believed that he was fed information by the Second Respondent when it was necessary to involve him, and when there was no necessity he was dropped out of the loop until he was needed again. At the time he was getting on with his work and the Second Respondent had day-to-day control of these files.

17.34 The next line of cross-examination related to the COT fee. On 2 December 2012 El Giovanni promised release of the funds to the Firm's account the following week. COT fees were mentioned in an email from SI to El Giovanni on 13 December 2012. El Giovanni replied to SI on 19 December 2012 stating that the transferring bank (N) required COT- Cost of Transfer fees of $210,000 to enable the completion of the transaction. This was the reason why the funds had not already been moved to the Firm's account. A communication from N dated 14 January 2013 to SI confirmed the requirement for the $210,000 payment as COT to progress the transfer of $110m to the Firm's account. The First Respondent understood that the funds could not be sent direct from N, but had to be routed through a third-party to transfer the monies to the Firm's Bank. After some consideration, the First Respondent agreed with Mr Levey that it was IDL's liability to pay the COT. Master said that they would pay the fee in order to get the deal done. Ultimately however SI instructed the Firm to send the money out of the Firm's account. S's role was simply to provide an insurance policy. Apparently N Bank was unable to receive $210,000, so it was to be paid to S, the insurer, instead. The First Respondent did not know why the money had to be paid to S. He agreed that this appeared to be "extraordinary". On 5 February 2013, SI raised a query with El Giovanni concerning the arrangements. El Giovanni replied on 7 February 2013, stating that they had reconfirmed the issue with N and the money was to be paid to S due to a new banking system involving taxes on banks in Finland. This

had not been explained to the First Respondent at the time. The bank details provided for S were again for the account of AAV at the Banco di Napoli. The First Respondent authorised payment of the $210,000 COT fee to the AAV account on 14 February 2013.

17.35 S contacted the First Respondent direct by email on 19 February 2013 to explain the connection between AAV and S. The First Respondent considered it appropriate to pay the money to S, the insurer, because the contents of the email chain in relation to this matter had been made known to him by this point. One of the Second Respondent, SI or IM had explained the situation to him. This was the final piece of the jigsaw that would secure the release of the loan. Mr Levey put it to the First Respondent that by then he was in so deep, having released so much money, that he knew at this stage that this was an improper payment but felt that he had no option but to pay it out in the hope that all would come good. The First Respondent replied that at this stage he was still being told that the transaction was going to complete and that he understood the story he was told as being genuine in order to avoid tax. Mr Levey put it to the First Respondent that this was a payment of a banking fee to release loan monies and had nothing to do with payment for an insurance policy. He replied that the payment would procure release of the loan monies. Payments started on 17 November 2011 and continued to be made until 28 May 2013, despite the fact that no monies had come in and the First Respondent's suspicions. Mr Levey suggested that at least in relation to the November 2012 COT payment and the continuing payments that was not honest behaviour by the ordinary standards of reasonable and honest people and that he knew that what he was doing was dishonest. The First Respondent denied that suggestion.

17.36 When dealing in particular with the COT fees, the First Respondent's evidence was that he was given information immediately prior to making the payment and was not privy to correspondence unless he was copied in to emails. As the Second Respondent had explained in his evidence, he considered that these were matters that he should deal with, involving the First Respondent only when payment was required, so that the First Respondent knew what money was to be sent where. He had asked for the name of the payee and was told that the AAV bank account was the payee to which the money was to be sent electronically. The First Respondent would always ask the Second Respondent to go back to the clients for information. Once the First Respondent was satisfied as to where the monies were going and the purpose he would complete the transaction himself electronically. The Second Respondent would contact the First Respondent when payment was due, the First Respondent would discuss the payment with him, and, in this instance, the Second Respondent would have explained the COT fees to the First Respondent, and would have passed over the account details to the First Respondent. If the First Respondent had any further queries he would either raise those with the Second Respondent to raise with the clients or, by this stage, he would speak directly to the clients. The First Respondent was told that AAV, the vineyard, was a company-owned asset which held an account in which to receive these monies. The First Respondent was not sure that at the time it crossed his mind exactly what AAV was.

17.37 The First Respondent admitted the majority of the allegations against him. He denied the allegations of lack of integrity, dishonesty and recklessness. He denied that he was dishonest in his conduct of this transaction: he "got it wrong, completely misread the

situation and was a victim of what now appeared to have been a hoax, a scam, whatever one called it". The First Respondent did not lie to people and did not lie to people during this transaction, or seek to take advantage of anybody by his actions. He genuinely believed he was involved in a *bona fides* transaction acting with honourable people who had secured a loan to lend to TPB. He admitted that he had breached a number of SRA Accounts' and other rules. He had permitted his client account to be used as a banking facility. At the time and in the context of what he believed to be a *bona fides* transaction he did not recognise that, but does recognise that now. In short it will never happen again.

17.38 The First Respondent was familiar with the various warning notices in the context of the Continuing Professional Development programme. He attended courses and webinars as the COLP and COFA of his practice to keep as up-to-date as possible. With a heavy workload and limited assistance, he probably did not pay as much attention to these warning notices as he ought to have done. He had re-read the warning notices and now has them on his computer as a screensaver reminder. He is familiar with the latest notice on shortages in client account which he believed to have been issued in July 2015.

17.39 Addressing recklessness, in that the First Respondent was said to have turned a blind eye and ploughed on regardless when he should not have been doing so. The First Respondent repeated that he got it wrong, that he should have been more objective, and should have taken a step back, and tried to divorce himself from what was happening and did not do so. He received instructions from the Second Respondent and his clients and misplaced trust in them, genuinely believing that he was working on a *bona fides* transaction. This will not happen again. Beyond that, the First Respondent did not intend to deceive, disadvantage or cause any suffering to anybody during the course of this transaction or as a result of it. Quite the contrary in fact, he was trying to help his clients achieve their aim which was to secure $110m of funding.

17.40 Turning to the allegation of lack of integrity, the First Respondent was asked whether he lied to anyone, to which he replied "no". He wrote something that he now knew to be wrong, namely the proof of funds letter. It was poorly drafted and incorrect. It promised to do something that the Respondents did not do. On reflection, and whilst at the time the First Respondent genuinely believed that what he said to Dr S, for example, was correct, namely that they had secured the insurance guarantee, but the loan monies had not arrived, The First Respondent should have told Dr S this. However, the TPB knew that the monies had not arrived because that was the essence of his complaint. The First Respondent tried to act with integrity at all times. He did not go out to try to defraud or mislead people; this was not in his nature. He did not consider that he engaged in any sharp practice. His motivation in this and each matter he deals with is to act in the client's best interests and to "deliver the result they want in a legal and proper manner". He thought he was doing so in this instance, and he did have concerns and did not heed the warnings. With hindsight he should have walked away from the transaction, but was convinced by what he was hearing and seeing that the Firm's clients were on top of it and dealing with it and were in control of what was going on. The First Respondent did not go out to deceive anybody, to lie to anybody and did not intend that the TPB should be in their current position.

17.41 The First Respondent was asked by the Tribunal about the overall timescale for the transaction, starting in 2011 and finishing in the Spring of 2013, and what he thought about the lack of receipt of the funds over such a long period. He said he wanted to know what was going on. Following non-receipt of the $35.7m, unbeknown to the First Respondent, an extension of the loan to $110m was negotiated. This resulted in the $35.7m of funding being almost pushed to one side for the larger transaction. The original TPB wanted their monies. The 5% deposits were calculated on whatever loan each TPB was seeking. The First Respondent did not know whether the TPB had paid 5% of the original $35.7m by way of deposit. The loan monies were "a moving feast". There was not a block of borrowers for the first $35.7m and a second block for the larger amount. Possibly more than 5% of $35.7m had been paid by way of deposits. Master, the large borrower became involved, and the original monies had not arrived at that point.

17.42 By 19 February 2013 the COT fees of $210,000 had not actually left the Firm's account because the Bank was conducting the transaction through JP Morgan who had raised a query concerning S when payment was to be made to AAV and not S. The First Respondent had received an explanation from S, namely that AAV was a name used to receive funds anywhere in the world. The First Respondent had already been told this by El Giovanni. The reason for asking the question again was receipt of the written request from JP Morgan to which the First Respondent wanted to produce a written response. He forwarded the email to the Bank to be sent on to JP Morgan. A further email was sent by the First Respondent to the Bank on 14 March 2013 suggesting bank-to-bank contact with N, to which the First Respondent could not recall whether he received a reply. However, shortly afterwards the Bank blocked his accounts, effectively closing them down.

18. The Second Respondent also relied on the written witness statement of Donna Harper dated 6 November 2015.

Findings of Fact and Law

19. 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 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. The Tribunal noted that the underlying facts and all the allegations of breach against both Respondents were admitted, save that the allegations of acting in breach of Principle 2 (lack of integrity), dishonesty and recklessness were denied. The Tribunal considered the totality of the evidence against each Respondent separately.

20. <u>Submissions by Mr Levey on behalf of the Applicant</u>

20.1 The Applicant relied on the totality of the conduct alleged in support of the assertion that, by the standards of reasonable and honest people, the Respondents acted dishonestly and that they knew that, by those standards, they had acted dishonestly. In particular the Applicant relied on the following submissions:

- The Second Respondent introduced the clients to the Firm but, nevertheless, it was relevant that the Firm chosen by IDL and LCH was one where the First Respondent was sole principal and was being expected to involve itself in purported loans of up to $110m (a loan facility of $1b had also been mentioned);

- Neither Respondent had been involved in such a scheme before. The sheer size of the amounts being discussed and the manner in which the scheme was supposed to operate must have made the Respondents highly suspicious;

- By their own admission, neither Respondent provided any legal advice or drafted any documentation when, at the same time, the Respondents made the Firm's client account available to operate as a banking facility to enable funds to be received and payments to be made out;

- The Respondents suggested by way of explanation for their conduct that their role was a minor one in the overall picture, but also accepted that the use of a solicitors' client account would increase the appearance of legitimacy to the scheme and give comfort to the borrowers as to its propriety;

- It was also stated by the Second Respondent that, as the monies were being paid into the Firm's client account, at least it would ensure that the funds were used to pay for an insurance policy rather than leaving the funds with IDL or LCH to do with as they wished. However this was precisely what did happen;

- The Respondents could not be sure that the payments they were making out of money received from TPB were in fact being made to acquire an "insurance guarantee" and they were simply following the instructions of IDL and LCH;

- Despite providing clear assurances to the TPB that the deposits would be used for one purpose and one purpose only, namely the purchase of an insurance guarantee, the Respondents made payments to a number of third parties without any clear knowledge of the status of those parties or whether there was any connection between those payments and the purchase of an insurance guarantee;

- The payments, some of which were substantial, were made to foreign accounts, including Russia and Italy;

- The documentation was confusing and complex, much of it having been drafted by others which the Respondents did not check;

- The email correspondence was confusing and in poor English;

- Unnecessarily complex and potentially meaningless phrases were used such as "… I am bound by the non-disclosure, non-circumvention agreements", which also indicated a requirement for secrecy which was neither justified nor explained;

- Payments continued to be made by the Respondents despite the fact that no loan funds had actually been paid;

- There were clear and obvious concerns (or should have been, had proper enquiries been made) about the genuineness of the contact within N Bank, namely BT who was understood to be Chief Financial Officer and OG, Controller/Chief Accounting Officer;

- Even before any money started to pass through the Firm's client account, the Firm's bankers expressed grave concerns as to the legitimacy of the financial scheme. This concern continued to be expressed in more and more forceful terms as the months went by;

- On 12 July 2012 the Firm's bank stated unequivocally that they believed the scheme to be fraudulent. Notwithstanding that, on the same day, the Respondents forwarded to S $525,000 and paid a similar sum to S on 5 November 2012, representing a premium to enable the loan of $110m to be made. The Applicant submitted that it came as no surprise that such sum never materialised.

20.2 For all these reasons, the Applicant alleged that both the First and Second Respondents knew that by the standards of any reasonable and honest person, such behaviour was dishonest. It was alleged that, in the alternative, such conduct was dishonest in that such disregard for the obligations of a solicitor to conduct himself in a way which safeguarded the public interest was so reckless as to negate honest belief.

20.3 The Applicant submitted in the Rule 5 Statement that, by reference to the Warning Notice regarding fraudulent financial arrangements, a number of the factors were present which should have alerted the Respondents to the likelihood of the loan scheme being potentially fraudulent:

- In the exchange of emails between 3 December 2012 and 19 February 2013 and the payment of the COT fee, the explanation from S as to why that was necessary was entirely unconvincing. There was no evidence that the Firm carried out its own research into the S companies and/or its associates;

- Due to the substantial sums of money that the Firm was informed that N would be transferring to the Firm's client bank account, the Respondents fell far short of the due diligence required in failing to verify the identity of the individuals involved, particularly having experienced difficulties in contacting a person holding himself out as the Chief Finance Officer of N Bank and the explanation provided by H.

- Taking account of:

  - the chronology;

  - the concern of the Firm's bankers notified to the Respondents as early as August 2011;

  - the unequivocal warning provided by the Firm's bankers on 11 and 12 July 2012;

- the fact that on the same day the Respondents arranged for $525,000 to be transferred;

this meant that, despite all the clear features of concern which, by reference to the Warning Cards and the warnings from the bank, should have been completely obvious to the Respondents, their conduct in pressing ahead with their involvement in the scheme amounted to a failure to act with any integrity and was conduct which was bound to diminish the trust the public placed in them and in the provision of legal services. The Respondents also fell very substantially short of their obligations to comply with appropriate legislation applicable to their business, including anti-money laundering.

20.4 This was an extraordinary transaction in that the putative lender effectively needed to borrow money from the TPB in order for it, the lender, to be in a position to borrow money to lend to the TPB. A private equity company, with which the First Respondent sought to draw an analogy, might borrow money to embark on a deal but not from the people to whom they were going to lend.

20.5 The TPB were "extremely vulnerable". They deposited 5% of the putative loan monies in circumstances where, as the First Respondent accepted, as the Respondents knew, and as the term sheet made clear, there was no guarantee that they were going to get a loan. They had to pass due diligence first. There was nothing on the term sheet which said expressly in terms that they would get their deposits back. Even if that term was implied, there was no security for the money. It was not good enough for the Respondents to say that they had independent legal advice. As the First Respondent accepted, if he had been the independent legal adviser, his advice to the TPB would have been that they should not touch the transaction. Regardless that the Respondents drew some comfort from the fact that the TPB had independent legal advice, they knew that the TPB were very vulnerable. Further, the Respondents knew that the whole purpose of the Firm's involvement was to give the TPB some comfort that their monies would not be paid away on the instructions of the putative lender. The very event for which the Firm's involvement was supposed to provide a comfort was what ultimately happened.

20.6 The Tribunal was invited to keep in mind the payment schedule included in the FIR, and the chronology generally, stated briefly as follows:

- 17 November 2011 - €381,285.76 paid to PP (Russia) in respect of the S insurance guarantee policy for the $35m transaction which never happened. This was "alarm bell 1";

- December 2011-January 2012 - exchange of correspondence with JJ of the Bank when the Firm was told that the transaction was a fraud and not to become involved;

- May 2012 – a crucial month for two reasons: (1) the First Respondent had a hand in drafting and approving the letter to the TPB. This was the version of the letter (exhibited to the First Respondent's witness statement) which said that the monies deposited would be used specifically for payment directly to the insurer for the insurance. The Tribunal was invited to find that it was this version of the letter

(and not an earlier version) that was sent to TPB after May 2012. There was no evidence to suggest otherwise. (2) Dr S complained to the Firm of the existence of a possible fraud;

- June/July 2012 - the hunt for BT took place. The Respondents already had concerns at this point;

- 12 July 2012 – The Firm's Bank queried with the Respondents whether this was the same transaction (as featured in late 2011- early 2012) and if so it was a fraud;

- 12 July 2012 - $520,000 paid to AAV (Italy) in respect of the S insurance guarantee policy;

- August 2012 - the Respondents were receiving in the region of 5 calls a day from TPB asking about their money. The Tribunal was referred to the letter jointly drafted by the Respondents to the lenders dated 30 August 2012 setting out the position at that point. Mr Levey also relied on the email from the First Respondent to the Second Respondent dated 29 August 2012 expressing concerns about the whereabouts of the loan monies. The First Respondent clearly knew or had the belief that the lenders were using the deposits for their own good. These were "key documents" in the proceedings;

- 5 November 2012 - $525,000 paid to AAV (as above) in respect of the S insurance guarantee policy;

- 14 February 2013 to March 2013 - process of payment of $210,000 to AAV (as above) in respect of the COT fee. Mr Levey reminded the Tribunal of the circumstances in which the COT fee was said to be payable and how it came to be paid. The First Respondent had paid away $210,000 to AAV, the vineyard, without even having seen the email containing the explanation of "taxis reasons (sic)". It was not believable that the Respondents did not believe this to be a fraudulent transaction;

20.7 The payments were not paid directly to the insurance company (as the TPB had been told) but to the accounts referred to above. This was one way in which the TPB were misled. Examination of the ledgers revealed that after May 2012, when the First Respondent knew the terms on which he had told third parties that their monies were being held, payments were also made to individuals who had nothing to do with the insurance guarantee policy. Mr Levey submitted that this was a "lie" to the TPB.

20.8 The Applicant's position was that this was a case of dishonesty. It was not credible that the Respondents acted honestly. The Tribunal may well to some extent accept the First Respondent's evidence that he felt duty bound while being pressured. The First Respondent could still have a dishonest state of mind even if being pressured by someone else. A person could know in his heart of hearts, deep down in his conscience, that what he was doing was wrong and try to justify it to himself, and hope that it will all come good, but that did not mean to say that he was an honest person. This was not turning a blind eye. In the First Respondent's conscience, when he thought about it, he knew that what he was doing was wrong. He knew that this was not an honest transaction. He could not genuinely have thought that what he was

participating in was not a fraud. There were all sorts of reasons why this might be: he hoped that the "golden carrot" of fees would come streaming in, or he did not want to accept that he had been duped and continued to go along with it. The Applicant's primary case was one of dishonesty; this was not honest and the Respondents knew that it was not honest.

20.9 The alternative was "wilful blindness", namely that the Respondents turned a blind eye to what was shouting at them. This too would be dishonest.

20.10 Very closely related to "wilful blindness" was recklessness, namely that there was a reckless disregard of their professional obligations on a number of occasions. Mr Levey invited the Tribunal to find that the Respondents' approach was "cavalier" and "reckless", involving as it did no due diligence into the various characters or face-to-face meetings with them, and being prepared to accept the word of SI and IM who were the potential fraudsters.

20.11 The Tribunal could find that some or all of these matters involved a lack of integrity. The Applicant did not accept as suggested by Mr Barnett that lack of integrity involved "sharp practice". The authorities made it clear that all sorts of behaviour could constitute lack of integrity, and sharp practice would be one of them. Lack of integrity was a lack of moral soundness and moral rectitude when one simply did not do the right thing. This was an objective test. The Tribunal must decide whether the conduct connoted a lack of moral rectitude. The fact that the Respondents did not recognise it themselves did not mean that they did not lack integrity. A person did not have to recognise that he lacked integrity to lack integrity. There was nothing in the authorities to suggest that he had to recognise himself that he was lacking in integrity for the Tribunal to find lack of integrity. The difference between dishonesty and lack of integrity was that lack of integrity did not require the subjective element.

20.12 Mr Levey took the Tribunal to what he said were the relevant authorities:

- Provision of Banking Facilities - Patel v Solicitors Regulation Authority [2012] EWHC 3373 (Admin) at [2],[3],[34], [44]. Mr Levey submitted that, as per Cranston J in Patel, these Respondents were not providing legal services but were trading in effect on the "trust and reputation which they acquired through their status as solicitors". The only reason for the TPB to give the money to the solicitors was because they drew comfort from doing so. Fuglers LLP and Others v Solicitors Regulatory (sic) Authority [2014] EWHC 179 (Admin) at [39]. Mr Levey submitted that, leaving aside dishonesty, recklessness and lack of integrity, in this transaction in and of itself the misconduct was serious, to effectively allow the Firm's client to trade off the Firm's reputation.

- Bolton v Law Society [1994] 1 WLR 512, per Lord Justice Bingham at 518, paragraphs B - E. Bingham LJ drew a distinction between dishonesty and lack of integrity without saying what the distinction was.

- The Law Society (Solicitors Regulation Authority) v Emeana and Others [2013] EWHC 2130 (Admin), at [26], again drew a distinction between dishonesty and lack of integrity.

- Twinsectra Ltd v Yardley and Others [2002] UKHL 12 sets out the test for "dishonesty" applying the test in R v Ghosh [1982] QB 1053. The test is:

> "that for a person to be liable as an accessory to a breach of trust he had to have acted dishonestly by the ordinary standards of reasonable and honest people and have been himself aware that by those standards he was acting dishonestly".

The Applicant's primary case was that the First Respondent may have wished that the position was something different, but deep down in his conscience he knew that this was dishonest. The Tribunal may find that the First Respondent was not dishonest from the outset but that there came a point, even if at the very end, where enough was enough. The Applicant's position was that the Respondents were dishonest from the very beginning, when the Bank told them of its concerns. At the very latest by May - June 2012 the First Respondent could not continue honestly in this transaction and he knew that. "Wilful blindness" is a form of dishonesty. Authority comes from Twinsectra at [112] per Miller LJ (who provided the dissenting judgment). He said that:

> "it is dishonest for a man deliberately to shut his eyes to facts which he would prefer not to know. If he does so, he is taken to have actual knowledge of the facts to which he shut his eyes. Such knowledge has been described as "Nelsonian knowledge", meaning knowledge which is attributed to a person as a consequence of his "wilful blindness" or (as American lawyers describe it) "contrived ignorance". But a person's failure through negligence to make an inquiry is insufficient to enable knowledge to be attributed to him".

Mr Levey explained that if a person was negligent and did not discover facts that he ought to have done they were not imputed. If something was staring him in the face and he turned away and would rather not see he was deemed to know those facts.

- Manifest Shipping Company Limited v Uni-Polaris Shipping Company Limited and Others [2001] UK HL/1 at [112]-[113]. This decision elaborated on what was meant by "turning a blind eye".

- Vukelic v Financial Services Authority [Financial Services And Markets Tribunal] at [21], quoting Hoodless & Blackwell v FSA (3 October 2003):

> "… to consider the applicants' integrity, which both sides accepted involved the application of objective ethical standards. In our view 'integrity' connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards."

If the Tribunal found that the Respondents were not dishonest by the ordinary standards of reasonable and honest people or that they were objectively dishonest but not subjectively dishonest, was there a lack of integrity? Was this the lack of integrity, probity and trustworthiness that Lord Bingham talked about in Bolton? One of the primary roles of this Tribunal was the protection of the public and maintenance of the reputation of the profession. The former entailed protecting the public from someone

who lacked integrity. The public required protection from such a person as a solicitor who himself did not realise that he was acting without integrity. People who could not recognise that they lacked integrity were the sort of people who caused harm to clients or third parties. If one did not realise that one lacked integrity one still lacked integrity and the public required protection from such a person. Secondly, the role of these proceedings was to maintain the reputation of the profession. How would a member of the public sitting through these proceedings regard the reputation of the profession if on the evidence heard by the Tribunal it was found that because the Respondents did not realise that they were lacking in integrity they did not lack integrity. Mr Barnett intervened to make it clear that he was not and never had contended that lack of integrity carried a subjective test. Mr Barnett accepted that the test was purely and simply objective. He did not however accept that the test was "moral rectitude".

- Solicitors Regulation Authority v Saunders (SDT Case number 10972-2012). A different Division of this Tribunal followed Vukelic at [10.15] and [10.19].

- Constantinides v The Law Society [2006] EWHC 725 (Admin) at [36] per Moses LJ:

> "There is no reason why, provided that the position is clear in the Rule 4 statement, The Law Society should not allege dishonesty or, in the alternative, a state of mind falling short of dishonesty, as described by Lord Hoffmann at paragraph 22, page 170 of Twinsectra, namely that he took a blinkered approach to his professional duties as a solicitor. There is every reason why, in the public interest, such an alternative approach should be adopted. The Tribunal would be failing in its obligation to protect the public and preserve the integrity of the profession if a solicitor had to be acquitted merely because The Law Society was unable to prove dishonesty. A reckless disregard of the obligation of a solicitor to his client is itself serious and conduct against which the public should be protected".

Mr Levey submitted that this paragraph could be read substituting third-party for client.

20.13 Following Mr Barnett's submissions on behalf of the First Respondent, Mr Levey raised one further point. He observed that Mr Barnett invited the Tribunal to draw an inference that if the First Respondent had known that SI was a struck off accountant it would have made a difference. There was no evidence from the First Respondent on that point and he was not asked the question. It would be wrong to draw that inference when the First Respondent did not suggest it himself. The First Respondent and one member of the Tribunal thought that this was said by the First Respondent in evidence. The Chairman's note of the evidence was that the First Respondent said that he did not know that SI was a fraudster. In his evidence the Second Respondent conceded that he knew that SI had been struck off for fraud.

21. Submissions on behalf of the First Respondent

21.1 Mr Barnett observed that Mr Levey had failed in his submissions to distinguish between the evidence against each Respondent. He invited the Tribunal to adopt a strict approach by looking at the evidence against each Respondent separately. The

Tribunal must be careful, particularly when looking at dishonesty and state of mind, before attributing the knowledge of the Second Respondent to the First Respondent, and must draw the best inferences that could be drawn from the circumstances. The Tribunal must look coldly and clinically at the evidence against the First Respondent; it was clear that what the Second Respondent knew, the First Respondent did not necessarily know. The facts and the majority of the allegations were admitted. The question for the Tribunal to decide was what "was the First Respondent's state of mind at the time?"

21.2 Whilst this may be an "extraordinary transaction" as submitted by Mr Levey, there was no evidence that the First Respondent was armed with that insight (about the hallmarks of an advance fee fraud) at the time. More importantly, Mr Levey submitted that these were "exceedingly vulnerable" investors. There was no support for that proposition. Dr S was trying to borrow £5m and was putting down "key money" to try to borrow that sum. There was no evidence that Dr S was particularly vulnerable; the inference to be drawn from the papers was that he was not vulnerable and he had his own lawyer. In his letter of response to Dr S's letter of complaint, the First Respondent indicated that the matter was to be put in the hands of the Firm's insurers; in those circumstances he could not be brought to task for not making a frank and full admission. In summary, the Tribunal was invited to look at the evidence against the First Respondent dispassionately, drawing only proper inferences, and forgetting the idea that the TPB were extremely vulnerable. The Respondents knew that the TPB had their own lawyers. They had taken a decision to invest before the Respondents got involved. This was the state of the evidence.

21.3 At the Tribunal's invitation, Mr Barnett summarised the differences in the evidence against the Respondents. The key difference was that SI was dishonest and corrupt before this transaction began: the Second Respondent knew this, but the First Respondent's evidence was that he did not. This was not the First Respondent's case, and these were not his clients; he had a supervisory role, was the partner in charge, and dealt with all the transfers, but this was not his case. Mr Levey's narrative was that it was blindingly obvious that this was a fraud involving fraudulent people as the First Respondent should have known. The evidence was that the First Respondent did not know, and that he was kept in the dark by the Second Respondent, who admitted in cross-examination that with the benefit of hindsight he should, perhaps, have been more forthcoming about what he told the First Respondent. The cases against the Respondents were therefore "poles apart". The unchallenged state of the evidence was that the First Respondent was kept up-to-date by the Second Respondent at arms-length. Mr Barnett invited the Tribunal to find that there was a real risk that the Second Respondent was dishonest or was alive to the risks and knew of the real risks, and in this small firm kept his Senior Partner in the dark. If the Tribunal accepted that prime submission, the cases against the Respondents were wholly different. The Tribunal had to attempt to understand what the First Respondent knew at the time. The unchallenged evidence was that the First Respondent accepted that SI was honest and decent and he accepted his instructions and explanations. Whenever there was a hurdle (as described by the First Respondent) he went back to the expert accountant (SI) and international banker (IM). They satisfied him that the transaction was proper, that they knew more about it than he did, and he relied upon them. This was the key factor in the case as far as the First Respondent was concerned. If the Tribunal

accepted that he was misled because of where he placed his reliance, all of his actions flow from the wrong decision that he made to place trust in SI and IM.

21.4 This was not "turning a blind eye", and Manifest was very helpful in that regard. The Nelsonian blind eye is knowingly putting the telescope to the eye that does not work. This was not a case of Nelsonian blindness; the First Respondent put the telescope to the right eye and got the wrong answer, which was negligent. He got it wrong because he believed that SI and IM were honest and decent. He made no enquiries about either of them because he had no reason to suspect clients SI and IM because the Second Respondent was the person dealing with them. IDL and LCH were clients of the Firm, but the First Respondent was entitled to rely on the Second Respondent, a solicitor who knew the clients and who brought them to the Firm. The Second Respondent said that he had acted for them on a number of occasions over a number of years and SI was an ex-partner in a significant accountancy firm. There was no obligation on the First Respondent to perform due diligence on the Firm's clients when he believed that the Second Respondent knew the clients. The key information that was held back dictated all of his actions throughout the case. Additionally, the First Respondent did not have to prove his case. He had chosen to give evidence, but the burden of proof remained firmly on the Applicant.

21.5 Mr Barnett commented briefly on Mr Levey's submissions on Twinsectra for the purposes of the transcript. After hearing the submission, the Chairman made it explicit to both Counsel that the Tribunal intended to apply the Twinsectra test, whilst being mindful that the test had been subject to discussion in the High Court, for example by Mostyn J in Kirschner v The General Dental Council [2015] EWHC 1377 (Admin). Mr Barnett confirmed that there was nothing between himself and Mr Levey in relation to "wilful blindness". This case boiled down to either wilful blindness or negligence. There was no evidence that the First Respondent deliberately shut his eyes to what was going on: he was negligent.

21.6 On the definition of lack of integrity Mr Levey invited the Tribunal to the view that Mr Barnett's reading of the law was wrong because of the weight of the authorities against the latter. The Financial Services Authority decision in Vukelic and decisions of other Divisions of the SDT were not, in Mr Barnett's understanding, binding on the Tribunal. He referred the Tribunal for a "better view" to the decision of Mr Justice Stadlen in May v The Chartered Institute of Management Accountants [2013] EWHC 1574 (Admin) at [150] to [155]. The decision in Vukelic and previous SDT decisions "blurred the issue". Mr Barnett submitted that "We get into the issue of what is a fit and proper person" which was a slightly different test that a number of regulators had to consider, including the SRA. In May, the Stadlen J looked at the Appeal Committee's finding and considered the difference between integrity and dishonesty. He said at paragraph [154]:

> "I have great difficulty in understanding the distinction apparently drawn by the Appeal Committee between acting dishonestly on the one hand and acting not in a straightforward way on the other.… [155] when applied to human conduct or behaviour, the word straightforward is commonly used in the sense of honest and frank, not circuitous or evasive, honest and open, not trying to trick somebody or to hide something. In other words it is broadly synonymous with honest."

Mr Barnett submitted that this was a better test than the test in Vukelic with its reference to moral rectitude. Wrestling with a moral code was very dangerous and difficult for a panel. One would expect a solicitor not to mislead, not to engage in circuitous or evasive behaviour, not to say something knowing that it could be read two ways, not to be duplicitous and to be open and honest. These types of characterisation were helpful here. Mr Barnett invited the Tribunal when considering integrity to look at whether there had been a lie. The Solicitor Member interjected to invite Mr Barnett to address the Tribunal on whether the test was as set out in Bolton, namely integrity, probity and trustworthiness and all of the professional duties relevant to the facts of this case. Mr Barnett replied that asking the question "Has there been a lie?" helped the Tribunal, because if there was a lie all of the elements in Bolton were satisfied. He accepted that there did not have to be a lie for the Bolton elements to be satisfied, but used the example of proof of a lie not of itself being sufficient to prove dishonesty. At the SDT lying was lack of integrity and it was unnecessary to know why the lie had been told. It was not necessarily dishonesty, but lying as a solicitor was "the end of it". Mr Barnett did not seek to resile from that position and it was for the Tribunal to set the bar for standards of solicitors' behaviour. The First Respondent had accepted that there was an undertaking but said that he did not give that undertaking. He re-drafted the letter in which the undertaking was contained. It was said that he did not explain in the letter to Dr S that costs were to be taken out of his deposit. The First Respondent's point was that the word "directly" in the letter was important. He should have made it clear that he thought that the Firm could pay money out attributable to these transactions but the word "directly" did not appear in the documents; if that word had appeared that would have been the end of it.

21.7 Mr Barnett addressed the Tribunal on the First Respondent's state of mind at the material time. He invited the Tribunal to consider the transcript of the FIO interview, when questions were asked of the First Respondent about Dr S's case. Quoting from the reply letter sent to Dr S, the First Respondent said: "I would be the first person to be alert to any suggestions of money laundering or suspicious transactions" and that he did not believe money laundering or suspicious transactions to be the case here. He was asked at interview whether he felt that the fact that he did not have suspicions was a correct statement. His answer was: "… at the time I wrote it I didn't but you're asking whether I do now is a different matter… I wouldn't of written it had I not thought that (sic)" and stated his position at the time of the interview as being "questionable". This was exactly what the First Respondent said in evidence and the reply to Dr S was further evidence of his state of mind and knowledge of the document that had become the high point of the Applicant's case. The Chairman observed that the Tribunal must decide the case on all of the evidence, with which Mr Barnett agreed.

21.8 The First Respondent's account was that he thought the payments out were to enable the process, bearing in mind that this was not his transaction, that he was working on the basis of what he was told by the Second Respondent, and that some, but not excessive, fees went to the Firm. The Applicant's case was that the First Respondent turned a blind eye so that the Firm could make a windfall on fees. There was no windfall here; £6,000 was charged for a great deal of work, and that figure was by no means representative of all the work done.

21.9 On the allegation of recklessness, the First Respondent's case was that every time someone raised an issue he put up a hurdle. He accepted that he could have done better. The evidence was that this was a genuine, admittedly not very good, attempt to deal with each hurdle. He recognised each of the warnings and hallmarks of fraud raised and went back to SI on the Bank's letters. SI said that he was experienced and that this happened all the time. At the single meeting that the First Respondent had with Master, the TPB, everyone was telling him that they wanted the transaction to go through. This was evidence of the First Respondent considering what the TPB wanted. He listened to the TPB, to his clients and to the Second Respondent. The Second Respondent did not tell him the truth in relation to SI's background. The First Respondent came to the decision, wrongly, to allow the transaction to continue and approved the payments. Had the First Respondent known of the full facts at that key meeting, he might have acted differently. However, he came to a reasoned decision that proceeding was the right thing to do and he got it wrong. This was not wilful blindness. The Tribunal had before it a number of cases where solicitors were incompetent, negligent, and also lacked integrity, were reckless, and so on. By the First Respondent's admissions he accepted that he had got it wrong. If he had not run the escrow account none of this would have happened. Having got himself into an invidious situation by running the escrow account, he looked after the interests of the TPB. There was nothing that he could have done at that stage to get himself out of the "pickle". Had the Applicant shown beyond reasonable doubt that he did what he did knowing that he should not be doing it and nevertheless ploughed on? The answer was "no", despite some very powerful advocacy by Mr Levey, the Applicant had not shown on a cold and clinical analysis of the facts that that was his state of mind. The Tribunal had to consider the First Respondent's evidence and the way in which he gave it. He did so in a measured manner. He accepted that what he had done was wrong and showed insight. He now understood fully the implications of what he did, why he was wrong and why it will not happen again.

21.10 Mr Barnett was asked by the Solicitor Member to consider his client's position in February-March 2013. By that stage everything contemplated in the sample letter dated 18 September 2012 to a TPB had been done. The insurance policy had been put in place by payment made to the insurer at the insurer's direction. When it came to the COT fee of $210,000, which was entirely separate, what did the First Respondent know and do about that? Mr Barnett, having reviewed all the documents, concluded that there was no evidence about what the First Respondent thought about the COT fee. The Solicitor Member questioned whether the First Respondent believed payment of the COT fee was necessary to keep the transaction up in the air, thus enabling the loans. Mr Barnett submitted that if this was the only evidence, bearing in mind the First Respondent's consistent account of the transaction, it would be a fair inference that the Second Respondent had told the First Respondent that there were some COT fees to be paid as part and parcel of the transaction. The First Respondent did not have to prove that that was right; the Tribunal had to be sure that that was wrong. Mr Barnett agreed that the First Respondent was in a position to take a view of the payment before the money was physically transferred. The actual evidence was that, at the time, he thought that the payment was necessary in order to complete the transaction. This was his evidence and the Applicant had to negate that evidence in order to prove that the First Respondent knew that the COT fee should not be paid.

22. General Submissions by the Second Respondent

The Second Respondent's general submissions were made at the end of his evidence and are set out in full at paragraph 16.33 above.

23. **Allegation 1.1: The First and/or Second Respondent used, or permitted the use of, the client account of the Firm, inappropriately by utilising it as a banking facility for a client contrary to Rule 14.5 AR 2011 and Principles 2 and 6 SCC**

Allegation 1.2: The First and/or Second Respondent acted in breach of an undertaking provided to third parties in breach of Principles 2 and 6 and Outcome 11.2 SCC

Allegation 1.3: The First and/or Second Respondent authorised payments to be made out of client account when not permitted to do so in breach of Rule 20 AR 2011

Allegation 1.4: The First and/or Second Respondent failed to return to third parties monies paid in breach of the undertaking provided to those third parties in breach of Rule 14.3 AR 2011 and Principles 2 and 6 SCC

Allegation 1.5: The First and/or Second Respondent acted in transactions which bore the hallmarks of money laundering and/or fraudulent financial arrangements in breach of Principles 2 and 6 and Outcome 7.5 SCC

23.1 Being mindful of the ease of reference of the parties and others reading this Judgment, it was convenient to take allegations 1.1 to 1.5 together. However, each allegation was considered by the Tribunal independently against the totality of the evidence against each Respondent.

23.2 The underlying facts and alleged breaches of Rules, Principles, and Outcomes pleaded in allegations 1.1 to 1.5 were admitted by each Respondent save as stated below. The Tribunal found the admitted allegations proved beyond reasonable doubt on those admissions and on the facts supported by the oral and written evidence in its entirety.

23.3 Each Respondent denied that the underlying facts admitted in respect allegations 1.1, 1.2, 1.4 and 1.5 gave rise to a breach of Principle 2, namely the mandatory requirement to act with integrity. Breach of the Principle 2 was not alleged in relation to allegation 1.3. The Tribunal provides its reasons for its findings in respect of the allegations of breach of Principle 2 below, with its findings on dishonesty and recklessness.

24. **Allegation 1.6: In relation to Allegations 1.1 to 1.5 (as amended) it was alleged that the First and/or Second Respondent acted dishonestly, although it was not necessary to prove dishonesty to prove the allegations themselves**

Allegation 1.7: In the alternative, the First and/or Second Respondent acted recklessly

24.1 Each Respondent denied the allegation of dishonesty attached to each of allegations 1.1 to 1.5 (as amended). The transaction was presented to the Respondents (the First Respondent via the Second Respondent until 20 April 2012 when he met the clients for the first time. The Respondents were simply to participate as solicitors running an escrow arrangement. The outcome for the TPB in terms of whether or not they received the loans for which they had paid deposits was irrelevant for the purpose of these proceedings. The Tribunal was required to look at the Respondents' respective obligations on behalf of the Firm to the TPB. The Tribunal recognised, however, that the fact of non-receipt of the loans by the TPB may have influenced the First Respondent's thinking at the time when he was deciding whether or not to proceed with the transaction. This possibility was evidenced by the First Respondent's assertion that he acted as he did to keep the transaction going. The Respondents were not dishonest in receiving the funds into the Firm's client account. They wrongly (as they admitted and as the Tribunal had found) permitted that account to be used as a banking facility, but that was not of itself dishonest. The serious issues did not arise until the monies began to be paid away in November 2011.

24.2 According to the evidence, this was a single transaction comprising a number of discrete steps. There was no evidence that the Respondents knew that the scheme was fraudulent from the start or that they were conscious parties to it. The Tribunal could and did infer from the available evidence that SI and/or IM were from the outset conscious parties to a fraudulent scheme. The Tribunal was supported in that conclusion by the decision of the clients to choose this Firm as participants in a significant scheme purportedly involving loans of very large sums of money. The Firm was by any definition small, with one sole practitioner partner and one consultant working separately from their individual home offices (not unusual nowadays) with no back-up support. The Tribunal recognised that the Second Respondent had acted for SI over a number of years and knew him well, which could explain why the Firm was instructed. The Tribunal also recognised that the Firm was very specialised, stating as it did in the footer of its emails that it was a "niche corporate and commercial legal practice providing friendly, professional and innovative advice to investors, entrepreneurs and businesses". The Tribunal could see how such a statement might be attractive to individuals such as SI and IM. At first sight as JJ, the Firm's Bank Manager identified at an early stage, this Firm was not an obvious choice on this transaction.

24.3 The Tribunal found it helpful to work through the chronology as suggested by Mr Levey. In this case dates were important. On 17 November 2011 the payment of €381,285.76 (or $506,000 as it was also described) was made by the First Respondent to the Russian bank account held in the name of PP for the documented purpose of procuring the insurance policy. This was where the trouble on the transaction began. The Tribunal considered whether the circumstances of this payment, the underlying facts having been admitted by both Respondents, was evidence of dishonesty (and applied the same approach to subsequent payments). Applying the well-established and accepted Twinsectra test, the Tribunal asked itself whether by the ordinary standards of reasonable and honest people the payment was dishonest. The payment was not made direct to a bank account in the name of S, or to an account that could be identified explicitly or implicitly by, say, an objective bystander as belonging to S, the purported insurance policy provider. The payment was made by the First Respondent, the only person with authority to make payments from the Firm's client account, to

the Russian bank account in the name of PP on instructions, apparently from S contained in an email to the Second Respondent dated 16 November 2011. The evidence was that the First Respondent did not see this email himself at the time but followed instructions from the Second Respondent as to where to make the payment. Reasonable and honest people would not consider this first material payment at the commencement of the transaction to be dishonest, taking at face value the email instructions received by the Second Respondent and relayed by him for the purposes of processing the payment to the First Respondent. The payment was significant in that it should have triggered prompt release of the funds of $35.7m by H to the Firm's client account for onward distribution to the TPB. This was the point at which the amount of work done by the Firm would increase as funds were distributed and further documentation in support, including security documents, was produced by the Firm, the cost of which was to be charged to TPB.

24.4 By December 2011 - January 2012, $35.7m had not been received. The Firm was in email correspondence with JJ, the Firm's corporate bank manager concerning the details of the transaction, and in particular the supporting documentation sent primarily by El Giovanni on behalf of the lender H; he was said to be H's Milan branch manager with decision-making powers. JJ raised a query with the Second Respondent relatively early in the transaction on 23 August 2011 asking "how well do you know your client?". This was prescient. JJ warned (as the Tribunal found) that, without more detailed information into the background and provenance of the client, the transaction would be treated as one of the "numerous funny money transactions" seen by the Bank. The First Respondent replied that he had acted for the client for over 3 years and would pass the email on for further information. The Tribunal found that at this very early stage JJ was giving the Second Respondent a gentle, but firm, warning about how to manage what the Bank saw even then as a clear risk. The Tribunal found that the Second Respondent was being open with the Bank in August 2011 which tended to support the Tribunal's view that he was not a party to the fraudulent transaction from the outset. There was limited evidence of correspondence between the Firm and its Bank in relation to this transaction until late November 2011 after the first payment had been made.

24.5 By email to both Respondents dated 23 November 2011 at 09:25 JJ observed that the size of the proposed transaction was significantly higher than the Bank would have expected to see in the ordinary course of business and asked for confirmation that the Respondents had undertaken to their entire satisfaction all the necessary governance requirements as to the provenance of the funds and final destination. The First Respondent sent an email to the Second Respondent at 09:51 the same day expressing his view that they needed a "belt 'n braces" approach, not only for the Bank but also for their own anti-money laundering procedures. This too was prescient. The First Respondent asked the Second Respondent what information he had to date, how it could be verified, and who was in a position to give them the required information/comfort. This was evidence that the First Respondent had, at the very least, the beginnings of doubt, and the warning from the Bank was expressed in sufficiently plain and formal terms for the First Respondent to understand and be sufficiently concerned to ask direct questions of the Second Respondent. There was no documentary evidence of the Second Respondent's response or any response from the clients. The Tribunal found that there could be no doubt about what the Bank was asking and why. The Tribunal noted that the Second Respondent copied the First

Respondent into his reply to the Bank, expressing reassurance that the client, IDL, had MB as its sole director- shareholder, and that the Second Respondent had acted for him for the previous 3 to 4 years and was happy with his details. Reference was made to the funds being a loan from H (said to be based in Milan, Italy). This was an example of the sort of reassurance provided by the clients to which the First Respondent referred in his evidence.

24.6 By 2 December 2011 the Bank was expressing its "grave reservations about the transaction" by email dated 17:29 to the Second Respondent, copied to the First Respondent. The Bank advocated "extreme caution on dealings involving Russia". The Tribunal found that the warning bells being run by JJ were becoming louder and clearer, and still there was no sign of the $35.7m in the Firm's client account. The correspondence from the Bank continued in a similar vein on 5 December 2011, with both Respondents included in the email distribution, and into January 2012. On 5 December 2011, JJ specifically asked the question why, given the complexity and size of the transaction the Firm had been specifically picked. He observed that the size of the transaction was "abnormally large compared with your ordinary course of business". The Second Respondent replied, reporting on comments received from his client and copying in the First Respondent: "Hilton Legal was chosen because Robert Schofield has acted for [IDL] since its formation. We prefer to stay with individuals we know and trust."

24.7 The most powerful, strong, and persuasive warning came from JJ by email addressed to both Respondents on 18 January 2012. It was important to remember that the $35.7m had still not been received by this date. The concerns that JJ had had from the outset had "just been confirmed". He referred to the contents of the purported Citibank transfer slip and described the email that came with it as "bizarre" and "unintelligible". He pointed out a number of spurious references, giving as an example the spelling of the word dollars as "DOLLAS$". Significantly he invited the Respondents to enter the words "MT103/23" referred to in the transfer slip into Google which would identify the reference as a code commonly used in scam transactions. The First Respondent confirmed in evidence that he had carried out the search with the same result as the Bank. The email was followed by another email from the Bank on the same day, providing further evidence of a scam following a search against a name given in the transfer slip. The Bank confirmed, bluntly, that if the $35.7m arrived in the Firm's account, given the facts gleaned the Bank would have no option but to return the funds to the remitter. The Firm was advised to close the Dollar account and open a new account to protect its position. The Bank also questioned a payment in and out to IDL for $36,000 and requested details of the background to that transaction. The Tribunal found that the Bank was making its concerns about the transaction crystal clear to both Respondents. On 19 January 2012 the Bank informed the Second Respondent that the document had been reviewed by the Bank's International Manager who had opined that it was a fraudulent spam document, and asked whether any funds had been remitted to "these people by you or your client". By this date any reasonably competent solicitor paying attention to the warnings from its Bank would have concluded that the whole scheme was very likely to be a scam. The Bank had no reason to give the Respondents such warnings without believing them to be correct.

24.8 It was clear from the papers that the First Respondent heeded the warning from the Bank. On 26 January 2012 he sent an email to the Second Respondent prompted by an instruction from MB asking that the Firm request its Bank to make contact urgently with Citibank and including a warning that if the Firm's Bank was not prepared to do that, the Firm's clients would have no option but to consider alternative arrangements to facilitate the process. The Second Respondent asked for the First Respondent's opinion, which he gave in no uncertain terms. He instructed the Second Respondent to send the email to the Bank and then to call JJ to discuss. Crucially, he said that he would be:

> "relatively relaxed if you/we had done a proper MLR check on the clients/sources of funds etc, but we haven't… that said, if we receive the cash, sit on it until Lloyds confirm it is not 'dirty', then move on as instructed… I appreciate that you won't want to lose the client/transaction, but equally, we cannot afford to be involved with any kind of scam."

This was evidence of the First Respondent taking a proper approach to the situation. Unfortunately, having identified what should be done, the First Respondent did not follow his own advice. His evidence was that he was persuaded by SI and IM that all his own concerns and those raised by the Bank could be swept aside. It was significant that the First Respondent knew very little about SI and IM and others connected with the transaction other than that the Second Respondent said that they were genuine. Of course, the Second Respondent was in a different position because he knew that SI had been struck off as a Chartered Accountant for fraud. He confirmed in his evidence that he did not pass this information on to the First Respondent.

24.9 At this point the game changed again. Instead of the transaction being for $35.7m, it increased to a composite transaction of $110m with the arrival of the new TPB and its Parisian lawyers with whom the First Respondent dealt direct. As at 26 January 2012 the First Respondent was thinking in the right way and was mindful of his professional obligations. He knew very clearly and expressed what he, the Second Respondent and the Firm ought to be doing. His only explanation for why subsequent events played out as they did was that he spoke to SI and IM and was prepared to take their word over the information being given to him by the Firm's Bank. This was in part a reflection of what he had been told by the clients, namely that the Bank was covering its own back. The Tribunal considered that this was not an unreasonable or wrong approach for the Bank to take, particularly as the document prompting the "over caution" was the Citibank transfer slip to trigger the transfer of $35.7m to the Firm's dollar account. The Bank was also trying to protect the Firm, its customer, and was taking its professional obligations seriously. The Bank was to be applauded for that approach. As the First Respondent himself said in evidence, and with hindsight, at that point he should have walked away from the transaction.

24.10 From this point forward, and in relation to the First Respondent in particular (the Second Respondent had greater knowledge of the transaction throughout), he had to be very cautious before proceeding. By the end of January 2012 he knew that there was a risk of fraud as explained by the Bank supported by evidence from Google and he had to be very, very careful. There were approximately 40 emails in the bundle which were not copied to the First Respondent, and these primarily moved the

transaction along in an unexceptional way. In the view of the Tribunal, the emails that he did not see did not contain unexpected revelations which would have caused the First Respondent to significantly alter his approach. The Tribunal took the view that the Respondents were in effectively the same factual position in respect of the allegation of dishonesty as at 26 January 2012 and drew no significant distinction between them. Both Respondents were on notice following receipt of the correspondence from the Bank that this transaction was potentially fraudulent. The Second Respondent's view of subsequent events should have been coloured by his knowledge of SI's strike off for fraud and he should have be more sceptical about what he was being told by SI and IM than the First Respondent had cause to be up to 26 January 2012. He should have passed the information about SI on to the First Respondent at the outset so that the First Respondent could make an informed decision about the level of his and his Firm's involvement, if any. However, the Tribunal would not draw inferences as to what the First Respondent might have done differently if the information about SI had been provided to him. The Tribunal had to consider the Respondents' respective state of mind at the time based on what they knew at that point. As at 26 January 2012 the Tribunal found that neither Respondent had acted dishonestly by the ordinary standards of reasonable and honest people.

24.11 The next crucial point in the chronology was 3 May 2012 by which date the First Respondent had drafted amendments to the letter of undertaking to be sent to TPB. By this date both Respondents knew exactly how they were supposed to be handling the TPB deposits in terms of holding the money and making payments out in accordance with the contents of the undertaking. The Tribunal found that the payments out should have been made solely and directly to insurers in accordance with the Respondents' professional obligations as set out in the May 2012 TPB letter. Both Respondents knew this. Receipt of the letter of complaint from Dr S was another clanging warning bell, this time from a TPB who had deposited funds in the Firm's client account in expectation, subject to successful completion of due diligence, of receipt of £5m of loan monies. Dr S did not tell the Respondents anything that they did not already know. The Tribunal observed that the First Respondent's reply to Dr S, dated 14 May 2012, into which the Second Respondent was copied might be viewed as disingenuous (although it was noted that the matter was reported to the Firm's professional indemnity insurers which might explain the contents of the response). The First Respondent stated at point 3 of that letter that the Respondents did not believe that the paperwork was fraudulent and that no "advance fee fraud" or fraud of any nature was being conducted. This could not have been his state of mind at the time, bearing in mind the warnings from the Bank and the non-receipt by the Firm of the $35.7m (by now rolled up into the proposed new transaction of $110m, although this was not explained by the First Respondent to Dr S). The First Respondent reassured Dr S that he took his duty of care very seriously and would be the "first person to be alert to any suggestion of money laundering or suspicious transactions" which he did not believe to be the case. Further, he asserted that the deposit monies had been utilised to secure the insurance policy on behalf of Dr S and the other borrowers to explain why he could not return Dr S's deposit (of £100,000) to him. Monies had been used for purposes other than securing the insurance policy albeit that it could not be said that Dr S's specific deposit had been used for other purposes – that £100,000 was merely part of the overall pot of TPB deposits. Bearing in mind the way in which the allegations were pleaded, all that the Tribunal would say was that the contents of the letter to Dr S were notable by the omissions.

24.12 The next step in the chronology was the search for BT. The chain of emails from in June and July 2012 evidencing the attempts to make contact with BT, the purported Chief Financial Officer of N Bank who had come on to the scene to replace Citibank in relation to the transfer of $110m to the Firm, were significant. The Respondents were given clear advice by their Bank to make enquiries to satisfy themselves about the BT's identity and status within N, including confirmation that he had authority to act on this type of transaction. The Second Respondent explained the situation to El Giovanni (purportedly a manager of H) by email dated 8 June 2012. The Second Respondent was under no illusions as to what was required. The First Respondent was alerted by the Bank to a potential problem in tracing BT by email from JJ direct to him dated 11 July 2012. JJ noted that he had tried to ring the telephone number provided for BT but that it was dead. The evidence established that the Respondents made what could only be described as half-hearted attempts to track down BT and then abandoned the enterprise whilst continuing with the transaction for $110m. The *bona fides* of BT was never resolved, perhaps unsurprisingly as events played out. This was another warning that both Respondents failed to heed.

24.13 On 28 June 2012 the N Bank proof of funds for $110m was received. It was signed by BT as the Chief Financial Officer of N. On 11 July 2012 the Firm's Bank informed the First Respondent, copied to the Second Respondent that the International Manager was yet again involved. JJ sounded a warning in relation to the Firm's due diligence and pointed out that the Bank was unable to initiate contact with N as there was no recognised trade transaction between Lloyds and N and the reason for the engagement requested via the Firm was unclear. Oddities and discrepancies in the proof of funds document were highlighted by JJ, reiterating the Banks' concerns raised in 2011 and January 2012. The First Respondent replied to the Bank the same day, querying the its position and expressing his opinion that:

> "what we cannot afford is any delay in clearance of the funds or other delay from a banking perspective. Please confirm that this will not be the case should bank to bank contacts not be provided."

The very next day the First Respondent authorised and made payment of $520,000 to AAV in Italy purportedly in respect of the S policy to secure the $110m deal. Two days earlier he had paid $12,600 to another Italian account (NA) in respect of H's fees. The First Respondent's case was that the payment purportedly to S was made on instructions from the Firm's client, albeit to AAV's bank account to which he had not previously made payments (the last payment for the policy was made to PP's Russian account). At first blush, this was the same set of circumstances as when the first payment was made. However by this point, the First Respondent had considerably more information than when he made the payment to PP in November 2011, in particular he was aware of the concerns of the Firm's Bank and had seen evidence that the transaction was a potential scam or fraud, he had redrafted the letter to TPB so was crystal clear about the terms on which payments out were to be made, the $35.7m had never been received in spite of the fact that the insurance policy had apparently been secured in November 2011, and neither H nor BT had been identified or contacted. Instructions to make the payment to AAV were received by the Second Respondent from ML on 9 May 2012. Azienda Agricola Vitivinicola did not look like the name of an insurance company (and the evidence was that it was a vineyard). The Respondents failed to make any meaningful enquiries concerning BT's identity or the

bona fides of Nordea Bank. With this background the Tribunal was led to the conclusion that Mr Levey's submissions were correct and that the behaviour of both Respondents in making the payments to AAV in July 2012 was dishonest by the ordinary standards of reasonable and honest people. The Tribunal also concluded that the Respondents by those same standards knew that what they were doing was dishonest. To expand on that conclusion, both Respondents turned their eyes away from facts staring them in the face that they did not want to know or that it was inconvenient for them to see, their focus being on completing the deal involving the new TPB (which the First Respondent was leading and where he was in direct contact with both the TPB and their lawyers). The documents that the First Respondent said in his evidence were "*bona fides*" were exactly the same documents that JJ and the Firm's Bank had warned him about. His evidence was that he was "overwhelmed" at the meeting at which the TPB said that the money for the insurance policy had to be sent to S that same day. The only benefit that the Respondents derived from their actions was that they kept the $110m transaction alive, in the forlorn hope that it might complete in spite of the stark and obvious evidence to the contrary. The Tribunal recognised that the Respondents did not benefit from receipt of funds for their own use on completion. Potential benefits in kind to the Respondents and the Firm secured by remaining in the loop were that: if the transaction completed successfully monies would not have to be repaid to the TPB (getting over the obstacle of the absence from client account of the monies already paid out in anticipation of receipt of the loan funds); the Firm would not have to continue with the claim against its insurance policy in respect of Dr S and potentially others as time progressed; and, there was some prospect of fees for future work (part of what the First Respondent referred to in his evidence as "the golden carrot"). The Respondents' strategy by this point could be summarised as "we are focused on completing this deal, justifying our actions to ourselves on the basis that the TPB wants to complete the deal".

24.14 The Tribunal considered the following documents to be very important. On 13 July 2012 the First Respondent sent an email to SI, copied to the Second Respondent making it clear that the Firm had not undertaken any due diligence on either S or H and for anti-money laundering purposes had exclusively relied on the wording in the proof of funds document and pre-advice received from N Bank. He referred to the "grave reservations" expressed by the Firm's own Bank regarding the authenticity of the documents and the concerns having been relayed by both Respondents to SI. The email concluded with the First Respondent recording that "as instructed, we have sent $520,000 to [S] this morning" which the First Respondent said should facilitate the release of the $110m loan monies from H into the Firm's client account. This was clear evidence of the First Respondent's state of mind at the time, namely that he knew that the Firm's Bank had grave reservations and he was expressing his own concerns to the client. However the payment had been made and he was expecting receipt of $110m fairly quickly afterwards. On 27 August 2012, with the subject line "Transfers Requested" the First Respondent informed the Second Respondent by email that he had "not made any payments" and instructed the Second Respondent to set up a conference call with SI and IM. The Second Respondent acted on this instruction on 28 August 2012, suggesting a conference call followed by a meeting. On 29 August 2012 by email from the First Respondent to the Second Respondent, the former made his doubts and concerns about the transaction clear. The email started with the First Respondent asking the question "where are the loan monies these guarantees have 'paid for'?!" He said in plain terms "[SI] et al are using monies,

in my opinion, for their own use, which monies have been sent under the auspices of buying the insurance guarantees". He referred to provision of evidence from the clients to demonstrate that monies were being retained or better still "in order to avoid any allegations of misappropriation of funds" that LCH should open a stand-alone deposit account into which the monies were paid, with the Respondents having very limited access to those accounts. On 30 August 2012 the Second Respondent sent an email to IM, SI and MB, copied to the First Respondent (the contents having been discussed with and agreed by him). The email referred to the Respondents having met the previous evening to discuss the current position. They referred to the numerous phone calls being received each day from potential borrowers who had deposited funds and the fact that it was becoming increasingly more difficult to answer their questions. The fact that the loan monies had not yet been remitted by the lender to the Firm was highlighted. The view was expressed that the Respondents were "both reluctant" in letting funds leave client account which a TPB believed were held for a specific purpose. There was reference to a letter having been sent to that borrower on 26 July 2012. The risk of deposit makers making allegations against the Firm in respect of their having released deposit monies to LCH without consent was identified. The Respondents expressed their desire to re-emphasise their position to all concerned by making it clear that they were not taking an active role pending receipt of the loan funds. It was indicated that the initial correspondence from Dr S and the reply from the Firm was unlikely to be the end of that matter. A meeting in Milan was proposed, to be attended by both the insurance company and the lender to resolve the position once and for all, albeit that the Respondents did not consider that it was appropriate for them to be present. A request was made to re-emphasise to the individual TPB that money deposited was effectively non-refundable save to the extent that it would be repaid at the end of the project (10 years hence). The email made it clear that the deposited monies had been used. The effect of the response from SI, copied to others, approximately 2 hours later was to put them back down in their place. The limits of the Firm's role in the transaction were made clear. The Tribunal's reading of that response was that the Respondent should do what they were told by the clients and keep quiet. The Tribunal's conclusion was that the email from the First Respondent to the Second Respondent on 29 August 2012 stating his belief that SI and others were using the deposits for their own use was a watershed in the chronology. Up to this point, and being mindful of the standard of proof the Tribunal had given both Respondents the benefit of the doubt. At this point the position changed.

24.15 The next critical event was that on 5 November 2012 a further $525,000 was paid by the First Respondent out of the deposited TPB funds to the Italian AAV account to secure the insurance policy from S. The evidence about this payment was largely oral. The Second Respondent said in evidence that he was satisfied that it was a proper payment, there had been a further meeting with the clients and the transaction was still happening. They had to pay the second tranche of the insurance premium in order to complete. The clients told him that SI had gone to Milan to meet with El Giovanni. The First Respondent accepted in his evidence that the paperwork was "appalling" and "damning" but he had clear clients' instructions to make the payment. He referred to the dangling of the "golden carrot". He had done no due diligence on the identity of AAV or S insurance company.

24.16 The Tribunal found that after 29 August 2012 the Respondents should not have made any further payments out of the monies deposited by the TPB. The Respondents had not satisfied themselves of the existence or identity of N's Chief Financial Officer BT and on that basis they had no satisfactory evidence that funds of $110m or any other amount were going to be made available to the TPB whose monies had been entrusted to the Respondents to be held for a specific purpose of which the Respondents were well aware. No further payments to procure an insurance guarantee policy should have been made unless both Respondents were in no doubt that the promised funds were available. The factual position was that there had been no demonstration that funds for the loan were available because all the documents provided had been said by the Firm's bank to be almost certainly fraudulent. The Tribunal therefore found that by the ordinary standards of reasonable and honest people both Respondents were dishonest in respect of their involvement in the payment out of $525,000 to AAV on 5 November 2012 as alleged. By those same standards both Respondents knew that what they were doing was dishonest because they had received warnings that the transaction was fraudulent from the Firm's Bank over a period of time and all the evidence, in particular non-receipt of $35.7m and then the promised $110m in about mid-late July 2012 persuasively suggested that the Bank's opinion (independently verified by the results of Google searches) was correct. The view expressed by the First Respondent to the Second Respondent on 29 August 2012 was that the Firm's clients were using the monies for their own use. It was not clear to the Tribunal from the evidence before it what had happened between 13 July 2012 and 29 August 2012 save that £110m had not arrived. The Tribunal did not accept the First Respondent's evidence that he relied on the reassurances given to him by his clients following the visit to Milan. Both Respondents described the paperwork as "damning" and it was difficult for the Tribunal to see any means by which reassurances from clients who the First Respondent believed to be experienced in this field and the Second Respondent knew had a blemished past (SI only) could get over that particular hurdle. The paperwork was the only corroborative evidence that either Respondent had to go on. The Second Respondent's view of the transaction should have been coloured throughout by his knowledge of SI's position as a Chartered Accountant struck off in 2004 for fraud.

24.17 On 14 February 2013 the Respondents were responsible for payment of $210,000 to AAV for the purported COT fee. This was yet another hurdle to be overcome before the funds could be released to the Firm. Bearing in mind what the Tribunal had said above, it must follow that this payment was also dishonest on both the objective and subjective limbs of the Twinsectra test. The Tribunal accepted in their entirety Mr Levey's submissions in relation to this aspect of the transaction. Nowhere in the 2012 letter drafted by the First Respondent was there authority for the Respondents to make payment out of the TPB deposits to fund someone else's bank charges, whether those charges were genuine or otherwise. In this case the charges were not genuine but merely part of the fraud and the money was paid away, almost as if the fraudsters were squeezing the last drop out of the fruit before moving on. It was inconceivable to the Tribunal that the Respondents could have for one moment considered that they were complying with their professional obligations to the TPB when making that payment in the context of what they knew about the transaction at that time. The explanation given to the Respondents in emails to justify this payment stretched all credibility and the Respondents could not have believed that the payment fell within the limitations of the undertaking sent to TPB, the contents of which were well known

to them as was clear from the email sent by the Respondents to SI on 30 August 2012. However, they went ahead regardless.

24.18 Pulling the Tribunal's findings together, they were as follows:

- **Allegation 1.1** - permitting the use of one's client account as a banking facility. The Tribunal found the allegation of breach of Principle 2, acting with lack of integrity, which was denied by both Respondents, not proved beyond reasonable doubt. Permitting the use of one's client account as a banking facility for a client in these fact-specific circumstances could not be said to lack integrity. For the avoidance of doubt, the Tribunal applied throughout its reasoning the definition of integrity as set out in Hoodless and Blackwell, and applied in Vukelic, and rejected Mr Barnett's submissions in respect of the alternative definition in the case of May. As Mr Barnett correctly identified there was little between the parties on this point, hence the Tribunal's decision. The Tribunal did not find the Respondents to have been dishonest in respect of allegation 1.1 within the test in Twinsectra. The Tribunal considered the authority of Constantinides to which it was referred by Mr Levey for the definition of recklessness. The Respondents were wrong to permit client account to be used as a banking facility for their clients but the Tribunal did not consider that the evidence justified going as far as to find that conduct to have been reckless in these circumstances beyond reasonable doubt. On the Applicant's pleaded case, the particulars did not push home the point that use of the client account as a banking facility was reckless.

- **Allegation 1.2** - acting in breach of undertakings to TPB. For the reasons stated above, the Tribunal found the allegation of breach of Principle 2 in respect of, acting with lack of integrity, which was denied by both Respondents, proved beyond reasonable doubt, from 29 August 2012 Further the Tribunal found beyond reasonable doubt that both Respondents acted dishonestly from that same date, applying the test in Twinsectra (here and below). Recklessness was pleaded in the alternative to dishonesty so it was unnecessary for the Tribunal to make any finding in that regard.

- **Allegation 1.3** - authorised payments from client account when not permitted to do so. For the reasons stated above, the Tribunal found the allegation that both Respondents acted dishonestly proved beyond reasonable doubt, the First Respondent from 29 August 2012 when he re-drafted the letter to TPB and became fully aware of the limitations on making payments out, and the Second Respondent throughout the transaction as he was aware from the start of the basis upon which monies were being held by the Firm. Recklessness was pleaded in the alternative to dishonesty so it was unnecessary for the Tribunal to make any finding in that regard. There was no allegation of breach of Principle 2 at allegation 1.3.

- **Allegation 1.4** – failed to return third party monies paid in breach of undertaking. For the reasons stated above, the Tribunal found the allegation of breach of Principle 2, acting with lack of integrity, which was denied by both Respondents, proved beyond reasonable doubt. Further the Tribunal found beyond reasonable doubt that both Respondents acted dishonestly from 29 August 2012. Recklessness was pleaded in the alternative to dishonesty so it was unnecessary

for the Tribunal to make any finding in that regard. It was worth noting here that the Firm could not return the monies to the TPB because they had been paid away.

- **Allegation 1.5** – hallmarks of money laundering and/or fraudulent financial arrangements. For the reasons stated above, the Tribunal found the allegation of breach of Principle 2, acting with lack of integrity, which was denied by both Respondents, proved beyond reasonable doubt, from 29 August 2012. Further, the Tribunal found beyond reasonable doubt that both Respondents acted dishonestly from that same date. Recklessness was pleaded in the alternative to dishonesty so it was unnecessary for the Tribunal to make any finding in that regard.

Previous Disciplinary Matters

25. First Respondent

25.1 None.

26. Second Respondent

26.1 The Second Respondent previously appeared before the Tribunal under case number 10801-2011 on 18 September 2013. On that occasion he was ordered to pay a fine of £6,000 and costs of £11,146.23. The allegations against the Second Respondent were that he failed to comply with the terms of an undertaking promptly or at all, and that by his actions he compromised or impaired or acted in a way which was likely to have compromised or impaired his independence or integrity and behaved in a way that was likely to have diminished the trust the public placed in him as a solicitor or the legal profession. The allegations were ultimately admitted and found proved.

Mitigation

27. Mr Barnett was given an opportunity by the Tribunal to take instructions in private before commencing his submissions on mitigation. He handed the Tribunal a bundle of references on behalf of his client which he invited the Tribunal to consider when deciding sanction. Mindful of the Tribunal's decision, and case law, Mr Barnett indicated that there was very little that he could say in the circumstances. The First Respondent's case was set out in his witness statement. Mr Barnett invited the Tribunal to review the parts of that witness statement dealing with private mitigation before determining sanction. There was nothing that Mr Barnett felt he could properly add to the witness statement. The First Respondent invited the Tribunal to consider suspension rather than striking off. This was a proper submission for Mr Barnett to make on his client's behalf and he made it in that way, and did not propose to expand upon it. In the circumstances that was how Mr Barnett invited the Tribunal to approach sanction. Whether the sanction was suspension or striking off, the First Respondent had a hitherto exemplary record as a solicitor and the result of sanction would be draconian on him and others. The Chairman invited Mr Barnett to address the Tribunal on any exceptional circumstances that the First Respondent wished the Tribunal to consider. Mr Barnett said that, doing the best that he could for his client, he could do nothing more than draw the Tribunal's attention to the witness statement.

28. There was no oral mitigation from or on behalf of the Second Respondent who was not in attendance at the resumed hearing. However the Tribunal considered his witness statement for the purposes of identifying specific points to be taken into account.

Sanction

29. 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. It also had in mind the recent decision in Solicitors Regulation Authority v Uddin [2014] EWHC 4553 (Admin), [35], namely, that the overriding objective of sanction is the need to maintain public confidence in the integrity of the profession. For the avoidance of doubt, the Tribunal considered the mitigation contained in the First Respondent's witness statement and the references handed up on his behalf. The Tribunal also reviewed the Second Respondent's Witness Statement. Each Respondent also provided a statement of means.

30. The admitted allegations and those denied but found proved beyond reasonable doubt by the Tribunal were numerous and serious in nature, and included multiple findings of lack of integrity and dishonesty. The fact that there were no previous findings by the Tribunal against the First Respondent was taken into account as were the submissions made by Mr Barnett on his behalf. The serious nature of the allegations and the duties referred to at paragraph 29 above caused the Tribunal to discount the possible sanctions below the level of suspension, namely "no order", reprimand and fine. Mr Barnett invited the Tribunal to consider suspension as the appropriate and proportionate sanction. The Tribunal heard what was said by Mr Barnett and reviewed the First Respondent's witness statement in that light, having expressly invited Mr Barnett to put forward any exceptional circumstances to support sanction other than striking off. The Tribunal did what was asked of it and concluded that the First Respondent's name must be struck off the Roll of Solicitors. The Tribunal was unable to identify on the material before it any exceptional circumstances justifying the sanction of suspension or mitigating against strike off. 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 justifiable sanction that the Tribunal could impose on the First Respondent. For the avoidance of doubt, if the Tribunal had not found the First Respondent to have behaved dishonestly, it would have found that the he had behaved recklessly. The sanction imposed on that basis (or indeed if the Tribunal had found in addition to the admitted breaches that the First Respondent had lacked integrity without finding dishonesty or recklessness) would potentially have been the same, bearing in mind the seriousness of the misconduct looked at in the round.

31. In relation to the Second Respondent, the Tribunal referred to its reasons at paragraph 30 above which applied equally to him. In addition, the Second Respondent had previously appeared before the Tribunal in September 2013. That appearance related

to events that occurred between July 2009 and July 2010. The main allegation in that case was failure to comply with the terms of an undertaking promptly or at all. The Tribunal was mindful that on this occasion separate allegations had been brought against the Second Respondent alone under case number 11322-2014 which had been admitted and found proved. Those allegations too involved breach of undertakings, another serious matter. Bearing in mind that the Second Respondent absented himself from the resumed hearing in November and did not mitigate in person or via a legal representative, the Tribunal noted that in his witness statement in the other current case he explained that there was no reason for him to comply with the undertaking because the person in whose favour it was given had security for the money that it covered and therefore the exercise was academic, leaving him with no reason to comply with it. There was evidence before the Tribunal that the individual concerned remained out of pocket following continued non-compliance by the Second Respondent (the Respondent in proceedings 11322-2014). These facts compounded the Second Respondent's misconduct in respect of the matters currently before the Tribunal albeit that they occurred in 2004. The Tribunal was unable to identify on the material before it any exceptional circumstances justifying the sanction of suspension or mitigating against strike off. 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 justifiable sanction that the Tribunal could impose on the Second Respondent. For the avoidance of doubt, if the Tribunal had not found the Second Respondent to have behaved dishonestly, it would have found that the he had behaved recklessly. The sanction imposed on that basis (or indeed if the Tribunal had found in addition to the admitted breaches that the Second Respondent had lacked integrity without finding dishonesty or recklessness) would potentially have been the same, bearing in mind the seriousness of the misconduct looked at in the round. Further, if the Second Respondent had appeared before the Tribunal on case number 11322-2014 alone the Tribunal would have been minded to strike him off the Roll in view of the circumstances of the underlying facts and his previous appearance. It was a serious breach of a solicitor's professional obligations not to comply with undertakings hitting at the heart of the smooth running and integrity of the conveyancing process.

Costs

32. Mr Levey made an application for costs on behalf of the Applicant, totalling £46,572.48. After hearing Mr Barnett's submissions (see below) he submitted that the bottom line figure claimed for costs was entirely reasonable and appropriate for a case of this length and complexity. He indicated that the claim should be reduced by £250 to allow for a change in travel arrangements. Extra costs were incurred as a result of the adjournment when the case went part heard. It took Mr Levey time to re-prepare the case. Without making any criticism, the reason for the adjournment after 1½ days of hearing was because Mr Barnett was unavailable on the third listed day. If the case had not been adjourned then, the evidence and submissions at least would have been completed in the available time. If the case had not been completed then, Mr Levey would not have had to do any further work because the prosecution case would have been closed. The Applicant could not therefore be criticised for the fact that additional costs had been incurred.

33. In relation to apportionment of costs, the Applicant sought what it considered to be appropriate, namely a joint and several order. The costs had been incurred by the profession in pursuit of disciplinary proceedings against both Respondents. If the costs were apportioned, hopefully 50% of the same would be recovered from the First Respondent but the profession would have to bear the costs of the prosecution of the Second Respondent. This could not be the right and apportionment was wrong in principle. Further it would be wrong in any event to apportion the costs on a 50/50 basis because the bulk of the costs incurred were as against the First Respondent; the Second Respondent had played very little part in the proceedings and said that he attended the hearing to support the First Respondent. In answer to a question from the Solicitor Member, Mr Levey confirmed that the reference to a brief fee for the November hearing related to the cost of re-preparing the case. Regardless of the description in the schedule, the figures claimed were themselves correct.

34. Mr Barnett submitted that the headline figure for costs claimed was slightly higher than expected. The case went part-heard which incurred further costs on the resumed hearing. In respect of the resumed hearing, 10 hours had been claimed for preparation and an additional brief fee. The First Respondent and his legal team had been under the impression that the case was ready for hearing when it went part-heard if there had been sufficient time available for Mr Levey to complete his cross-examination on that occasion. The First Respondent therefore queried the need for further preparation costs. The cost had to reflect the length of the case.

35. Mr Barnett invited the Tribunal to consider apportionment of the cost between the Respondents. The Second Respondent was a discharged bankrupt and was unlikely to contribute towards the costs. In the circumstances of this case the appropriate order would be to look at the case against the First Respondent and apportion the costs between the Respondents 50/50 accordingly. This would be a fair approach bearing in mind that there was a realistic prospect that the First Respondent would be able to pay the costs.

36. The Tribunal considered the costs claimed in the light of submissions made on behalf of the parties, and the statements of means. The Tribunal recognised that the Second Respondent had very little in the way of means. However, the Tribunal did not consider it appropriate to make no order for costs against him, leaving the First Respondent or the profession to bear the expense. There was some merit in the arguments made by Mr Barnett in relation to the level of the Applicant's fees even allowing for the small adjustment of £250. There was a degree of duplication of work evident in respect of the adjourned hearing. After reviewing the matter carefully the Tribunal concluded that the length and complexity of the case was such that the appropriate summary assessment of costs on case number 11292-2014 was £40,000. In relation to apportionment of those costs, the Tribunal concluded that as the Firm under discussion effectively belonged to the First Respondent as sole practitioner, with the Second Respondent as a consultant, the First Respondent was ultimately responsible for how it was run. It was appropriate for the costs order to be made on a joint and several basis in those circumstances, and the Tribunal so ordered. In relation to the proceedings against the Second Respondent alone the appropriate order was for costs summarily assessed at £13,562.88 as claimed by the Applicant.

Statement of Full Order

37. The Tribunal Ordered that the Respondent, DAVID CLINCH, 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 summarily assessed and fixed in the sum of £40,000.00, liability for payment of which the First Respondent is jointly and severally liable with the Second Respondent.

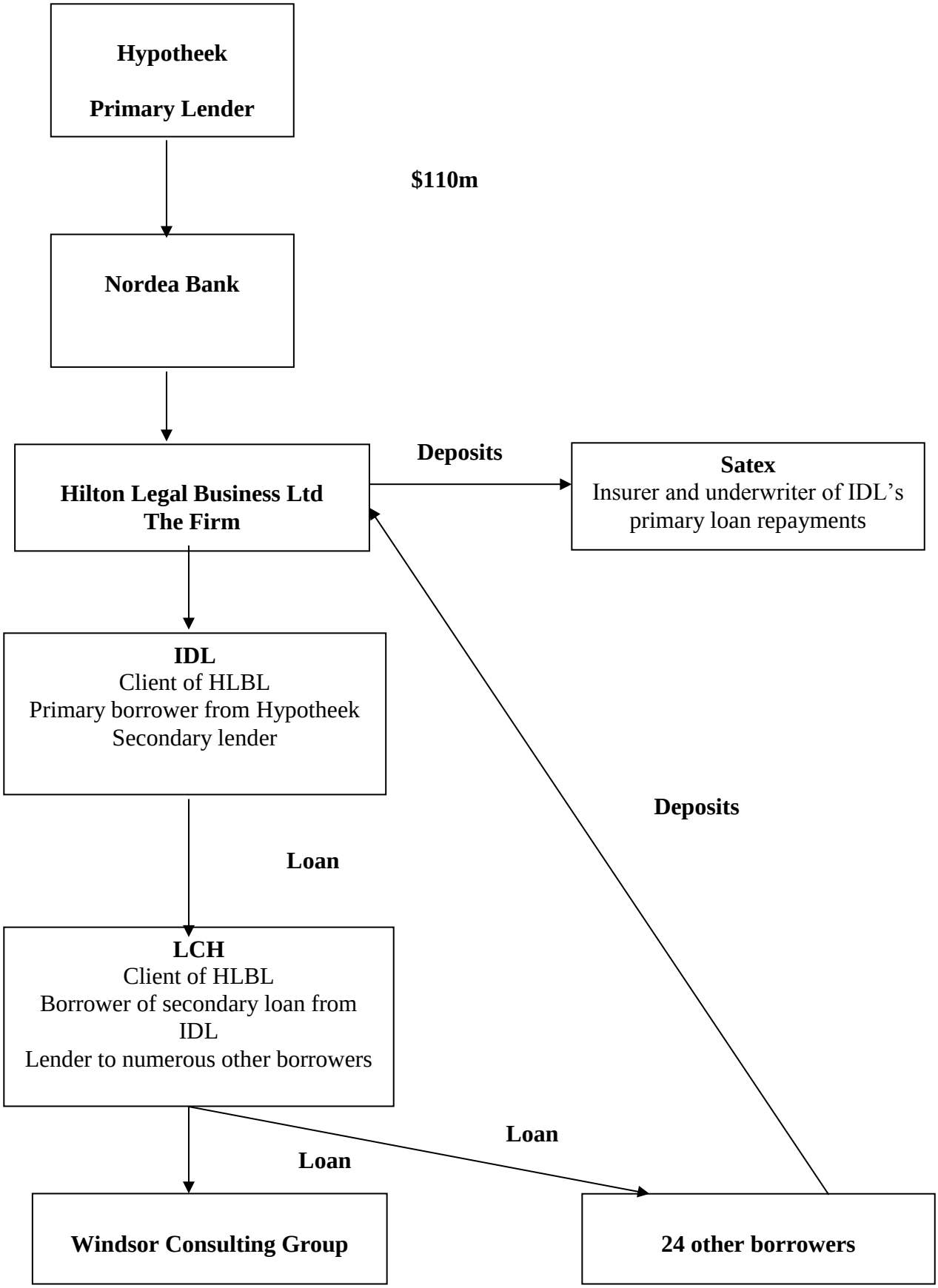
38. **Case Number: 11292-2014.** The Tribunal Ordered that the Respondent, ROBERT ANDREW SCHOFIELD, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry summarily assessed and fixed in the sum of £40,000.00, liability for payment of which the Second Respondent is jointly and severally liable with the First Respondent.

39. **Case Number: 11322-2014.** The Tribunal Ordered that the Respondent, ROBERT ANDREW SCHOFIELD, solicitor, do pay the costs of and incidental to this application and enquiry summarily assessed and fixed in the sum of £13,562.88.

DATED this 11th day of April 2016
On behalf of the Tribunal

D. Glass
Chairman

APPENDIX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$110m
Nordea Bank
Deposits
Hilton Legal Business Ltd
The Firm
Satex
Insurer and underwriter of IDL's primary loan repayments
IDL
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Primary borrower from Hypotheek
Secondary lender
Deposits
Loan
LCH
Client of HLBL
Borrower of secondary loan from IDL
Lender to numerous other borrowers
Loan
Loan
Windsor Consulting Group
24 other borrowers