SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11568-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RAJPAL SINGH AHLUWALIA Respondent

Before:

Ms A. E. Banks (in the chair)
Mr P. Lewis
Mr M. Palayiwa

Date of Hearing: 9-11 May 2017

Appearances

Mr Edward Levey, Counsel of Fountain Court Chambers, Temple, London EC4Y 9DH instructed by Penningtons Manches LLP of Abacus House, 33 Gutter Lane, London, EC2V 8AR for the Applicant

Mr Robert Lazarus, Counsel of 39 Essex Chambers, 81 Chancery Lane, London, WC2A 1DD instructed by RadcliffesLeBrasseur, 85 Fleet Street EC4Y 1AE for the Respondent who was present

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JUDGMENT

Allegations

1. The allegations against the Respondent Rajpal Singh Ahluwalia were as follows:

1.1 On 15 October 2013 he purported to send an email to A Insurer – a client of the firm at which he was employed which was misleading. In so doing he acted in breach of the SRA Principles 2011 (Principles 2, 4, 5 and 6).

1.2 On 10 September 2014 he sent an e-mail to an insurance broker which was misleading. In so doing he acted in breach of Principles 2, 4, 5 and 6.

1.3 On 14 May 2013 he signed a statement of truth on a defence in which he:

1.3.1 certified that the defendant believed that the facts stated in the defence were true, when he knew that the defendant had not seen the facts that had been pleaded; and

1.3.2 that he was duly authorised to sign the defence on behalf of the defendant when he knew he had neither sought nor obtained the defendant's authority.

In doing both, he acted in breach of Principles 1, 2 and 6.

1.4 On 7 March 2014 he signed a statement of truth on a witness statement in which he certified that he was authorised to make the statement on behalf of the defendant when he knew he had neither sought nor obtained the defendant's authority. In so doing, he acted in breach of Principles 1, 2 and 6.

1.5 He made statements in letters to a firm of solicitors dated 15 February 2013, 20 March 2013, and 28 February 2014 which he knew not to be true. In so doing he acted in breach of Principles 2 and 6.

1.6 He failed within a reasonable time to inform A Insurer about, or take instructions in relation to:

1.6.1 the service of a claim in January 2013;

1.6.2 two offers of settlement made on 28 January 2013;

1.6.3 judgment in default awarded in respect of the claim on 14 May 2013 and/or

1.6.4 a draft statutory demand sent to the firm on 21 February 2014.

In failing to do each of these he breached Principles 2, 4, 5 and 6 of the Principles.

1.7 He failed to ensure that a defence to a claim dated 21 January 2013 was filed in good time, thereby enabling judgment in default to be entered on 14 May 2013. In failing to do so, he acted in breach of Principles 4, 5 and 6.

1.8 After judgment in default was entered on 14 May 2013, he failed until 7 March 2014 to take any steps to have that judgment set aside. In failing to do so, he acted in breach of Principles 4, 5 and 6.

2. It was further alleged that the Respondent's conduct in respect of allegations 1.1, 1.2, 1.3, 1.4 and 1.5 was dishonest. However dishonesty was not an essential ingredient of any of those allegations and it was open to the Tribunal to find those allegations proved without making findings of dishonesty.

The Respondent made the following admissions and denials:

- Allegations 1.1 and 1.2 admitted save for breach of Principle 2 regarding integrity, and dishonesty
- Allegations 1.3, 1.4 and 1.5 denied
- Allegation 1.6 admitted save for breach of Principle 2 regarding integrity
- Allegations 1.7 and 1.8 admitted.
- Allegation 2 - see above regarding individual allegations

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 20 October 2013 with exhibit
- Witness statement of Supervisory Partner ("SP") dated 6 March 2017 with exhibit
- Judgment in the case of Bolton v Law Society [1994] 2 All ER 486
- Judgment in the case of Newell-Austin v SRA [2017] EWHC 411 (Admin)
- Judgment in the case of SRA v Emeana, Ijewere, and Ajanaku [2013] EWHC 2130 (Admin)
- Excerpt from the White Book volume 1 Part 13
- Applicant's statement of costs as at 28 April 2017 dated 2 May 2017

Respondent

- Respondent's Answer dated 24 January 2017
- Respondent's witness statement dated 15 April 2017 with exhibit
- Character references
- Holiday reservation
- Correspondence with Manchester Civil Justice Centre
- Medical records
- E-mails to SP omitted from exhibit to the Rule 5 Statement
- SP's e-mail correspondence of 2 October 2014
- E-mail from EM to the Respondent dated 25 April 2017
- Second witness statement of the Respondent dated 8 May 2017 with exhibit
- Moderation forms for the Respondent for the years 2011 – 2012, 2012 – 2013 and 2013 – 2014
- Documentary basis for witness statement of SP dated 18 May 2016
- Judgment in the case of Malins v SRA [2017] EWHC 835 (Admin)

- Judgment in the case of Bryant and Bench v Law Society [2007] EWHC 3043 (Admin)

Called for by the Tribunal

- SRA v Wingate and Evans [2016] EWHC 3455 (Admin)

Factual Background

4. The Respondent was born in 1977 and admitted to the Roll of Solicitors in 2006. As at the date of the Rule 5 Statement he held a practising certificate for the year 2015-2016 free from conditions.

5. At the material times the Respondent was employed as a solicitor at Clyde & Co ("the firm") in London. The Respondent worked in a team of solicitors undertaking insurance litigation. The team was managed by a supervisory partner ("SP"). In late 2012, the Respondent was promoted from Associate to Senior Associate.

6. In June 2008, the firm was instructed in connection with an insurance policy in favour of the B Association. The Case Registration/Conflict Form completed at the outset of the matter recorded SP as both the case handler and the case partner. The firm's client was given on the form as A Insurer – the B Association/name of Broker. This reflected the fact that the claim related to an insurance policy in favour of the B Association. The policy had various underwriters, the lead underwriter being A Insurer.

7. The firm's client was A Insurer (which dealt with claims against the policy on behalf of the insured and all the other underwriters) and the firm chiefly sought and obtained instructions from SC, a Claims Manager at A. However, the firm also sent updates to HR, a claims advisor at the Broker and, at the outset of the case, corresponded with officials at the B Association.

8. D Solicitors acted for the Claimant Mr U.

9. On 22 January 2013, D Solicitors served a claim form dated 21 January 2013 and associated documents on the firm by post and fax.

10. The claim was issued against L Insurer and "all other insurers of the [B Association] Policy". The claim form and accompanying particulars of claim stated that L Insurer was being "sued on its own behalf and on behalf of all insurers of the annexed (copy) Aviation Third Party Liability Insurance Policy…" which included A Insurer as the lead underwriter of the B Association policy.

11. The time records showed that on 22 and 23 January 2013, the Respondent spent four hours working on the case, including considering D Solicitors' letter and the accompanying claim. No time was recorded by SP at this time. The first time record for SP after 14 February 2012 was 10 September 2014.

12. On 24 January 2013, the Respondent sent a letter to D Solicitors confirming receipt of the claim form.

13. On 28 January 2013, D Solicitors sent two "Without Prejudice" letters to the firm containing offers of settlement one of which was expressed to be an offer pursuant to Part 36 of the Civil Procedure Rules ("CPR").

14. On 30 January 2013, the Respondent filed an Acknowledgement of Service form with the High Court in Manchester, indicating that the claim would be defended. The form was signed by the Respondent.

15. The Respondent sent a copy of the form to D Solicitors on the same day by post and fax. In the covering letter to D Solicitors, the Respondent stated that the firm calculated that the Defence was due on or by 21 February 2013.

16. There was no evidence on file, including on the timeline narratives recorded by the Respondent for the relevant period that, between 22 January 2013 and 15 October 2013, in respect of the claim form and settlement offers served by D Solicitors that the Respondent discussed these documents/developments with SP and/or that the Respondent had informed A Insurer (and/or L Insurer and/or the Broker and/or the B Association) or sought instructions in relation to their contents. The position regarding discussion with SP was disputed by the Respondent.

17. On 15 February 2013, the Respondent wrote to D Solicitors confirming receipt of their letters of 28 January 2013 (that is the offers of settlement), and stated "...we are seeking appropriate instructions". He went on to say:

> "...we would be obliged for a 28 day extension in which to serve the Defendant's Defence as we are currently seeking and obtaining instructions from all relevant parties in order to respond as appropriate."

18. On 18 February 2013, D Solicitors sent a letter to the firm indicating their agreement to the extension and noting that the Defence was now due by 21 March 2013.

19. The firm's invoice for the relevant period showed no time recorded by the Respondent or anyone else at the firm between 15 February 2013 and 19 March 2013.

20. On 20 March 2013, the Respondent wrote to D Solicitors, stating:

> "We are going to apply for a further short extension in respect of service of the Defence as you appreciate it takes some time in order to obtain all necessary instructions on this matter given the number of parties involved."

21. In his letter to D Solicitors of 20 March, the Respondent went on to suggest 5 April 2013 as a new deadline and asked D Solicitors to confirm the agreement "...in order that we can advise the court and keep any costs to a minimum".

22. On 21 March 2013, D Solicitors wrote to the firm indicating that they would not oppose an extension of the deadline for service of the Defence to 4p.m. on 5 April 2013. There was no evidence on the file that the Respondent or anyone else at the firm subsequently applied to the Court for such an extension. The Respondent confirmed in a letter to the Applicant of 28 September 2015 that no such application was made.

23. The firm's invoice for the relevant period showed that no work was undertaken by the Respondent or anyone else at the firm on the matter between 21 March 2013 and 4 April 2013.

24. On 4 April 2013, the Respondent wrote to D Solicitors to report that: "for the reasons set out in our letter of 20 March 2013 and the Easter period" a few further days were required in order to serve the Defence. The Respondent asked D Solicitors to agree to a new deadline of 4p.m. on 16 April 2013.

25. On 5 April 2013, D Solicitors wrote to say that their client would not oppose such an extension. No application was made to the Court to extend the deadline.

26. On 15 April 2013, the Respondent sent instructions to counsel (TM) to settle a Defence. In the covering letter, he wrote:

> "We would be obliged if papers could be put before Counsel, [TM] immediately. Whilst the Defence is due tomorrow, we are seeking a short extension in order to provide Counsel with an opportunity to consider the proceedings and revert with his draft Defence."

27. On 16 April 2013, the Respondent wrote to D Solicitors, stating:

> "Unfortunately, we will not be in a position to serve the Defence today as hoped. This is for the ongoing reasoning given in previous correspondence together with our instructed Counsel being engaged in an over running 6 day trial this week.
>
> We are currently liaising further with various parties this afternoon and rather than proposing a further date for service, we shall contact your office tomorrow morning to discuss the state of play and progressing the matter on a mutually agreeable basis going forwards."

28. D Solicitors responded by fax and post on the same day to say that they were disappointed not to have received a Defence and that it was not open to them to agree a further extension so the firm would need to apply to the court.

29. On 26 April 2013, D Solicitors wrote to the firm noting that they had not yet been served with a Defence or an application to extend the deadline for filing a Defence. They stated that unless a Defence or an application to extend the deadline was served by 4p.m. on 30 April 2013, they would advise their client to enter judgment in default.

30. On 1 May 2013, the Respondent wrote to D Solicitors to state that:

> "...our Counsel has advised we will be in a position to serve the Defence on or before 14 May 2013. In the light of the same, we would be obliged for a couple of days grace in order to serve the application to extend on yourselves by the end of the week...
>
> ... if you proceed to recommend and pursue Judgment in Default, we will have to amend any application to set that aside accordingly."

31. Also on 1 May 2013, D Solicitors made an application to the Court for judgment in default, on the basis that no Defence had been filed. The application was served on the firm by fax on the same day.

32. On 14 May 2013, the Court made an order giving judgment in default in favour of the Claimant. The Claimant was awarded damages of £500,000 plus interest and costs.

33. Also on 14 May 2013, the Respondent filed and served a Defence to the claim.

34. The Defence was drafted by Counsel Mr TM with input from the Respondent.

35. On 17 May 2013, the Court issued a "Notice of Proposed Allocation to the Multi-Track".

36. On 20 May 2013, D Solicitors sent a letter to the firm enclosing a copy of the 14 May 2013 Order that is the default judgment "in case [the firm had] not received a copy direct".

37. On 22 May 2013, the Respondent wrote to D Solicitors stating that he had not received a copy of the default judgment directly from the court, and asserting that the court's notice of 17 May 2013 "superceded" the default judgment.

38. On 5 June 2013, the Court sent a letter to the parties confirming that the notice of 17 May 2013 had been dispatched in error and could be disregarded. The letter confirmed that the default judgment stood and returned the Defence.

39. On 15 October 2013, the Respondent sent an email to SC of A Insurer by way of update but because the address was incorrect it did not arrive.

40. On 21 February 2014, D Solicitors sent a draft statutory demand to the firm for the sum due to its client pursuant to the default judgment (at that date, the sum of £516,252.54) requiring acceptable proposals for settlement by 4p.m. on 28 February 2014, failing which D Solicitors stated they would formally serve a statutory demand (thereby triggering the process whereby the Claimant could petition for the Defendant to be wound up if the debt was not settled within 21 days).

41. On 28 February 2014, the Respondent wrote to D Solicitors stating that he did not have complete instructions and needed more time.

42. On 4 March 2014, D Solicitors wrote to the firm to agree to the extension sought in the Respondent's 28 February letter but said that its client would not agree to any further extension of time.

43. On 7 March 2014, the Respondent sent an application to the High Court in Manchester seeking to overturn the default judgment dated 14 May 2013. This application was supported by a witness statement of the Respondent in which he stated that he had conduct of the matter within the firm; apologised to the court for the inconvenience caused by the firm not applying to extend the period for filing a Defence, and for the late filing of the Defence; and sought to argue that the Defendant's case had a real prospect of success.

44. On 7 March 2014, the Respondent wrote to D Solicitors to serve a copy of the application as well as notice that a hearing of the application would take place on 2 May 2014.

45. The hearing of the Respondent's application to set aside the default judgment was delayed several times, before finally being fixed for 10 December 2014.

46. On 22 October 2013, the Respondent sent an e-mail to HR of the Broker in which he stated:

> "I have your recent e-mail and will revert with a substantive report shortly."

47. On 24 June 2014, HR e-mailed the Respondent to say:

> "Further to your e-mail below [that is 22 October 2013] we await receipt of your report at your earliest convenience."

48. On 24 July 2014 and 21 August 2014, HR again e-mailed the Respondent to say that the report promised in his e-mail of 22 October 2013 was awaited.

49. Between 31 January 2013 and 23 September 2014 the firm's computer system generated 11 automated e-mails at regular intervals reminding that reports were due to the client in respect of this case.

50. On 8 September 2014, RB an employee of the Broker wrote to the Respondent stating:

> "My colleague [HR] has sent numerous chasers regarding receiving a substantive report on this matter, however disappointingly no further reporting has been received and Underwriters are understandably unhappy as updates have been outside of normal reporting procedures and timeframes..."

51. On 10 September 2014, the Respondent sent a report to RB.

52. On 2 October 2014, on the instructions of SC, the case was transferred to JS another partner at the firm. The Respondent's actions came to light following this transfer and the firm subsequently sought advice from Leading Counsel as to the prospect of having the default judgment of 14 May 2013 set aside. Leading Counsel assessed the prospects at 35-40%. The firm subsequently agreed a settlement with the Claimant which was approved by the court on 10 December 2014. It was understood that the firm paid this settlement and the client suffered no loss.

53. On 6 November 2014, the Respondent was suspended by the firm pending an investigation into his conduct. On 11 November 2014, he resigned from the firm.

54. Only 11 May 2015, 11 September 2015 and 11 April 2016 respectively the Applicant sent a letter to the Respondent seeking his comments on concerns which had been raised regarding the conduct of Mr U's claim against A Insurer. The Respondent sent a letter in reply on 28 May 2015, 28 September 2015, and 26 April 2016.

55. On 29 June 2016, an authorised officer of the Applicant decided to refer the Respondent to the Tribunal.

Witnesses

SP

(This witness is variously referred to as "SP" or "supervisory partner" in this judgment.)

56. The witness confirmed the truth of her witness statement dated 6 March 2017 save for amending a factual error about the time the Respondent had spent managing a branch office at a previous employer. She described her procedure as supervisory partner for dealing with incoming post, faxes and e-mail. Her secretaries printed off all electronic communications. She only read e-mails on her iPad when travelling. Incoming post usually went to the fee earners' secretaries. This approach would have extended to the correspondence received from D Solicitors and an e-mail from TM of Counsel on 14 May 2013 addressed to the Respondent but copied to the witness asking the Respondent to check the factual assertions made in the draft Defence. Her secretary would have downloaded and passed the e-mail to the Respondent; it was his job to deal with the Defence. An e-mail report sent on 21 September 2012 to SC referred to a copy of the draft particulars of claim having been received by the firm and the witness could not recall but might have seen it. The witness stated that she did not see the default judgment sent by the court after it was sealed on 14 May 2013 although it included her reference as well as the Respondent's. Nor would she have expected to see the court notice of allocation to the multi-track or the letter from the court saying that the judgment still stood, which were similarly addressed

57. As to the Respondent being away on holiday between 14 May 2013 and 19 May 2013, the witness explained that there was an informal buddy system, a loose arrangement whereby staff kept an eye on each other's work when they were away but this never involved her. In cross examination, the witness rejected the suggestion that she had taken a telephone call from the court in July 2014 about taking the application to set aside the default judgement out of the list. She would have directed her secretary to put it to the person handling the case. She could not tell how, when the court documents only had the Respondent's e-mail address, an e-mail dated 17 July 2014 had come to her email address from the court's Listing Officer.

58. The witness stated that the Respondent could and did contact insurer clients direct although her preference was that legal advice/reports to clients should be run by her. She preferred that reports did not go to other partners for approval because they did not know the case. The Respondent liked to send his own e-mails; sometimes these were sent to her for approval. The witness stated that there could be a delay of up to three weeks in her signing off documents depending on their urgency and there were some which she chose to rewrite before sending or giving to the fee earner to send. All the team members and fee earners spoke to her two secretaries who worked overlapping hours. They gave her work with a timeline if appropriate within which she needed to deal.

59. In cross examination the witness stated that she did not have written guidelines setting out what her team could do; they knew from the conduct of the case and from the level of authority the insurer delegated. Staff had conduct of party and party correspondence. She described opportunities for staff to talk to her around and at work. The witness stated that she did not deny that she had a quite stressful job but she did not think it affected the way she treated team members. She agreed that she placed a "Do not disturb" sign on her door if she did not wish to be disturbed during a conference call or was working on reports but staff would come in at any other time. She and the Respondent spoke on a daily basis when she was in the office. She travelled both within Europe and further afield which involved being out of the office.

60. In cross examination, the witness testified that around 10% of her practice related to the jurisdiction of England and Wales but all her team knew how to litigate in this jurisdiction and she was an experienced litigator. They also had lunchtime updates which she attended if she could.

61. The witness stated the Respondent was at the third of five levels of solicitor in the firm above Junior Associate and Associate. His workload was not particularly high and his time recording was lower than all the other solicitors in the team. In her statement, the witness stated that the Respondent's average chargeable hours in 2013 and 2014 calculated by the firm's Risk Team were below the target. She was not sure if he stayed until 8 p.m. every night; he was one of the last to arrive in the morning. As to the Respondent's comments about being out of his depth, this was certainly not her experience; he often assisted more junior members of staff and could cite a number of provisions of the CPR. He certainly would have known all the steps in litigation as he had been qualified for six or seven years. The witness did not recall the Respondent ever telling her that he could not deal with his caseload. In cross examination, the witness stated that the firm's "moderation" process, by which the Respondent's rating of "Fully effective" had been arrived at, did not involve the staff member but there was also an appraisal system – a career development review. It would not surprise her if he had not had a review; she was not that keen on doing them. The Respondent could discuss any problems with her at any time or with the HR department.

62. In cross examination, the witness stated regarding the figure of 4,331 cases for the team in 2013 that in addition to herself there were five fee earners but that did not mean that they had between 500 and 1,000 cases each because some were simply requests for indemnity where the insured party had handled the case itself under a level of delegation agreed with the insurer and was seeking reimbursement by the firm from funds it held on behalf of the underwriters. Some cases were notifications of accidents which were required of the insured party whether a claim was made or not. The firm reported such matters periodically to the insurer and in many cases no follow-up was required. These cases might involve no more than 10 or 15 minutes' work. A significant proportion of claims was not litigated; the firm advised on liability and settled the claim if the insurers had liability. While 3,000 to 4,000 cases sounded a lot they coped quite well.

63. In her statement the witness said:

> "This claim was one of the more complex disputes handled by my team, in that it involved coverage issues and was not run of the mill."

She explained that it was complex in the sense that it was not a claim notification or luggage claim. In cross examination the witness was referred to her statement where she said:

> "...what changed from September/October 2012 was my level of involvement in the detail of the case. From this point on, as I mention above, given the nature of the tasks that would be required on a daily basis, my close involvement in the case was no longer necessary..."

She also said in her statement:

> "[The Respondent's] responsibility was limited to liaising with Counsel and carrying out relatively straightforward tasks to implement the agreed strategy..."

The witness stated that it was not her practice to make formal transfers of files. It was put to the witness that the Respondent would have had no way of knowing that she had decided to step back in September/October 2012. She replied that he kept the file in his room. It was obvious from the fact that he had day-to-day conduct and that she was not involved that she had stepped back. The witness did not give him formal notice because she was still the supervising partner. By the time she stepped back all that had to be done was procedural; this included consideration of the draft particulars of claim and drafting the Defence. She would not necessarily have read the pleadings because the drafts were with a person who was a very competent Senior Associate. How the claim was to be put would already have been covered in correspondence from the other side.

64. The witness stated that she did not report to clients by telephone as the Respondent asserted; all legal advice and updating reports which she checked were in writing. In cross examination, the witness said that she spoke to Mr SC or someone in his team a number of times a week about ongoing cases. SC led the team and was far more focused on another bigger and more complex aircraft accident claim which was going on at the time. In cross examination, the witness was asked about notes in the papers of a telephone conversation with SC on 13 March 2012 and of her speaking to the Broker on 30 July 2012 which were not time recorded; she might have forgotten. The witness's statement recorded that having not recalled seeing a formal update from the Respondent for a considerable period of time she asked him in or about early October 2013 to prepare a report to the clients and that on or about 15 October he brought her a hard copy draft of the e-mail that he intended to send to SC. She explained that there was no time recording for this work because if she did not make any substantive changes she would not bill for it as she was not permitted to bill for supervision. As to the reliability of the time recording, if the witness spent any significant time on the matter she would have recorded it. The time recording process was quite laborious and sometimes took longer than the conversation.

65. The witness stated that TM of counsel was familiar with the circumstances of the case. He might have needed to refresh his memory but he could deliver a very quick turnaround in two or three days. The Respondent attributed his own failure regarding the default judgment in part to being "incredibly busy at the time". The witness did not recall that being the case.

66. In respect of allegation 1.1 and the document printed out dated 14 May 2013 which the Respondent stated he had prepared in late March or early April, the witness stated that she regarded it as highly unlikely if not impossible that her secretary would not have brought the document to her attention if it had been in her signature book for approval for a while. She recalled asking the Respondent on more than one occasion for a report and recalled seeing a version of the report but could not say if it was this one in October 2013. At the time there was nothing striking about the report and she did not think that she made any amendments. She did not know that it was factually incorrect at the time. She normally checked addresses and would immediately have seen that it was wrong. In cross examination, the witness agreed that the 14 May 2013 report did not appear to have been sent to the underwriters. She could not tell when the Respondent actually drafted it. In respect of an earlier report recorded as drafted by the Respondent for SC on 20 February 2012, the witness agreed that an email report sent from the Respondent to SC on 21 September 2012 seemed to be the same report, sent after the witness recorded A Insurer asking for a report by telephone on 30 July 2012. She would not have seen such a delay as a problem as not much was going on; they were awaiting issue of proceedings but she did not accept there had been a two-month delay in her giving approval. The witness rejected the suggestion that the Respondent having provided the report the subject of the allegation before the Defence was drafted, then sent it under pressure in October 2013 when the witness had failed to approve it earlier. There was no pressure to send reports save sometimes in the six weeks before the end of the financial year but that was not so here. If the report was out of date when she returned it to him he should have amended it and told her.

67. In respect of allegation 1.2, the witness described Limnet reports (the e-mail from the firm to the broker dated 10 September 2014 was one of these). Reports to insurer clients needed to be drafted in a certain way. They went through the Broker. The top part was a "Limnet" Synopsis which was sent to all the involved insurers but the main body of the report was seen only by two entities. The arrangement was that two leading Lloyd's syndicates and two leading company market insurers would review the reports. There was an overall lead underwriter who made decisions; in this case A Insurer. The witness would expect to review a Limnet report to the Broker.

68. The witness had no recollection of discussions which the Respondent stated that he had with her on the default judgment in early March 2014 and in July 2014. If she had known about the default judgment she would have reported it to the Risk Team and also to the firm's chairman who was the relationship partner for that client. The witness stated that she probably saw on her iPad the e-mail copied to her from RB of the Broker chasing the Respondent for the report. She told the Respondent to prepare a report. He told the witness that the default judgment had been entered against a non-party; that is a party who was not an underwriter on risk. That meant that she ranked the default judgment on the scale of 0 to 10 trivial to catastrophic at about two. The witness did not like to be subject to a default judgment and discussed it with the

firm's chairman; he said that if they were not on risk it was not a big issue. As a default judgment against an entity which was a party on a scale of 0 to 10, the witness said that she would have placed it at 11; it was a serious issue.

69. The witness did not recollect that as the Respondent said in his statement she came into his room and took the file and the draft report from his desk. He said that he tried to explain to her that the report was not finished and she made it clear that she would complete the draft herself. It was highly unlikely that she would have done that; they both sat at her desk when he brought the report into her room and they reviewed it without the file. In his statement the Respondent said:

> "[SP] told me in July that she did not want to report to [A Insurer] (and therefore the other insurers) until we had a fixed hearing date for the application to set aside the default judgment. The fixed hearing date was not obtained until late 2014."

The witness had no recollection of that conversation and she would have told the insurers about the default judgment straightaway. She also rejected the Respondent's assertion in his statement that he relied on her judgment on the merits of the application to set aside, the level of the indemnity reserve and the overall content of the report because she was an experienced partner; the Respondent told her that the action had been commenced against the wrong party and that there had been an administrative error on the part of the court and so she took those with words to mean exactly that and did not question him.

70. Having regard to the annotated draft of the Limnet report dated 8 September 2014, the witness had deleted the words "we have applied to the" and left in the words "Court to set aside the Court Judgment". She had made this change because the Synopsis part of the document was limited to a maximum of 10 lines. It was the less important section because the decision-makers read the balance of the document which contained the detail. She rejected the suggestion that she had changed the meaning; the court would have set the default judgment aside if it had been issued against a non-party which was what the Respondent told her when he sat down with her and she amended the report. As to the fact the report did not refer to a non-party, the witness stated that she sought clarification when discussing the matter with the Respondent and he said that the Defendant was a non-party. The second section of the report included:

> "In essence, they are suing all the parties to the insurance policy, but have simply named [L Insurer] as a legal entity for the purposes of the proceedings."

The witness stated that she assumed the Respondent to be saying that they were a non-party. In the next paragraph it was stated:

> "Mr [U's] solicitors have chosen to name [L Insurers] on the basis of being a recognised legal entity for the purposes of proceedings. The solicitors for Mr [U] have therefore pursued the matter in accordance with the CPR 19.6 by naming [L Insurers] as the representative of itself and all the other insurers under the [B Association] policy, in order to proceed with pursuing court proceedings against the subscribing parties to the policy."

The witness stated that this was not what the Respondent told her. Perhaps with hindsight she should have delved deeper but she was informed that they were not on risk and the company on risk was L. Possibly she had misunderstood.

71. In respect of allegation 1.3, as to the Respondent's assertion in his witness statement that he thought that filing the Defence without reference to the client fell into the firm's general authority from the client to conduct the case, the witness stated that this particular client would definitely have wanted to see the Defence. SC was quite interested in the matter and made it clear how he wanted it run. She thought he would probably have read the Defence. The witness also rejected the suggestion in the statement that the Respondent believed she must have known that he was preparing the Defence without obtaining instructions on the basis of the general authority. In cross examination the witness was taken through some of the points in the Defence to which Mr Levey had referred in his submissions as requiring the client's confirmation. Generally the witness confirmed that they were either matters of which counsel would have had legal knowledge or of which the B Association or SC would have had factual knowledge. The witness stated that there had been a discussion about the structure and operation of the B Association when the firm met with them and Mr U's entitlement to claim would have been discussed. As far as the witness could recall the B Association had provided the firm with its rules and regulations. The Insurance Conduct of Business Rules and Sourcebook referred to in the particulars of claim were within counsel's knowledge; he had worked in the insurance market before becoming a barrister. It was put to the witness regarding the Statement of Truth at the end of the Defence, based on the issues which she had been taken to and what she had said about the extensive work that the firm had done on the case in the lead up to service of the Defence that there was nothing more SC could have added in terms of additional instructions. The witness stated that SC as the lead insurer and the party entitled to make decisions about the claim might have instructed the firm to have a discussion with the B Association.

72. In respect of allegation 1.4, the witness stated that the application to set aside the default judgment was outside the general authority up to $50,000 from the client.

73. As to the strategy for dealing with the case, the witness clarified for the Tribunal that litigation had not been issued for some time so the firm was not making it easy for the other side to pursue it. She did not think that they wanted to initiate proceedings because they also had proceedings on foot against Mr U's former solicitors. She thought that he had conceded liability before he knew the value of the case and if he succeeded in a claim against his former solicitors he would recover the money he needed from them to meet his damages liability.

74. The witness confirmed that she had not been involved in the suspension of the Respondent from the firm. When the file was transferred to her colleague Mr JS he was concerned by what he read and came to talk to her. He reported it to the Risk Department.

75. **Mr SB,** who was currently the Respondent's work supervisor, gave oral evidence in support of his written testimonial, attesting to the Respondent's honesty.

76. **Mr KF** a personal friend also gave oral evidence in support of his written testimonial, attesting to the Respondent's honesty.

Findings of Fact and Law

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

(Submissions recorded below are taken from those made in the papers and orally. The allegations arose out of related facts and so there is some cross over between submissions.)

General Submissions for the Applicant

78. Mr Levey referred to the background facts and explained that the litigation arose out of a gliding accident in which Mr U and another individual had been involved resulting in catastrophic injuries to the other person. It gave rise to a claim against Mr U on the basis he was supervising the flight. The litigation had been settled in the amount of £2.5m but there was a shortfall over and above the insurance which Mr U could call on (that of his local gliding club) in the sum of £500,000. Mr U sought to claim against the B Association's insurance policy for the balance. The B Association was the governing body for the sport in the UK. This was not an ordinary aviation claim because there was an issue as to whether Mr U was covered by the B Association's policy. The firm had worked out a defence strategy with the client (A Insurer) on the basis that Mr U could not take the benefit of the policy and that the client would decline cover. Mr Levey referred to the Rule 5 Statement where it was submitted that SP was initially directly involved in the matter and was personally in direct correspondence with SC at A Insurer, as well as the B Association. She was involved in assessing the merits of Mr U's case and setting a strategy (with counsel) for responding to that case. The Respondent first became involved in the case on or around 26 August 2010 (the date on an attendance note). The firm's files showed that after that date the Respondent undertook most of the day-to-day work on the file although SP remained involved in a supervisory and decision-making capacity. In particular all correspondence sent by the firm to D Solicitors after August 2010 had the reference "[SP]/RSA", the latter reference being that of the Respondent and the Respondent's direct telephone number and e-mail address were given as contact details at its head. Invoices raised by the firm in respect of the matter showed SP's involvement in the case decreasing over time, whilst the Respondent's involvement increased. Raw time records for the case, including time not billed to the client, showed that the vast majority of the work done on the case after August 2010 was undertaken by the Respondent. An invoice dated 26 July 2012 showed that between 11 August 2011 and 15 June 2012, SP recorded just less than two hours and from then until 22 May 2013 no time at all on the matter.

79. Mr Levey referred to the two limbed test for dishonesty which was applied in Tribunal proceedings following the decision in Twinsectra Ltd v Yardley [2002] UKHL 12. One could say in some cases that the solicitor did not realise that he was dishonest, known as the Robin Hood defence but it was not so here; there was clearly objective and subjective dishonesty.

80. Breach of Principle 2 of the SRA Principles 2011 requiring a solicitor to act with integrity was alleged against the Respondent in the allegations 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6. Mr Levey relied on three authorities. It was set out in the case of Bolton v Law Society [1994] 2 All ER 486:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust..."

Mr Levey anticipated that Mr Lazarus for the Respondent would draw the attention of the Tribunal to the recent case of Malins v SRA [2017] EWHC 835. Mr Levey indicated that the Applicant was seeking permission to appeal that judgment. He referred to the case of Scott v SRA [2016] EWHC 1256 (Admin) where reference was made to the case of Hoodless and Blackwell v FSA [2003] UKFTT FSM007 (3 October 2003) where it was stated:

> "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..."

In the case of SRA v Chan and Ali [2015] EWHC 2659 it was said:

> "As to want of integrity, there have been a number of decisions commenting on the import of this word as used in various regulations. In my view, it serves no purpose to expatiate on its meaning. Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case.
>
> I would respectfully agree with that approach."

Mr Levey submitted that the court in Malins said that dishonesty and lack of integrity were the same thing but the other cases made an important distinction between dishonesty and lack of integrity. One crucial difference was whether there was a subjective element; this was required for dishonesty. Mr Levey referred to the most recent case being Newell-Austin v SRA [2017] EWHC 411 (Admin):

> "First, the legal test for dishonesty in solicitors disciplinary proceedings is the combined test established in Twinsectra: namely, the conduct in question must be found to be dishonest "by the standards of reasonable and honest people"; and the respondent must have realised that by those standards his or her conduct was dishonest. In the present case, in relation to the allegations of dishonesty, the Tribunal applied this test...

> Thirdly, it is clear that, by contrast with the test of dishonesty, the test of "lack of integrity" is an objective test alone. A distinction must be drawn between subjective knowledge of the facts of the underlying conduct (which are alleged to give rise to the lack of integrity), and subjective knowledge of the fact that the conduct would be regarded by reasonable people as lacking in integrity. There is no requirement that a solicitor must subjectively realise that his conduct lacks integrity…"

In the case of SRA v Emeana, Ijewere, and Ajanaku [2013] EWHC 2130 (Admin) it was set out that even if a solicitor was not found dishonest but was found to lack integrity they could still be eligible for the most serious sanction. Lack of integrity was a very serious matter in itself, if not just as serious as dishonesty. Mr Levey acknowledged that there was a conflict of authorities following the judgment in Malins but submitted that there was a list of authorities in support of the Applicant's position; that lack of integrity and dishonesty were both animals from the same family but were different.

General Submissions for the Respondent

81. Mr Lazarus submitted that there was a very unfortunate situation in that there were conflicting lines of authority on the meaning of integrity and it seemed likely that the issue would go to the Court of Appeal in the not too distant future. The Tribunal would have to determine which authority it preferred however he submitted that the definition in Chan and Ali was unsatisfactory because it lacked legal certainty; the profession in general could not understand by reference to that case what was meant by Principle 2 and it was a particular problem for respondents to proceedings before this Tribunal against whom lack of integrity was alleged to identify precisely the case that they were facing. Mr Lazarus submitted that the reference in the case of Scott to the definition in Hoodless suggested that lack of integrity constituted objective dishonesty without the need to prove it to the subjective standard. Such an approach to lack of integrity was unacceptable because it undermined the case of Bryant and Bench v Law Society [2009] 1 WLR. Mr Lazarus submitted that there had been a tendency to move to a purely objective test for dishonesty in civil proceedings and there had been a question that the Tribunal should do that too. Bryant and Bench decided at first instance that the two limbed test for dishonesty in the case of Twinsectra and Yardley was the appropriate test for dishonesty for the Tribunal to apply. If one adopted a purely objective test that was to bring in the civil test by the back door. The third strand in the authorities was the recent case of Malins where it was said:

> "Before I turn to the authorities I address the position as if I had a blank canvas, and only the Oxford English Dictionary to help me. The dictionary defines dishonesty as "the reverse of honesty; lack of progress or integrity; disposition to deceive, defraud, or steal; peevishness; theft, fraud. Also, a dishonest or fraudulent act. And it defines integrity as "soundness of moral principle; the character of uncorrupted virtue, esp. in relation to truth and fair dealing; uprightness, honesty, sincerity." Therefore, it seems to me to be obvious that based on the dictionary definitions honesty and integrity are synonyms and that dishonesty and integrity are antonyms."

SRA v Wingate and Evans [2016] EWHC 3455 (Admin) presented the same problems as upon Mr Lazarus's argument did the Hoodless definition. Mr Wingate said that he "was not left with any questions as to the integrity or honesty" of two individuals. Mr Lazarus submitted that the decision in Malins still stood and so where dishonesty was alleged as here it was unnecessary to consider integrity separately; if dishonesty was not found there was no need to go on and consider lack of integrity. Where lack of integrity was alleged without dishonesty one could disregard the allegation because dishonesty must be expressly pleaded with "pitiless clarity" and it was not appropriate to introduce dishonesty by the back door by pleading it as lack of integrity.

82. Mr Lazarus submitted having regard to the Respondent's earlier three years post qualification experience at a well-known firm undertaking Claimant personal injury work that this was a fairly standard discipline and one would expect any junior solicitor to know the basics of handling a basic personal injury claim. The Respondent then spent nine months at another firm doing the same kind of work. He had experience of the default judgment process from the Claimant's perspective which involved just ticking a box on the form. He was never involved in any application to set aside a default judgment; that was not a feature of Claimant personal injury work. A default judgment was not the end of the case in a personal injury claim as it was in this case. Here a liquidated amount was being litigated for over and above the insurance cover which the Claimant had elsewhere. In a personal injury matter the court had to decide the extent of the damages and so a further hearing on quantum was needed after judgment in default. In many cases the Defendant would decide that there was little merit in seeking to set aside a default judgment because the real battle was over quantum. The disposal hearings which were referred to in the Respondent's CV related to determining the amount be paid under a judgment or order and could result in a full trial on quantum only. A disposal hearing under CPR 12.4 would not normally last longer than 30 minutes and the court would not normally hear oral evidence. Such a hearing was usually conducted by pupil barristers or very junior solicitors in personal injury practice.

83. Mr Lazarus submitted that the Respondent was then employed by the firm where the environment was very different. It was his first experience of defence work and insurance issues and the clients were institutional rather than individuals. This was a big city law firm and the Respondent was working in the niche area of aviation law. He did not know much about these matter but quickly found himself the most senior member of the team save for the supervising partner ("SP"). He was also dealing with a lot of foreign law cases and English law cases only constituted 10% of his workload. The Tribunal heard evidence that he found SP difficult to deal with and the Respondent was not allowed to communicate with clients about the delivery of legal advice. She said that she did not read e-mails unless they were printed out but Mr Lazarus suggested that she did when it suited her because she was aware of some which had not been printed out. She was out of the office one or two days a month and when in the office often had a "Do not disturb" sign on her door.

84. Mr Lazarus submitted that on SP's evidence, it was entirely likely that there had never been an appraisal of the Respondent. Mr Lazarus invited the Tribunal to conclude that this was not an environment in which an inexperienced person could thrive and develop. The Respondent was having to teach himself and picking up bad habits and

practices from others. It was also likely that he had been promoted into work beyond his ability and experience.

85. **Allegation 1.1 - On 15 October 2013 he [the Respondent] purported to send an email to A Insurer – a client of the firm at which he was employed which was misleading. In so doing he acted in breach of the SRA Principles 2011 (Principles 2, 4, 5 and 6).**

85.1 The Rule 5 Statement set out that there was no evidence on the file that the Respondent or anyone else at the firm took any steps in respect of the matter from the date the Defence was filed on 14 May 2013 until 15 October 2013 when the Respondent purportedly sent an e-mail to SC of A Insurer by way of an update. Mr Levey submitted that the e-mail dated 15 October 2013 left the Respondent's e-mail box but it did not arrive with SC because it bore the wrong address; SC's surname was incomplete and a letter was missing from A Insurer's corporate domain name. Computer messages showed that there was no doubt that the email was not received. The issue was whether it was ever intended to be received or whether the Respondent intentionally used a wrong address. It was set out in the Rule 5 Statement that the e-mail was misleading in that:

- the Respondent reported that D Solicitors had "finally issued proceedings in the Manchester High Court" but made no mention of the fact that the proceedings had been issued nearly nine months earlier on 22 January 2013;

- the Respondent did not mention that judgment in default had been entered against the Defendants (that is A Insurer and the other underwriters of the B Association policy) nearly six months earlier on 14 May 2013;

- whilst the Respondent recommended the continued instruction of counsel, TM he made no mention of the fact that TM had already settled the Defence or that the Defence had been filed and served; (and as Mr Levey added, returned by the court to the firm with its 5 June 2013 letter)

- whilst the Respondent referred to offers of settlement as having been made, that is the offers of 28 January 2013, he made no reference to the fact that those offers had been made nearly nine months earlier;

- the Respondent stated:

  > "We recommend neither of these offers is considered at this junction and there is no immediate reason for entertaining any offers of settlement"

but made no mention of the fact that, as default judgment had already been given in favour of the Claimant, it was not open to the Defendant to accept any such offer in any event.

85.2 Mr Levey submitted that it was the Respondent's evidence that the e-mail was sent with the assistance of a secretary when billing was being done. Mr Levey referred the Tribunal to an email addressed to HR of the Broker copied to SC which bore a date "14/05/2013" in the bottom left-hand corner of both sheets. (It was in almost identical

terms to the 15 October 2013 e-mail and showed the correct spelling of SC's name.) It was the Respondent's evidence that this document was produced in April or May 2013 and he said that he placed it in SP's signature book for approval. The Respondent asserted that the report should have been sent out once SP approved it. It was her evidence that she had no recollection of seeing the document and that it would not have been left in the signature book because her secretary would have chased her to deal with it. The Respondent asserted that in October 2013 his secretary was chasing him to bill the client and it was appreciated that the document had never been sent. The Applicant did not accept that the report was sent in error and that the Respondent did not notice that it was obviously misleading. Mr Levey pointed to the difference in the addressees of the two versions; in the version dated October 2013 HR of the Broker had been removed and the erroneous name and address for SC of the lead insurer inserted. SC had also been made the addressee rather than copied in. Mr Levey that the Respondent knew that he could not send the report to the client because it was so misleading and so rather than using the auto fill facility SC's address had been incorrectly typed in and the email most likely sent to leave a paper trail. It was the Respondent's case that he did not know that the e-mail had not arrived.

85.3 Mr Levey submitted that SP's evidence was that she asked for and was shown the October 2013 e-mail which seemed correct. She did not know at the time that proceedings had been issued, that a default judgment had been obtained or that there had been an application to set aside. She was not aware that the e-mail report was sent to the wrong address because she was not copied in on the e-mail. Mr Levey submitted that the Respondent produced the October 2013 email report using one which he had drafted in either April or May 2013, the particular month probably did not matter. It was alleged in the Rule 5 Statement that in preparing and attempting to send the e-mail report to SC on 15 October 2013 which he knew to be misleading in that it misrepresented the status of the claim against A Insurer and others by omitting material information, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. He must also have been aware that it was dishonest by those standards because he was aware that he/ the firm had failed to act in A Insurer's best interests in that an extension for filing a Defence to the claim dated 21 January 2013 had not been obtained, permitting judgment in default be obtained on 14 May 2013; and no steps were taken until 7 March 2014 to seek to overturn the default judgment; that the omissions were deliberately intended to hide these failings and/or defaults; as a senior and experienced solicitor, the Respondent would have been aware of his duty to be open and truthful in communications with his clients and of his clients' expectations that he would be open and truthful including in particular in respect of explaining to them failings and/or defaults on his part or that of the firm; and in any event no reasonable and honest solicitor would consider that deliberately misleading a client in order to hide that solicitor's own failings and/or defaults was honest conduct by the ordinary standards of reasonable and honest people

85.4 For the Respondent, Mr Lazarus submitted that the key issue was whether the e-mail in question was misleading. He reminded the Tribunal there was no pleaded allegation that the Respondent had attempted to create a false paper trail by sending the e-mail to a "spoof" address. In respect of the allegations of dishonesty and lack of integrity the Respondent admitted the e-mail was misleading but he denied that it was on the basis alleged or that he had laid a false paper trail. It was the Applicant's case that there had

been a calculated deception but that case presaged forethought and presence of mind for the Respondent to consider if it was necessary to create a paper trail. Regarding what the Tribunal had heard about the Respondent and the serious and regretted mistakes he made it was a curious way for the Respondent to go about it. Why would he create an e-mail presenting a rosy picture of what was going on and why concede the fact that he had served a Defence. It was said that he realised that if he only truncated SC's surname the e-mail might reach SC and so he also amended the domain name but the Respondent had no technical expertise and gave evidence that he could not even defeat the auto fill feature on the e-mail system. Why did he bother to change the surname; it would have been sufficient to change the domain name. On the Applicant's case the e-mail was created in October 2013 for the purposes of the deception but the Tribunal had seen that an e-mail definitely existed in draft form on 14 May 2013. The billing records showed for 11 April 2013 "further updating report to underwriters" and one could conclude that it existed in complete or nearly complete form on that date. There was no need at that point for deception or a paper trail. The Respondent was late with the Defence but could not know that the matter would get out of control. The obvious reason for the report not being sent at that time was that he was trying to obtain approval and failed to get it from SP. There had been a similar event a year earlier as evidenced by a memorandum from SP to the Respondent dated 14 February 2012 when she asked him to draft a report to the underwriters as they needed to be updated on the situation generally. The time recording showed on 20 February 2012 "drafting e-mail report to [SC] at [A Insurer] re: update on developments with advices on procedural developments and steps to take". There was no evidence that any report was sent out at that stage. The time recording showed on 30 July 2012 "drafting report for u/w re: procedural and substantive issues and advices"; this was five months later. There was an e-mail from the Respondent dated 30 July 2012 to SP stating:

> "Below is what I had already drafted for [SC] by way of update and further information needed."

It was not sent to SC until 21 September 2012 a delay of almost two more months. The Respondent's evidence was that reports sat with SP for months before they were approved and sent which Mr Lazarus submitted was entirely unsurprising in the context of how she dealt with e-mails. He invited the Tribunal to conclude that the most likely scenario was that the Respondent created the report in April 2013 when it was true. Then as a result of the way he was pressurised to bill he inadvertently sent it out in October 2013. His evidence was that he sent around 10 of these e-mails in the space of a few minutes and was not even aware of the cases upon which he was sending them. This was a boring administrative task which he carried out first thing in the morning before he got on to the real meat of his job – his caseload. The Tribunal could not possibly be satisfied of dishonesty to the criminal standard that the e-mail was created as part of a deliberate deception to create a false paper trail where things had gone wrong.

85.5 In evidence in addition to the points referred to by Mr Lazarus above, the Respondent stated that there were a number of files where SP sent him an e-mail or memo effecting a formal file transfer but there was nothing to suggest the position changed in this matter in September 2012. She was leaving him to do a lot of the work and he was looking to her for supervision and guidance. The Respondent denied that he

retained the case file in his room all the time; the matter had been going on for some time and there was more than one file. It was fair to say that the pleadings file would be in his room. SP had a filing system of up to several thousand files and these were stored across the fee earners' rooms by number.

85.6 In cross examination, the Respondent confirmed that from the date of service of the claim on 22 January 2013 until early March 2014 he prepared the report for SP but had no further conversations about the matter. He accepted that he filed the acknowledgement of service on 29 January 2013 and was dealing with the actions on the case. As to whether his calculation of the date when the Defence was due in his letter to D solicitors at that time reflected that he was an experienced litigator, the Respondent stated that this was a commonplace letter that he and colleagues would have written as a group. He accepted that this was a complex case with an issue of coverage and a considerable history where litigation had been threatened for several years and it was hoped that the other side would miss the limitation period and he told neither SP nor the client that proceedings had been issued at the time.

85.7 The Respondent stated that his secretary would have attached the bill to the e-mail in October 2013 as an administrative task at the request of the accounts department and presented it to the Respondent. He believed his secretary would have typed in the e-mail address and although he did not remember sending it believed that he pressed the send button. It was just a question of sending the bill out to the client as quickly as possible. He did not think that he had sought SP's approval. He was embarrassed that he had not read the contents of the e-mail properly.

85.8 In cross-examination the Respondent said that it was a failure on his part not to have chased up the April 2013 draft which he had left in the signature book. He accepted that the draft printed off on 14 May 2013 was correctly addressed both to HR of the Broker and copied to SC. The Respondent stated that when the bill was to be added, the draft would have gone back to the secretary and having added the bill she would put it back in his folder for it to be sent. He stated that there was more than one version of the report in his drafts. He did not think his secretary deleted HR but had pulled out a version which was not necessarily populated with the addresses. He accepted that the report was misleading but it was not intended to be. He had not read the email. He did not know that the address was incorrect. He had sent the e-mail and bill at 09.34 and a non-delivery message came in at 10.36. He was not looking for any such notice and would expect his secretary to deal with it and he believed that there were further such notices much later than this. As to the notice received at 05.41 on 19 October 2013 advising that there had been 29 attempts to deliver the message over a period of 92 hours, he expected his secretary to pick this up.

85.9 The Respondent stated that in four and a half years he had never dealt with an automated reminder from the system which the firm operated in respect of reports to clients. He did not look at the reminders dated 31 January 2013, 1 April 2013, and every two months until 23 September 2014. The reminders often did not follow the line of the case. They were generated every day; there was no way of stopping them. There were different systems for various clients and on the majority of cases reporting was on a bordereau by which one could update a client periodically.

85.10 The Respondent agreed that the case had not slipped his mind. He rejected the suggestion that his e-mail dated 22 October 2013 to HR at the Broker apologising for the delay and referring to her recent e-mail and promising a substantive report shortly was odd if his 15 October e-mail to SC had arrived safely. His mindset was that he knew he needed to report on this case and he was thinking of the draft report from April 2013. The file had bills going back a long way and he did not look at them. He did nothing because this was one of a number of things. In respect of the e-mail reminders which he received from HR dated 24 June 2014 incorporating his 22 October 2013 e-mail, 24 July 2014 and 21 August 2014 chasing up his report, the Respondent stated that he could not reply because he needed SP's approval for the report.

85.11 In re-examination the Respondent confirmed that he had sent the e-mail with the bill a few minutes after his start time in the morning and he thought that he had sent approximately 10 e-mails with bills at that time within say five minutes. A lot of the reports were pre-prepared and he would not necessarily need to check them again. He would not have been aware a few minutes later that he had sent out an e-mail about that particular case. As to the inclusion of the Broker as the addressee for the draft report dated 14 May 2013, the Respondent stated that the Brokers often took the bills round. There was no clear pattern in respect of sending them to the Broker or to SC.

85.12 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and the Respondent. The Respondent admitted breaches of Principle 4, the requirement for a solicitor to act in the best interests of each client, Principle 5, to provide a proper standard of service to your clients and Principle 6, to behave in a way that maintains the trust the public places in you and in the provision of legal services. He denied both breach of Principle 2, the requirement to act with integrity and denied acting dishonestly. In determining whether there had been a breach of Principle 2 in this and other allegations which included breach of that Principle, the Tribunal applied the approach to determining if there had been lack of integrity established in the line of cases which distinguished between lack of integrity and dishonesty and which applied an objective test for integrity. In determining whether there had been dishonesty the Tribunal followed the principles in the case of Twinsectra v Yardley applying the objective and subjective tests.

85.13 The Tribunal noted that the Respondent admitted that the e-mail report dated 15 October 2013 was misleading at the time purported to be sent. The Tribunal agreed; the report omitted key facts which would have been of interest to the client including that offers of settlement had been made on 28 January 2013; that a Defence had been served on 14 May 2013; and that a Default Judgment had been entered on the same day. The Tribunal found as the fact that the report which made up the e-mail was drafted by the Respondent no later than 14 May 2013 the date it was originally printed out. Nothing turned on whether it had already been drafted on 11 April 2013 as evidenced by the time recording. The Tribunal also accepted the evidence of the Respondent that he had personally attempted to send the e-mail. The Respondent asserted that he had been pressured to send out bills and sent this e-mail and the attached bill as one of a batch of several which he did not read at the time. He also testified that he would not have been aware of which case reports he was signing. However the Tribunal noted that the supervisory partner in her witness statement referred to the moderation for the Respondent for the year 2012-2013 as including

comments that the Respondent was "very thorough". She herself stated in her witness statement "...his work pace was measured. He was very methodical and took time to do things – he would not be rushed." The Respondent referred in his oral evidence to his desire to include detail in his reports. The other major case in which the Respondent was involved did not involve his firm until 30 November 2013 and so could not have put pressure on his conduct of the Defence to Mr U's claim. There was no dispute that the litigation which the firm was defending against Mr U was complex and in terms of the Respondent's experience on his own evidence was unusual. For whatever reason he had failed to undertake the necessary work and the case had gone disastrously wrong. The Tribunal did not accept in those circumstances that the Respondent was not aware of what he was sending out and that it was misleading. The allegation was explicit and charged that the Respondent "purported to send" a misleading e-mail. The Respondent's evidence was that the e-mail including the address was pre-drafted for him and that there were numerous versions of the draft report held in the firm's computer system. There was some evidence on the time recording documents of the report being updated on 29 May 2013 but even that would have been considerably out of date. The Respondent stated that the e-mail report was sent to SC because he rather than the Broker was the client. The Tribunal had seen evidence that it had been drawn to the Respondent's attention repeatedly that the e-mail had not arrived safely at its destination. The Respondent's evidence was that he did not read or ignored such communications as they were a matter for his secretary. The Tribunal found that the Respondent was aware of these repeated messages. It found that if he had wished the e-mail report to arrive safely at its destination he would have acted on these messages and re-sent the email to the correct address. In her statement, SP suggested that the Respondent drafted the email to convey an impression to her (and the client) that he was handling the case satisfactorily and that there was nothing untoward on the file which in turn meant that she did not become more directly involved in the matter and discover what had actually happened. The Tribunal agreed with this analysis. The Tribunal also had the evidence of the supervisory partner's witness statement that she had asked the Respondent to prepare a report in October 2013 and the Tribunal found that he had chosen to use in the main the earlier April/May 2013 draft. The Tribunal was satisfied that the inescapable conclusion was that the Respondent had deliberately used an address which would ensure that the Report did not arrive safely because he knew it was misleading. The Tribunal had heard evidence from the Respondent about the method of operation of the team in which the Respondent worked which the supervisory partner disputed but which it was asserted placed the Respondent under great pressure. Even if that picture were accurate it did not provide a defence to this allegation; if the Respondent acted under pressure and felt that it was difficult to obtain guidance that was a matter for mitigation. The Tribunal considered that the Respondent's actions would be considered dishonest by the standards of reasonable and honest people and that by his actions the Respondent demonstrated that he knew that he was being dishonest. The Tribunal also considered that viewed objectively the Respondent displayed a lack of integrity and the Tribunal therefore found breach of Principle 2 proved on the evidence to the required standard. The Tribunal also found proved breach of Principles 4, 5 and 6; indeed they were admitted. The Tribunal therefore found all aspects of allegation 1.1 proved.

86. **Allegation 1.2 - On 10 September 2014 he [the Respondent] sent an e-mail to a Broker which was misleading. In so doing he acted in breach of Principles 2, 4, 5 and 6.**

86.1 For the Applicant, Mr Levey submitted that the e-mail sent to the Broker was plainly misleading. The chronological lead up to the e-mail being sent was that the hearing of the Respondent's application to set aside the default judgment was delayed because the other side wanted to inspect the file. He inferred that they hoped that they would find something to identify all the insurers and parties and it was agreed that the hearing would take place at the same time as their application to make that inspection. There was also an issue about counsel's availability for the hearing which was ultimately fixed for December 2014. The communication exchanges before the 10 September 2014 e-mail was sent are set out in the background to this judgment. HR of the Broker chased the Respondent on 22 October 2013 and in June, July and August 2014 culminating on 8 September in an e-mail from RB of the Broker to the Respondent (which was copied to others including SP) referring to the Respondent's e-mail of 22 October 2013 and that his colleague HR had:

> "sent numerous chasers regarding receiving a substantive report on this matter and Underwriters are understandably unhappy as updates have been outside of normal reporting procedures and timeframes…"

SP then stepped in and on 9 September 2014 e-mailed RB: "You will get the report today. Apologies for the delay." On 10 September 2014 the email, the subject of allegation 1.2 was sent. Mr Levey submitted that it was a wholly misleading document. It included:

> "Following conflicting Courts Order and Notices regarding Directions and Default Judgment, Court to set aside the Court Judgment and proceed with substantive Directions as per previous Court Notice. Claimant has tried to seek a procedural advantage, but Court has acknowledged our application and will confirm a date in October 2014 to hear the Application…"

and

> "We were unaware that Mr [U's] solicitors had tried to file for Judgment by arguing no Defence had been served and filed by Underwriters."

It was set out in the Rule 5 Statement that D Solicitors had written to the firm on 26 April 2013 to warn that an application for default judgment would be made on 1 May 2013 if a Defence was not filed, or an application to extend the deadline for service of the Defence was not made by 4p.m. on 30 April 2013. D Solicitors' application for default judgment of 1 May 2013 was served on the firm by post and fax. The e-mail failed to accurately to explain the circumstances in which the default judgment had been entered; that is that it was the Respondent's/the firm's fault which had led to that judgment being entered.

86.2 Mr Levey submitted that the email wholly downplayed the default judgment and referred to "conflicting notices" which the court had said more than a year earlier in a letter dated 5 June 2013 were sent out in error and that the default judgment stood. The email included:

> "The Manchester High Court is an unusual Court entity insofar as District Judges who normally sit in a County Court often deliver court orders and notices in this higher Court. They delivered conflicting orders and notices to the parties seeking to address the issue of Directions in one court notice (following service of the Defence) and ordering Judgment on the other. We have therefore applied to the court set aside the Judgment…"

The email portrayed the other side as seeking procedural advantage and made no reference to the Respondent's requests for extensions and the reasonable behaviour of the other side which then lost its patience:

> "Mr [U's] solicitors have not been helpful in seeking to try and gain a procedural advantage… but we will point out to the Court that the claim is substantial, there is a real prospect of defending it substantively, it has been issued against the wrong lead entity in any event, and there is no prejudice to Mr [U], in accordance with CPR 13.3(1). Furthermore, the Court and Claimant have seen the Defence, which was lodged with all concerned before the conflicting Court notices and orders, and we will submit that it is Mr [U's] concerns as to the strength of the submissions in the Defence, which are behind his wish to seek a procedural advantage…"

The e-mail failed to state that the Respondent/the firm had failed for more than nine months to take any steps to have the default judgment set aside. No mention was made of the threat of making a statutory demand which might potentially lead to an application to wind up L Insurers on the basis that it was insolvent. The report did not say that the prospects of success in the application were therefore quite small because it was so late. The report gave the impression that there was a mix-up after the event but in fact the insurers could not rely on it. As to the assertion that the claim had been issued against the wrong lead entity, A Insurer was the lead underwriter but the claim made clear that the Claimant was suing L and all the others "on the slip". The Respondent was giving the impression that the other side had made a mistake whereas the proceedings had been issued in accordance with the CPR.

86.3 Mr Levey submitted that it was the Applicant's case that SP was absolutely misled by the Respondent for all the reasons she gave in her evidence. There was a draft of the 10 September 2014 document which had handwritten amendments made by SP. The Applicant had investigated her position and concluded that she was not to blame and was a witness of truth. She had not known of the default judgment and when she found out she believed what the Respondent said about the court issuing conflicting orders, she believed that there had been a mix-up and that the wrong party was sued; all of which was a lie. In his witness statement dated 15 April 2017, the Respondent stated:

> "The first discussion I had with [SP] on the default judgment was in early March 2014 in my office (and neither of us mentioned the case to the other between May 2013 and March 2014). [SP] mentioned the application I had made to set aside the default judgment and said we needed to get the matter listed to be heard and then prepare a full report to the client. She told me to get on with things.
>
> We discussed the case again in July 2014 when arrangements were being made to list the case for a one day hearing. I asked her at that time whether she wanted me to prepare a report for Mr [SC]. She told me not to do so and said that she wanted to wait until the listing date was known so that she could give him a more positive report which specified the date of the hearing and demonstrated that everything was in hand to set aside the default judgment.
>
> As I have said, we had conversations on the application to set aside in March 2014 and July 2014. Further, I believe she must have known about the default judgment when it was entered in May 2013 because she received all the correspondence on it from the court and [D Solicitors]."

It was suggested by the Respondent that SP knew of the default judgment much earlier between March and July 2014. She said that that was not true and she was not on trial before the Tribunal. Mr Levey submitted that SP explained in her evidence how her correspondence was looked at; she was running over 4,000 cases and her secretaries allocated it. Even if she had known in March and July 2014 what the Respondent was doing when the claim was issued which the Applicant did not accept, the clients were not told that the Defence had been signed off and that default judgment was entered. The Respondent did not say that he asked SP and that she told him what do or that what he did was acceptable; in order for his defence to be valid both had to have been dishonest and the Applicant did not accept that for one second and in any event questioned how that would help the Respondent's defence. At the highest he said there was a conspiracy of silence. In his statement the Respondent said that his Answer was premised on not seeking to blame other people but he blamed SP. Mr Levey submitted that if his supervising partner was not approachable he could have gone to another partner or found some other way of dealing with the situation but misleading the other side was not an option. Mr Levey submitted that there was a complete divergence between what the Respondent said and what SP said. If the Tribunal found that SP did not know what was happening then it reflected very badly on the Respondent and as a consequence it followed that the defence he was running was not true. It was alleged in the Rule 5 Statement that in sending the report to the Broker on 10 September 2014 which he knew to be misleading in that it misrepresented the status of the claim against A Insurer and others by omitting material information, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. He must also have been aware that it was dishonest by those standards for the following reasons: the omissions and/or misleading statements were intended to hide his/the firm's failings and/or defaults in dealing with the claim of 21 January 2013; as a senior and experienced solicitor he would been aware of his duty to be open and truthful in his communications with the Broker in the circumstances which included the likelihood that as Broker of the policy it would share the information with A Insurer and the other underwriters of the policy, including in particular in respect of explaining to them failings and/or defaults on the

part of the Respondent or the firm; and in any event no reasonable and honest solicitor would consider that a solicitor deliberately misleading an insurance broker in order to hide that solicitor's own failings and/or defaults was honest conduct by the ordinary standards of reasonable and honest people.

86.4 For the Respondent, Mr Lazarus submitted that it was admitted the report was misleading; it did not contain crucial pieces of information which the insurer needed to know but the Respondent denied dishonesty or lack of integrity. SP believed that he deliberately set out to mislead her regarding the status of the named Defendant in the proceedings. Her statement said:

> "In reading the 10 September 2014 draft report, I was under the impression, again acting in reliance on the information and explanations provided to me by [the Respondent], that although a default judgment had apparently been obtained, as it was against an unrelated party, it would be a straightforward matter to have the judgment set aside; notwithstanding what [the Respondent] told me about the judgment being against the wrong entity I did not feel that we could allow a default judgment to remain. When reading the 10 September 2014 draft report I had no reason to doubt that what [the Respondent] had written and what he told me was true."

Mr Lazarus asked the Tribunal to bear in mind that the witness said she relied on what she was being told by a very inexperienced solicitor as against her 25 years of experience and her very impressive CV. Later in her statement she said:

> "I was misled by [the Respondent] who concealed the true picture from me."

Mr Lazarus submitted that this was contradicted by what the report said:

> "In essence they are suing all the parties to the insurance policy but have simply named [L] as a legal entity for the purposes of the proceedings."

Mr Lazarus submitted that this statement would not lead one to believe that L was not on risk. The next paragraph contained a clear unequivocal account of the true status of the Defendant with its reference to Mr U's solicitors acting in accordance with CPR 19.6. Against that background Mr Lazarus admitted that it was almost impossible to believe that when SP found out about the default judgment and when presented with the report which identified that Defendant she did not look at the file. It was the Respondent's evidence that she took the file and had it for two days between 8 September when the report was drafted and 10 September 2014 when it was sent out. It was the Respondent's case that the witness knew before 8 September what was going on; that she had hard copy of the default judgment when the Respondent was on holiday – it was his evidence that his mail went to her. It was a case she was very familiar with as it was a complicated claim. Even if the Tribunal accepted her evidence about the buddy system for looking at absent staff members' correspondence and if someone else took the Respondent's mail it was inconceivable that if that person found a default judgment they did not take it to the witness or alert her to it. The default judgment had been found separately from the file by the firm. Mr Lazarus invited the Tribunal to conclude that the default judgment had been taken by the witness and put to one side intending to have words with the Respondent about it

which she eventually did and that it was never returned to the file until it was transferred to the other partner JS. The Tribunal could conclude that the witness knew of the default judgment at the time it was entered.

86.5 Mr Lazarus also submitted that Mr K of the court telephoned the firm and spoke to someone who had authority to agree to the 23 July 2014 hearing being vacated. Only two people, the Respondent and SP could be in that situation. If the Applicant's case were true and the Respondent was involved in a cover-up why would he give SP's e-mail address to the person to whom he was speaking knowing that the individual would generate an e-mail to confirm the hearing was vacated. Mr Lazarus suggested that the court spoke to SP and asked for an e-mail address to which to send confirmation and she gave hers. He suggested that she received the default judgment and so when the Respondent discussed the application to set aside with her after he had made it, it was not a problem for her and vacating the date was uncontroversial and straightforward. If the Respondent set out to mislead SP or the client he could have made a better fist of it. If SP was ignorant of the default judgment why should the Respondent mention it at all in the report; why not continue the deception and produce an anodyne report. Mr Lazarus submitted that the Respondent started work on the report. SP was worried because she was being chased by a senior person from the Broker. She took the report as it stood with the file off his hands and worked on it for two days making her own amendments; she deleted the words "we have applied to the Court to set aside the Court Judgment". The mistake the Respondent made was when he was given back the half finished manuscript he should not have agreed to send it. He felt he could not speak to SP and felt obliged to do what he was told. He had no intention to mislead her or the client. Mr Lazarus submitted that the Tribunal could not possibly reach a conclusion to the criminal standard that there had been deliberate deception on the Respondent's part.

86.6 In evidence regarding the 10 September 2014 email, the Respondent stated SP summoned him on 10 September 2014 and told him to put in her amendments and send the report immediately because it was overdue. He had not said that proceedings had been issued against a party not on risk but rather that they had not been issued against the lead underwriter but one of the other parties to the B Association policy.

86.7 The Respondent stated he knew of time being a factor to consider in making an application to set aside a default judgment but he was not aware it was a major factor. He accepted in the light of what he now knew about what had happened subsequently that the report gave a potentially optimistic view. He also accepted there was no reference in the report to the delay in serving the Defence but stated that this was not typical of the reports he produced. It was more succinct. He had been criticised for the length of his reports. He had had no opportunity to put in more detail. As to there being no mention of the threat of a statutory demand, the Respondent had never faced one before in spite of the experience detailed on his CV. He now thought the report should have referred to it. He had not sought to mislead or be dishonest; he had prepared something under extreme pressure. In cross-examination the Respondent agreed that at the time this e-mail was sent he knew that the file had gone disastrously wrong but stated he did not know at the time that there was a real risk that the application to set aside the default judgment would not succeed. He agreed that there was no other case he was involved in where there had been negligence. He rejected the suggestion that he did not need to look at the file to know there had been

negligence; he asserted that he would need to see the file in order to make the report a lot more detailed. As to the reference in his report to the other side taking a procedural advantage, the Respondent stated that they took the point (that he had not filed the Defence in time) in the same way as he took the point about what he regarded as the superceding court notice. As to the assertion that by entering the default judgment D Solicitors were increasing costs, the Respondent stated that he sent the report without appreciating that; he was told to make changes on the instructions of SP.

86.8 The Respondent stated that he had told SP how badly wrong the case had gone. He had not made it very clear about who was being sued; he was highlighting that the other side had brought the action in something other than the usual way. He thought that would provide an argument to set the default judgement aside but he did not tell SP that. She knew who the insurers were; it had been a big issue before proceedings were issued. The other side did not know that A Insurer was the lead underwriter but the insurer clients were aware of it and the Respondent stated that he was highlighting it to them again in the report. He thought that SC would be interested. As to it not being relevant to the application to set the default judgment aside, the Respondent said that it might be his misunderstanding; he was trying to provide all the information. He was not seeking to give comfort to the insurers that everything would be alright because the other side had sued the wrong underwriter. The Respondent stated that he knew that the document was incomplete rather than misleading when he prepared it. He had followed the instructions of a senior supervisor who was well equipped to deal with the claims. He appreciated with the benefit of hindsight that the document did not tell the whole story and that it was misleading.

86.9 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and the Respondent. The Respondent admitted breach of Principles 4, 5 and 6. He did not dispute that he sent the e-mail or that it was misleading. He prepared a draft which the supervisory partner amended. The Tribunal found that they then sat down together and discussed it. The nature of the omissions in the document was so significant as to create an entirely false impression as to what had happened in the matter. Crucial information was withheld. The Respondent tried to suggest that the document was nuanced to a point where it was not misleading; he tried to blame the court for giving out a conflicting order and notice and he gave the impression that key events had only just happened whereas for example the default judgment had been entered on 14 May 2013 some four months previously. He also made no reference in the draft to the fact that the other side had served him with a draft statutory demand which placed the firm's clients in a very precarious position about which they were never fully advised. Emphasis had been placed on changes made to the drafting by the supervisory partner. The Respondent had also asserted that the supervisory partner was aware of the default judgment because she received it while he was away on holiday and that she had communicated with the Court about the application to set aside. The Tribunal accepted her evidence that she was not aware of the default judgment at that time and that she had not communicated with the court. The Tribunal accepted the supervisory partner's evidence that they had sat down together and discussed the draft and that she relied on the explanations which the Respondent gave her. The Tribunal noted that the Respondent never at any time said that he did not know what was in the document. He merely said that the draft had been taken away from him after 90 minutes during which time he had not had the opportunity to put in all the details he wanted and when he had been focusing on other

aspects than the key events, such as the reserve needed for costs. The Tribunal found that the Respondent knew of the contents of the document and that the information in the document was plainly wrong. The Tribunal therefore found as a fact that on 10 September 2014 the Respondent sent an e-mail to the Broker which was misleading. The Tribunal found breaches of Principles 4, 5 and 6 proved on the evidence to the required standard; indeed they were admitted. The Tribunal also considered that by the standards of honest and reasonable people to send a misleading e-mail as the Respondent did was dishonest. The Respondent plainly knew that and did not dispute that the contents of the e-mail were misleading and in those circumstances the Tribunal considered that he knew that what he was doing was dishonest. In so acting he also displayed a lack of integrity. The Tribunal therefore found all aspects of allegation 1.2 proved on the evidence to the required standard.

87. **Allegation 1.3 - On 14 May 2013 he [the Respondent] signed a statement of truth on a defence in which he:**

1.3.1 certified that the defendant believed that the facts stated in the defence were true, when he knew that the defendant had not seen the facts that had been pleaded; and

1.3.2 that he was duly authorised to sign the defence on behalf of the defendant when he knew he had neither sought nor obtained the defendant's authority.

In doing both, he acted in breach of Principles 1, 2 and 6

87.1 For the Applicant, Mr Levey submitted regarding the Statement of Truth on the Defence that it was common ground that the Defence was served without any involvement at all of the insurer client save to the extent that a strategy had been agreed at a much earlier stage. The Respondent did not say that anyone had discussed with A Insurer that they had been sued, that a draft Defence had been prepared or that the Defence had been served. The Respondent signed a Statement of Truth certifying that the Defendant believed the facts in the Defence were true when it had not even seen the particulars of claim.

87.2 Mr Levey submitted that allegation 1.3 raised an issue of the extent to which the Respondent could rely on the agreed defence strategy to constitute implied authority. This was absolutely not the case where there was a default judgment for £500,000.00 and which in his own witness statement the Respondent said involved complex issues of the coverage afforded by the insurance policy, an issue which he said was beyond his area of expertise. It was not reasonable to suggest that he could sign off the Defence. The particulars of claim were lengthy and the Defence covered numerous factual issues about the policy. Mr Levey submitted that the Respondent asserted this was a matter in which he needed supervision but at the same time that the Defence was a routine matter with which he could deal without his client's comments. The other side did not think that this was a simple matter as Mr R of D Solicitors said in his witness statement in support of the application for default judgment:

> "The facts of this matter are complex and I have tried to briefly summarise the claim here to assist the Court."

Mr Levey submitted that the draft Defence was not purely legal argument; much of it consisted of factual assertions with which only the client could deal. The final page of the Defence comprised a Statement of Truth signed by the Respondent on 14 May 2013, in the following terms:

> "The Defendant believes the facts stated in this Defence are true and I am duly authorised to sign this Statement of Truth on its behalf"

Mr Levey submitted that if the matter went to trial and there were factual assertions in the Defence which were incorrect it would be the Defendant who would be criticised and cross examined. In the ordinary course of events one would ask the client to look at the draft Defence and agree that the facts were correct. A Statement of Truth was one of the most significant documents a solicitor or client could sign. One could be in contempt of court if one knowingly signed a Statement of Truth which was not true. Mr Levey took the Tribunal to what he submitted were examples of the facts which needed to be confirmed expressly with the client. (They related to matters such as the absence of qualification and/or licensing requirement in relation to flying gliders in the UK.) Mr Levey submitted that one could not sign the Defence without authorisation even if the matter was a very simple claim such as a pavement trip. It was alleged in the Rule 5 Statement that in signing the statement of truth on both the Defence and his witness statement in support of the application to set aside the default judgement (allegation 1.4) which he knew to be false and misleading, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people and that he must have been aware that it was dishonest because as a senior solicitor who was experienced in the conduct of litigation before the English courts, he was aware of his duty not to mislead the court; and no reasonable and honest person would consider that a solicitor who was deliberately misleading the court was acting honestly by their standards.

87.3 For the Respondent, Mr Lazarus submitted that the facts underlying this allegation were not in real dispute. No instructions had been sought from SC or anyone else and the Respondent signed the Statement of Truth. It was not good practice to sign without sending a document to the client for approval first but it was not in breach of any of the principles cited in the allegation. In reality the Statement of Truth was true; there was no evidence before the Tribunal to suggest that the Defendant disputed any of the facts or that they were anything other than true.

87.4 As to the Respondent's statement that he was authorised to sign the Statement of Truth on the Defendant's behalf, Mr Lazarus submitted that there was no indication that he did not have authority. There had been multiple meetings between SC, the Respondent and SP as well as with the B Association which was not a client and to whom the firm had no duty but they knew the underlying facts. There were few facts within the direct knowledge of the underwriters other than the terms of the policy and construing the policy was a lawyer's task for counsel and SP. There was a strategy based on the terms of the policy agreed with the client and counsel. There was little if anything that SC had to add to the factual matrix. There was no basis to assume that he would be a witness to the facts or could be cross examined and he had been party to the earlier conferences. There was no basis to consider that the Defendant did not believe the facts or that the Respondent did not have good reason to believe that the Defence was true and he clearly did believe it. Mr Lazarus invited the Tribunal to

accept that the Respondent had authority. Also he had seen other members of the team do the same thing. A lot of work had been done on this and other cases without the involvement of the client. This was very different from the client in a personal injury case where the solicitor would know nothing save what the client had told them and could not sign without the express authority of the client or have the documents signed by the clients. Mr Lazarus referred to SP's evidence about her involvement in the matter in her witness statement; she said that the Respondent's responsibility was limited to liaising with counsel and carrying out relatively straightforward tasks to implement the agreed strategy. There was no basis to conclude that the Respondent had breached the principles alleged; his signing the Statement of Truth had no impact on the rule of law or proper administration of justice. This was a valid Defence based on information provided by or through the client. The allegation came nowhere near proving dishonesty to any standard. There was no evidence that the Respondent believed the Statement of Truth to be untrue.

87.5 In evidence, the Respondent stated that he was authorised to sign a Statement of Truth in order to protect the client's interests. He had done so previously and no concern had ever been raised on those occasions. SP knew that he did so. He was aware of other fee earners in the team who signed Statements of Truth without explicit instructions from the client. He had never seen a Statement of Truth signed by the client in his time at the firm. He believed he had sufficient information to say that the Defendant believed the facts in the Defence to be true. The firm had lines for the Defence going back to 2010 and there had been a series of meetings with the parties to obtain all the factual information. Lines of argument had been prepared in letters of rejection of the claim previously. He now believed he should have provided A Insurer with advice that he had prepared something so that they would be aware of it. The Respondent clarified for the Tribunal that he did not need the authority of the client to incur counsel's fees because the reports included a fee reserve. A Tribunal member asked about the reference in the September 2014 e-mail to a Defence having been served and asked whether there had been a discussion with either the underwriter or SP about it having been done without reference to the client. The Respondent did not recall that ever happening.

87.6 The Respondent agreed in cross examination that in the application for the default judgment Mr R of D Solicitors described the facts of the matter as complex; that when counsel sent the draft Defence he asked the Respondent to check the factual assertions were correct; that he had a telephone conversation with counsel evidenced by an attendance note on 14 May 2013 and that the note reflected that the claim was prolix and difficult to follow and that they noted that there were difficulties in understanding certain paragraphs of the particulars of claim; he had never dealt with an issue of coverage before and that this was not work it was typical of the department as a whole. The Respondent stated that he thought that SP knew that the claim had been issued and that the Defence covered issues which went back over four years. He was not suggesting that the insurers had given delegated authority to deal with a half million pound claim without reference to them.

87.7 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and the Respondent. The Respondent denied allegation 1.3. The Tribunal first considered that part of the Statement of Truth which referred to what the Defendant believed. The supervisory partner said that this action was well

outside the delegated $50,000 authority limit. She said that this was a document which she thought that SC would have read if it had been provided to him and that he was interested in this case. The Respondent stated that he thought that he had authority to sign the Statement of Truth and the only evidence from the client was how they reacted when they knew that a Defence had been submitted. The report to the Broker on 14 September 2014 which was the subject of allegation 1.2 disclosed that a Defence had been served. At no point after that had the Tribunal seen any evidence that SC for the client was dissatisfied by that knowledge. The file was later transferred at the direction of SC to another partner in the firm JS because SC felt it needed regular high-level attention and because the client had not received a report for over two years. The Respondent accepted that he had carried out the actions described in allegation 1.3.1 but not that they constituted breaches of the Principles pleaded. Mr Levey had taken the supervisory partner through a considerable amount of factual and legal detail in the Defence and Mr Lazarus had also addressed that point. The supervisory partner had given evidence about the process of information gathering which the firm had undertaken with the client A Insurer and the B Association and had also testified about the expertise of counsel who had drafted the Defence and who had previous insurance experience. The Tribunal was not therefore satisfied that the facts set out in the Defence were false and therefore Principle 1 could not have been breached because the rule of law or proper administration of justice were not adversely impacted by filing a document containing accurate facts. For the Respondent to sign that the Defendant believed the facts in the Defence to be true when they were, could not constitute lack of integrity (Principle 2) and would not undermine the trust of the public in the Respondent or the provision of legal services (Principle 6). This was not to say that the Respondent had perhaps behaved unwisely in failing to submit a draft Defence to the client for consideration but the Tribunal had to consider the allegation as drafted. Based on these findings the question of dishonesty did not arise in respect of allegation 1.3.1.

87.8 Allegation 1.3.2 related to the Respondent's statement that he was duly authorised to sign the Defence. The Tribunal did not consider that anything turned on whether or not there was a requirement for such a statement to be contained in the document. The Respondent had given evidence that he was entitled to instruct counsel in dealing with a case. The Tribunal had heard considerable evidence about the working arrangements within the team of which the Respondent was a member. There was no written guidance for staff in terms of what any individual member of staff was permitted to do without consulting the client. Again there was no evidence of any adverse reaction from the client which tended to support the Respondent's belief that he had authority to sign the Defence. In the circumstances the Tribunal found that it had not been proved on the evidence to the required standard that the Respondent had breached any of the three principles alleged. Based on these findings the question of dishonesty did not arise in respect of allegation 1.3.2. Allegation 1.3 was therefore found not proved its entirety.

88. **Allegation 1.4 - On 7 March 2014 he [the Respondent] signed a statement of truth on a witness statement in which he certified that he was authorised to make the statement on behalf of the defendant when he knew he had neither sought nor obtained the defendant's authority. In so doing, he acted in breach of Principles 1, 2 and 6.**

88.1 For the Applicant, Mr Levey submitted that judgment in default was entered because no Defence was served and it was 10 months until an application was made to set the judgment aside. There was no evidence that the Respondent or anyone else at the firm took any steps in respect of the matter after the e-mail report of 15 October 2013, until 21 February 2014 when D Solicitors sent their draft statutory demand to the firm for the sum due to its client pursuant to the default judgment. There was still no suggestion of reporting back to the client but the Respondent wrote to D Solicitors on 28 February 2014 asserting that he did not have complete instructions. There was a requirement that the application had to be made promptly. In that ten-month period the client was not told that judgment in default in excess of £500,000 had been entered against them. The CPR included the need for such an application to be made promptly and was one of the very few rules which expressly required that. The only other example was in Judicial Review. In cross examination of the Respondent, Mr Levey set out the CPR requirements: Rule 13.3 stated:

> "(1) In any other case, the court may set aside or vary a judgment entered under Part 12 if –
>
> (a) the defendant has a real prospect of successfully defending the claim; or
>
> (b) it appears to the court that there is some other good reason why –
>
> (i) the judgment should be set aside or varied; or
> (ii) the defendant should be allowed to defend the claim.
>
> (2) In considering whether to set aside or vary a judgment entered under Part 12, the matters to which the court must have regard include, whether the person seeking to set aside the judgment made an application to do so promptly."

Mr Levey referred to the notes to rule 13.3.3 which stated:

> "Promptness will always be a factor of considerable significance and, if there has been a marked failure to make the application promptly, a court may well be justified in refusing to give relief, notwithstanding the possibility that the defendant may well succeed at trial…"

The notes also stated "In Regency Rolls v Murat Carnall [2000] EWCA Civ 379 Brown L.J. held that 30 days was too long a delay before making the application in the particular circumstances…" H.H. Judge Coulson in Khan v Edgbaston Holdings [2007] EWHC 2444 (QB) also referred to the decision in Hart Investments v Fidler [2006] EWHC 2857 …where the judge concluded that a delay of 59 days in making an application under CPR Pt 13 was "very much at the outer limit of what could possibly be acceptable…". Mr Levey submitted that the Respondent stated that he was authorised to make the application to set aside the default judgment when he was not. Towards the end of the transaction Leading Counsel advised that the prospect of setting aside the default judgment were only 30-40% advice which had been disclosed to the Respondent and was never challenged. The case was settled by the firm. Such an application to set aside the default judgment carried very serious risks that a costs

order would be made against the insurer client because the application was made late and had low prospects of success. Even if the application to set aside succeeded it carried a serious risk that an adverse costs order would be made. The Applicant rejected the Respondent's suggestion that this was a very routine matter where he could sign a Statement of Truth because it was in the client's best interests. That argument was misconceived because of the risk of a costs order. The Respondent needed express authority to make the application because the client might decide that instead of applying to set aside the default judgment it would instead sue the firm. However it might need to make the application to set aside in order to mitigate its loss.

88.2 On 7 March 2014, the day on which the latest extension from the other side expired, the Respondent applied to set aside the default judgment, for permission formally to serve the Defence and asked for stay of enforcement. The Statement of Truth on the application he signed read:

> "(I believe) (The applicant believes) that the facts stated in this section (and any continuation sheets) are true."

In the first paragraph of his witness statement in support of the application the Respondent stated: "I have conduct of this matter within this firm." At paragraph 5 he stated:

> "The facts of this matter are complex and have been the subject of a dispute dating back to intimation of this claim by [D Solicitors] (the Claimant's solicitors)… in June 2010."

Mr Levey reminded the Tribunal that the Claimant's solicitor had said the same thing in his witness statement dated 1 May 2013. Mr Levey submitted that the Statement of Truth on the Respondent's witness statement in support of the application was not true when he said that he was authorised by the "Claimants" (an error for "Defendants") to make the statement on their behalf. The Respondent remained actively engaged in the matter in respect of scheduling the listing of the application and liaising about the hearing bundle as correspondence before the Tribunal showed (save for an e-mail addressed to SP on 17 July 2014 when the Respondent was on leave.) The hearing was put off until a major decision in another relevant case was available. Mr Levey submitted that it was not until 10 September 2014 that the Respondent made a report to the insurer client.

88.3 For the Respondent, Mr Lazarus submitted that the only issue was whether the Respondent was authorised to sign the Statement of Truth on the witness statement. There was no issue about the truth of the statement itself; all the material arose from the Respondent's own knowledge and he was the only person qualified to sign. The Tribunal had heard the Respondent's evidence about the practices that he experienced in the team. It was clear that he believed he was authorised to sign the statement. The Tribunal might form the view that he did not have sufficient authority and that he was wrong to conclude as he did but his statement that he was duly authorised was not required in the document in order to make the application to set aside. It might be a matter of good practice to say that but the gravamen of the allegation was in his belief that the witness statement was true. Mr Lazarus invited the Tribunal to conclude that

even if the Respondent did not have the authority that did not constitute a breach of Principles 1, 2 and 6 in any meaningful way because lack of authority was not a necessary element of the allegation. There was nothing which came near proving dishonesty to any standard and it would be absurd to make findings of lack of integrity or dishonesty where the assertion as to being authorised was not required. The allegation referred to the Respondent having neither sought nor obtained authority. The underlying factual matrix was not disputed, the Respondent signed the statement and there was no sign that he communicated anything to the clients or put them on notice of the application to set aside. Any authority he had must have been implied and if he had thought that he had it there was no breach at all. If the Tribunal took the view that the Respondent acted without authority then Mr Lazarus invited it to look at the following factors taken together; he had an honest but mistaken belief he had authority, asserting that he was authorised was an unnecessary assertion in any event so what he had done could not impinge on Principle 1 and as to Principle 6 the public trust was not affected by things that did not matter.

88.4 The Respondent stated in evidence that he believed he had authority to make the application to set aside the default judgment without reverting to the client to protect its position. He now believed he should have taken instructions. He was not sure whether saying that he was duly authorised was a necessary part of making the application and he did not think it would have undermined the application if he had not said it.

88.5 In making points of law, Mr Levey submitted that it did not matter whether the client's authority was required for the witness statement; the fact was that the Respondent stated that he had it. Mr Lazarus had asserted that the statement of having authority was not commonly used but Mr Levey submitted that such statements were commonly to be found in the body of such a witness statement as evidenced by the witness statement of Mr R of D Solicitors when applying for the default judgment. Mr Lazarus pointed out that the Application Notice form N244 did not refer to a requirement for authority.

88.6 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and the Respondent. The Tribunal considered that similar considerations applied to the Respondent in respect of allegation 1.4 as to allegation 1.3; if the Respondent believed, even if misguidedly, that he had authority to make the witness statement on behalf of the Defendant the allegation could not be found proved. The Tribunal found as a fact that the Respondent had such a belief. The Tribunal therefore found allegation 1.4 not proved on the evidence to the required standard.

89. **Allegation 1.5 - He [the Respondent] made statements in letters to a firm of solicitors dated 15 February 2013, 20 March 2013, and 28 February 2014 which he knew not to be true. In so doing he acted in breach of Principles 2 and 6.**

89.1 For the Applicant, Mr Levey submitted that in the Respondent's statement he said that when he stated in the letters that he needed instructions this was a commonly understood and commonly used phrase which did not mean that he was taking instructions. The Applicant took issue with that interpretation. No honest solicitor could say that they were taking instructions if they were not and where the client did

not know what was going on. For the Respondent to say that he was taking instructions misled the other side who might or might not take the point. If a solicitor said that they needed to wait until the following week because a witness was abroad, the other side might agree to an extension of time but one could not lie to the other side about the witness being abroad and in the same way one could not say that one was taking instructions if one was not doing it.

89.2 Mr Levey submitted that the first and second paragraphs of the firm's letter to D Solicitors of 15 February 2013 stated:

> "We acknowledge safe receipt of your two letters of 28 January 2013 and are seeking appropriate instructions.
>
> In the interim, we would be obliged for a 28 day extension in which to serve the Defendant's Defence as we are currently seeking and obtaining instructions from all relevant parties in order to respond as appropriate. We trust this can be agreed amicably rather than requiring any form of application and would be obliged for your confirmation of the same by no later than close of play on 18 February 2013."

This was clearly written by an experienced solicitor; it included a reference to a date calculated as due for filing the Defence to guard against the other side having arrived at a different date and trying to enter judgment based on it. The Respondent stated that he was seeking instructions which was not the case. Mr Levey also pointed out that the maximum time that the parties could agree to extend time for serving the Defence was 28 days after which the parties could only agree to an extension in principle and needed an order of the court to extend time. The Respondent was asking for a 28 day extension because he realised that that was all that D Solicitors could agree to. Mr Levey relied on the letter of 15 February 2013 having been written some weeks after the claim had been served for his assertion that it was inaccurate in saying that the Respondent was seeking instructions; such a statement might be made as unfortunate use of language on the day or very soon after the claim was served.

89.3 In the 20 March 2013 letter, it was stated:

> "We write further in respect of the above matter.
>
> We are going to apply for a further short extension in respect of service of Defence as you will appreciate it takes some time in order to obtain all necessary instructions on this matter given the number of parties involved.
>
> We are recommending Friday 5 April 2013 in order to have sufficient time to avoid any further difficulties around the Easter holiday period, albeit if the documentation is ready for service earlier than this, we will serve the papers on yourselves accordingly.
>
> If you raised no objections in this regard, we would be obliged for a brief confirmation of the same in order that we can advise the court and keep any costs to a minimum. We thank you for your patience and intend to revert on a series of issues in addition to the Defence shortly."

Mr Levey submitted that in this letter, as a reasonably experienced litigator, the Respondent clearly recognised that he could not go beyond 28 days by way of extension and suggested that he would apply to the court. The reason given for the extension was not true. If the Respondent had said that he was too busy his request would be refused by the other side. In its letter of 21 March 2013, D Solicitors took the Respondent's letter at face value and plainly believed that the reason time was needed was because the Respondent was taking instructions. Mr Levey went through the exchanges of correspondence submitting that the other side were being patient but that patience might run out and so the Respondent's client was already at serious risk.

89.4 Mr Levey submitted that as set out in respect of allegation 1.4 above the Respondent wrote to D solicitors on 28 February 2014 including:

> "Unfortunately, we do not have complete instructions in order to revert to you within the timeframe you advised. Nevertheless, we anticipate receiving complete instructions and being able to revert to you by no later than 4p.m. on 7 March 2014… Given the issues raised as a result of the lead Underwriter not being the subject of the proceedings as previously advised, you will appreciate it is taking some time to get full instructions from all parties concerned.
>
> We will revert within the next 7 days with our full comments and any proposals accordingly and would be obliged if you could bear with us accordingly."

The Respondent went on to state that the firm would revert to D Solicitors within the next seven days "with our full comments and any proposals".

89.5 It was alleged in the Rule 5 Statement that the Respondent was dishonest in making these above statements in correspondence to D Solicitors which he knew to be false and misleading by the ordinary standards of reasonable and honest people and that he must have been aware that it was dishonest because no reasonable and honest person would consider that a solicitor who deliberately made those false statements in correspondence was engaging in conduct which was honest by their standards.

89.6 For the Respondent, Mr Lazarus submitted that only three letters were the subject of this allegation and despite the implied criticism in Mr Levey's cross-examination of the Respondent it was not open to the Tribunal to make findings regarding other letters. In the letter dated 15 February 2013 the Respondent said: "…we are currently seeking and obtaining instructions from all relevant parties…". By 'we' he meant the firm. He was a junior and relatively inexperienced solicitor and probably did not consider the meaning of 'we'. The notion of the words meaning seeking instructions from his supervising partner was not dishonest or misleading. Mr Lazarus asked the Tribunal to construe the words used as a statement of intent and not of present or past fact. He had taken the Respondent in evidence through a chronology of the time records and it could be seen that he was doing a reasonable amount of work to try to advance this case. He was taking steps to advance the Defence in a complicated claim and that was the message of this letter. At times he went seriously off the rails. Nothing was done between the letter of 15 February 2013 and the letter of 20 March 2013 and he had been in hospital. The Respondent's evidence was almost certainly true regarding what happened at junior level; he had seen these sorts of

phrases bandied about. This was not a sophisticated attempt to mislead the other side to buy time. He did not get the work done and that was the subject of other allegations. There was no breach of the Principles regarding the letters or dishonesty to any standard.

89.7 In evidence, the Respondent stated in respect of his letter to D Solicitors of 15 February 2013, that it was his intention to obtain instructions from SP and the client. He had no intention to mislead anyone. Nothing substantive was done because of a combination of factors; he was very busy and had a number of issues in his personal life. In cross examination, the Respondent accepted that litigation correspondence worked on the basis of a degree of trust between solicitors but he stated that it also operated on the basis of commercial reality; people need time to get things done. Saying that he was seeking instructions in the 15 February 2013 letter was "litigation speak" used on a daily basis. He had not delved behind it when he was a Claimant solicitor. He viewed preparing a report for the client and instructing counsel as part of the whole process of getting instructions. He had spoken to counsel's clerk about counsel's availability but had not taken substantive steps to take things forward. The Respondent stated he was fire fighting on a number of issues. He agreed that if he had written and said that he was snowed under and needed time the other side would have moved forward with the claim as they subsequently did.

89.8 In respect of his letter to D Solicitors of 20 March 2013 where he said the firm was going to apply for a further short extension in respect of service of the Defence, the Respondent stated that he was trying to buy further time to respond and certainly did not intend to mislead anyone. In cross examination, the Respondent stated as to his waiting until 20 March 2013, to ask for an extension beyond 21 March to which the other side had agreed, that he did not know at first that he was not going to be able to meet that deadline. He had not instructed counsel but counsel could turn the matter round in two or three days but he did not do so because he was unavailable. The Respondent cited the personal issues he had already referred to. He agreed that he handled the matter poorly and slowly and he knew that the actions on the case would take time. He accepted that from 21 March 2013 on, the other side could have applied for a default judgment and that he was at risk. He denied that it was in his mind that he needed to satisfy the other side that he was dealing properly with their claim; he had in mind to get a letter out to get more time to deal with it. The matter had gone on for many years and there was an understanding between the parties that they would not undertake litigation lightly. Following earlier discussion with SP and the client there was a policy to hold back and not engage with the other side.

89.9 The Respondent agreed in cross-examination he had written the holding letter dated 28 February 2014 to get time without consulting anyone, saying that he did not have complete instructions. This was in response to a letter dated 21 February 2014 from D Solicitors which had given him until 28 February to provide acceptable proposals for settlement failing which D Solicitors would serve the draft statutory demand which they enclosed with their letter. The Respondent stated that he had never seen a statutory demand but appreciated that they were very serious. His mindset was that he needed to speak to SP and around that period he did so. He was trying to give himself the opportunity to respond and to consider and shortly after that letter he had a discussion with her. He denied that he was trying to make something of the fact that the lead underwriter had not been named in the action and stated that the reference to

it was just that he was trying to understand why that had been done. He agreed that he was looking at as a potential issue; it was a consideration but it was not in the application to set the judgment aside.

89.10 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and the Respondent. Although a considerable number of other letters had been the subject of submissions and cross-examination the Tribunal must limit itself to the three letters which were the subject of the allegation. The first of these was written on 15 February 2013. It contained statements about seeking and obtaining instructions. The Tribunal considered that it was poorly drafted but noted that it is was sent only two or three weeks into the litigation and in those circumstances found that the allegation that the letter contained statements which the Respondent knew not to be true had not been proved to the required standard. The letter of 30 March 2013 contained a statement: "it takes some time in order to obtain all necessary instructions on this matter given the number of parties involved". Of itself this was not untrue. As to the balance of the letter seeking an extension until 5 April 2013 the Tribunal could not be entirely sure that it was a misleading representation; rather it poorly expressed the Respondent's future intentions; the deadline which the Respondent suggested was not that impossible; the Tribunal had heard evidence including from the supervisory partner that counsel involved was capable of dealing with such matters very quickly. The Tribunal again found that the allegation that the letter contained statements which the Respondent knew not to be true had not been proved to the required standard. As to the letter dated almost one year later than the other two, 28 February 2014, the Tribunal considered that it fell into a completely different category. More than a year had passed since the proceedings had been issued and almost no work had been done. None of the supervisory partner, the client or the broker had been asked for instructions but the letter made reference in two places to obtaining "complete instructions". The Respondent was clearly indicating to the other side that he was discussing matters with the client and did not have complete instructions, which was not true at all. The Respondent was well aware that he had no instructions as opposed to incomplete instructions and he knew that in those circumstances there was no prospect that he could file a Defence by 7 March 2014. He also knew that the issue about the lead underwriter was irrelevant to the Defence. The Tribunal therefore found proved on the evidence to the required standard that this letter contained statements which Respondent knew not to be true. The Tribunal also found proved on the evidence to the required standard breaches of Principles 2 and 6. The Tribunal considered that by the standards of honest and reasonable people the letter 28 February 2014 would be considered dishonest. The Respondent was fully aware that the letter contained untruths and yet he sent it to buy time. The Tribunal considered that the subjective test for dishonesty was also therefore satisfied. The Tribunal found allegation 1.5 proved on the evidence to the required standard in respect of the letter dated 28 February 2014.

90. **Allegation 1.6 - He [the Respondent] failed within a reasonable time to inform A Insurer about, or take instructions in relation to:**

1.6.1 the service of a claim in January 2013;

1.6.2 two offers of settlement made on 28 January 2013;

1.6.3 judgment in default awarded in respect of the claim on 14 May 2013 and/or

1.6.4 a draft statutory demand sent to the firm on 21 February 2014.

In failing to do each of these he breached Principles 2, 4, 5 and 6 of the Principles.

90.1 For the Applicant, Mr Levey submitted that allegations 1.6, 1.7 and 1.8 were allegations about the conduct of the case and the standard of service provided. Allegation 1.6 included a reference to offers of settlement of which the other side had made two, one under Part 36 a formal mechanism offering to settle and the second on a straightforward Without Prejudice basis. The offer made under Part 36 was less than the full amount at £490,000.00 and the ordinary Without Prejudice offer was in the amount of £400,000.00. If the client failed to beat the offer there were implications in costs. It was crucial for the client to know that litigation had been commenced and that offers had been made. If judgment in default was entered a solicitor must tell the client because it meant that the judgment could now be enforced. The draft statutory demand sent in February 2014 if it was filed meant that the Claimant could apply to wind up the insurer client. Mr Levey submitted that in such circumstances there was no doubt the insurer would pay up and in this case there was not only a judgment but the threat of insolvency proceedings. It was somewhat later on 7 March 2014 that the Respondent applied to set aside the default judgment.

90.2 For the Respondent, Mr Lazarus submitted that allegations 1.6-1.8 were largely admitted. There had been very significant negligence in the handling of this file but he asked the Tribunal to consider the background. The Respondent was generally overworked; from late 2013 onwards he was involved in a case relating to a major disaster on which he was working five or six hours every day while he had an active caseload of other files. His billable hours were nothing like his hours worked. One of his character witnesses Mr KF had said that he was often in the office until 9 p.m. or 10 p.m. at night. The Respondent considered that he was fire fighting at times. Mr Lazarus invited the Tribunal to conclude that his situation was exacerbated by what he submitted was the chaotic way the team was run. Mr Lazarus did not seek to persuade the Tribunal to discount the Respondent's responsibilities for a file that he was as a matter-of-fact handling. He was the next most senior person in the team after the supervising partner. However he had personal difficulties at the material time. He admitted allegations 1.6, 1.7 and 1.8 to the extent that he did because he was in fact handling the case. These allegations went to the standard of service.

90.3 In respect of allegation 1.6, Mr Lazarus also submitted that it was alleged that the Respondent had failed to inform the client or to take instructions but these failings did not amount to lack of integrity. It seemed to be suggested that what was going on was not inadvertent but deliberate – that the Respondent deliberately avoided making the application to set aside and the application to extend time which Mr Lazarus suggested were absurd propositions. A possible motive had been identified as to why the Respondent would wish to do that. The only logical conclusion was that he was not coping; if he had time he would have made the applications. Mr Lazarus also submitted that against the background of the chaotic way communications worked in the team including that reports were drafted and not dealt with, the Tribunal could not

conclude that the Respondent's failings while serious amounted to lack integrity. Mr Lazarus also drew the Tribunal's attention to the testimonials submitted for the Respondent which should be considered in relation to integrity and honesty. He particular referred to the evidence of Mr KF and Mr SB who had also provided written testimonials. He also asked the Tribunal to look at a written testimonial from another solicitor who had worked in the firm at the time and at a testimonial provided by a litigation executive/branch manager for the office in which the Respondent worked for some months at a firm for which the Respondent had worked from 2009 to 2014. The testimonial stated that they worked in "a highly stressful role with a high volume of Claimant work where fraud was alleged on most cases". The writer was aware that the Respondent had been accused "of dishonestly concealing a default judgment" and said that was not the person he knew. "This is not something that I believe he would have done, based on the time I managed him."

90.4 In cross examination, the Respondent stated that he was on holiday when the court sent the default judgment and he only knew of it when he received a copy from D Solicitors. He was not going to ask the trainee with whom he shared an office to monitor his post. He stated that SP had monitored post when he was away previously in New York; her secretary had telephoned him on the first day of his holiday to inform him that SP wanted to speak to him because of ongoing correspondence with a forensic accountant on one of the cases and the Respondent had spoken to her. He did not believe that she did not open e-mails. She was the owner of the file and in the absence of the fee earner she would check post. The Respondent stated that he would not say SP had a closed door policy. He relied on his supervising partner to assist him and she had not done so and he wished he had gone to see someone else. It was her evidence that she did not need to be involved and he was left on his own. He had been expressly told not to consult other partners. He did not try to speak to her until later. The Respondent accepted that he knew that whether the application failed or succeeded there could be adverse cost consequences for the client but he took the steps he thought were in the best interests of the client. He did not think he had to discuss the application to set aside the default judgment with the client because applications were being made in the team to protect clients' interests. He stated that he did not have the experience to know that this was not appropriate where the application was 10 months late. The Respondent stated that he was not familiar with the rules regarding the need to apply promptly to set aside a default judgment. He did not consult the rules at the time because he was not coping. There were other examples of default judgments from around the world of which SP was aware and he thought that she would speak to him about this one. When he prepared the application to set aside the default judgment it took him a great deal of time and he had other work. It was put to the Respondent that the time recording showed that on 29 May 2013 after the default judgment was entered and the court notice had been sent there was an entry updating: "considering issues of procedure, inc cpr and substantive issues raised; considering strategy". The Respondent agreed that he was looking at all these issues including setting aside the default judgment. In cross examination, it was put to him that the application was on a standard form but he said he had to look it up. He stated that his justification for the application was based on the real prospects of success in the litigation; that was his main argument. He did not explain the delay because he could not see how that would help the application; there was no denying that there was delay. The Respondent accepted that he knew that the delay was a factor in the prospects of success. If he had been asked about it by the

court he would have apologised and he agreed that he had no answer. The Respondent denied failure to act with integrity and said he was focusing on other work.

90.5 In re-examination the Respondent was asked about the other major case that he had referred to; he was engaged on it about 90% of the time every day and could not recall doing less than five hours or more. It was a very onerous task. It involved well over 100 active claims. He had to gain a considerable understanding of relevant Scottish law regarding fatal accidents and injuries and had travelled to Scotland. He had major obligations in terms of correspondence and telephone calls including a one day deadline to respond to correspondence in respect of Claimants. At first there had been a disaster line and then the case was referred to him so that he could point people in the right direction.

90.6 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and the Respondent. The Respondent admitted the facts which went to make up this allegation that he had failed to inform the client about or take instructions in relation to the matters listed. He admitted that in so doing he had breached Principle 4 regarding client's best interests, Principle 5 regarding proper service and Principle 6 regarding maintaining public confidence. The Tribunal found these breaches proved on the evidence to the required standard. He denied breach of Principle 2 that he had displayed lack of integrity. Based on the objective test for integrity, the Tribunal having looked at all the authorities to which it had been referred and following the more consistent line of authority that dishonesty and lack of integrity were not synonymous, the Tribunal considered that the Respondent had followed a course of conduct which went beyond admitted breaches of the Principles because the material about which he omitted to advise the client was so significant and both individually, particularly the entering of the default judgment in the sum of £500,000 and the receipt of a draft statutory demand which could if filed have led to the Defendant being wound up, and collectively had put the client at extreme risk. The Defendant had cavalierly allowed the matter to go from bad to worse and in doing so had displayed that he lacked integrity. The Tribunal therefore found all aspects of allegation 1.6 proved on the evidence to the required standard.

91. **Allegation 1.7 - He [the Respondent] failed to ensure that a defence to a claim dated 21 January 2013 was filed in good time, thereby enabling judgment in default to be entered on 14 May 2013. In failing to do so, he acted in breach of Principles 4, 5 and 6.**

91.1 For the Applicant, Mr Levey submitted that the Respondent admitted his failure to file a Defence in time. There had been a suggestion that the case was not that of the Respondent; that it had never formally been assigned to him but Mr Levey submitted that clearly he was the case handler under the supervision of a partner. The references on all the documents were those of the partner and the Respondent. He admitted allegations 1.7 and 1.8 and in doing so admitted that he handled the case. He did not suggest that he had any conversations with the partner from the time when the claim was issued.

91.2 For the Respondent, Mr Lazarus submitted that the Respondent's defence was more nuanced; there was a considerable element of his defence based on the circumstances in which he worked; there was uncertainty about who was responsible for what and

what responsibility the Respondent had. As to why the Respondent did not apply for an extension of time to file the Defence, he stated in cross-examination that he needed time to get the Defence in and he had never made an application to extend time. His mindset was that he had difficulties.

91.3 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and the Respondent. The Tribunal considered the Respondent's conduct in failing to ensure that a Defence was filed in good time and thereby enabling judgment in default to be entered constituted a breach of Principles 4, 5 and 6; indeed those breaches had been admitted. The Tribunal therefore found allegation 1.7 proved on the evidence to the required standard.

92. **Allegation 1.8 - after judgment in default was entered on 14 May 2013, he [the Respondent] failed until 7 March 2014 to take any steps to have that judgment set aside. In failing to do so, he acted in breach of Principles 4, 5 and 6.**

92.1 For the Applicant, Mr Levey submitted that the Respondent admitted that he failed to take steps to set aside the default judgment within a reasonable time.

92.2 In evidence, the Respondent stated that he still felt that SP was aware of what had happened but agreed he had not applied to set aside the default judgment.

92.3 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and the Respondent. The Tribunal considered the Respondent's conduct in failing until 7 March 2014 to take any steps to have a default judgement set aside constituted a breach of Principles 4, 5 and 6; indeed those breaches had been admitted. The Tribunal therefore found allegation 1.8 proved on the evidence to the required standard.

93. **Allegation 2 - It was further alleged that the Respondent's conduct in respect of allegations 1.1, 1.2, 1.3, 1.4 and 1.5 was dishonest. However dishonesty was not an essential ingredient of any of those allegations and it was open to the Tribunal to find those allegations proved without making findings of dishonesty.**

93.1 Allegation 2 was addressed under the allegations to which it related.

Previous Disciplinary Matters

94. None.

Mitigation

95. Mr Lazarus provided to the Tribunal copies of the Respondent's moderation reports carried out by the firm for the years 2011-2012, 2012-2013 and 2013-2014 which he submitted demonstrated a highly regarded solicitor of considerable ability. He was a family man with a small child and what had happened was against a background of ill-health and overwork. He had only been in practice for three or four years when he started at the firm. He had not worked as a solicitor since he had been suspended from his employment. The Respondent was concerned about his current legal role to which he might be unable to return if his practising certificate was removed although the

practising certificate was not actually required to undertake it. The job involved outsourced discovery work for firms of solicitors and because of the nature of the documents and the work involved it would normally be that of a solicitor. He would no longer have the financial security of being a Senior Associate in a city law firm. Mr Lazarus asked the Tribunal to have regard in arriving at sanction to the testimonials which had been submitted for the Respondent. He had no previous disciplinary matters. Mr Lazarus acknowledged that there had been a number of findings of dishonesty and lack of integrity which one would normally expect to lead to striking off. He asked the Tribunal to think carefully about whether a suspension would serve as sufficient punishment and provide sufficient protection to the public. The Respondent was at the beginning of his career. This was a single case; an isolated incident. All the evidence suggested that it was totally out of character for the Respondent and that there was strong potential for reform during a period of suspension and for the Respondent to return to using the skills which he had gained so far. The Respondent had not provided a Personal Financial Statement but it was accepted that it was likely that he would face (at least) a lengthy suspension and he would no longer have income from practice as a solicitor. There was also a real concern that the income from his current work would evaporate. Mr Lazarus asked Tribunal to consider whether in the circumstances his financial future would be jeopardised and submitted that costs could be punitive and excessive.

Sanction

96. The Tribunal had regard to its Guidance Note on Sanctions (December 2016), to the mitigation offered for the Respondent and to the testimonials submitted including the oral evidence of SB and KF. The Tribunal had found dishonesty and also lack of integrity proved in respect of three allegations (of those one was in part) and lack of integrity in respect of another allegation. There had also been breaches of other of the SRA Principles. In assessing the seriousness of what had occurred, the Tribunal considered the Respondent's culpability; he had been running the file. There had been inaction over a period of time which was directly within his control. Considerable harm had been caused because the firm had to meet the other side's claim. It had therefore suffered financial and reputational damage within the legal profession. The Respondent knew or ought to have known that that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the legal profession. There were aggravating factors in that dishonesty had been found proved and the misconduct occurred over a period of time. The Respondent had acted to conceal his inactivity. By way of mitigating factors there were no previous disciplinary findings against the Respondent and the testimonials showed that he was highly regarded. The supervisory partner had generally endorsed the moderation finding that he was fully effective. The misconduct related only to one case. The Respondent had made partial admissions. The Guidance Note set out that the most serious misconduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved would almost invariably lead to striking off, save in exceptional circumstances (see Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)). Therefore a no order, reprimand or a fine would not be adequate and nor would a restriction order. In considering whether the Respondent should be suspended rather than struck off, the Tribunal had regard to the personal mitigation which had been referred to; his ill health including surgery and that of his wife and the loss of a

family member. The Respondent had also made reference to stress at work. It might be that the Respondent had found his working circumstances difficult and would have benefited from more support. However he was a Senior Associate at an international law firm who had been entrusted not just with this case but from late 2013 also with a very demanding, complex and high profile matter with which on the Respondent's own evidence from November 2013 onwards he had been able to cope and in respect of which he demonstrated that he could respond quickly to client demands. Overall the Tribunal did not consider that any of these factors amounted to exceptional circumstances such as would enable it to impose any sanction other than strike off.

Costs

97. For the Applicant, Mr Levey applied for costs in the amount of £46,293.00. For the Respondent, Mr Lazarus submitted that given the nature of the case the quantum of costs claimed by the Applicant was excessive. This was a straightforward case; the allegations were based on a single file and no investigation had been necessary beyond the file itself. As to the detail of the costs claim, the Applicant had only called one witness. Mr Lazarus submitted that the amount of £2,222.50 claimed for telephone calls and personal attendances in communicating with third parties including counsel and witnesses was excessive. It was not set out upon whom the personal attendances took place. As to the amount claimed for work on documents by a partner at Mr Levey's instructing solicitors and by a fee earner, Mr Lazarus submitted that 305 units relating to the Rule 5 Statement seemed to imply that six full days had been spent on the document which on any analysis was not necessary in a case like this. He also submitted that the Rule 5 Statement was too long at 22 pages, did not require the level of detail it contained and that a considerable amount of the Rule 5 Statement duplicated the statement of the supervisory partner. As to the time claimed for work on witness evidence at 157 units in the amount of £2,747.50, Mr Lazarus submitted that the supervisory partner's witness statement in these proceedings had been lifted almost directly from a letter she wrote to the Applicant. Mr Lazarus submitted that given the exhibits to the Rule 5 Statement there was duplication of work recorded in respect of General document perusal at 104 units in the amount of £1,820. He also challenged as duplication the claim for Review and input into the Rule 5 Statement by the partner at Mr Levey's instructing solicitors. Finally Mr Lazarus submitted that Counsel's fee was somewhat on the high side. The Tribunal had been referred to a number of High Court authorities most of which had involved Mr Levey and while acknowledging that he was of 18 years' call and this might be the level of fees he commanded, Mr Lazarus submitted that this case did not require his experience and expertise. Mr Lazarus's own fee was £10,000.00 inclusive of VAT and he was of 12 years' call.

98. The Tribunal summarily assessed the costs. It considered that the amount of time spent on the Rule 5 Statement was excessive and that it would not be reasonable to allow the costs of partner review as well as the costs of the conducting solicitor in preparing it. The Tribunal was satisfied that the evidence of the Applicant's witness was based on a detailed letter from that individual although the Applicant would have needed to look at the evidence that went with it. The Tribunal therefore reduced the amount claimed for working on witness evidence by two thirds. The Tribunal considered that the fees claimed for the Applicant's counsel were acceptable. The Tribunal assessed costs in the amount of £41,251.10. The Tribunal then considered,

having regard to the case of Broomhead v Solicitors Regulation Authority [2014] EWHC 2772 (Admin) whether it would be appropriate to reduce the costs award because some of the allegations had not been found proved. All of the allegations arose out of one set of facts and the Tribunal was of the view that the allegations not found proved did not significantly add to the Applicant's costs and that so it would not be appropriate to make a reduction on that account. The Tribunal had not been provided with any information about the Respondent's means and did not consider that it would be appropriate to reduce costs on grounds of affordability.

Statement of Full Order

99. The Tribunal Ordered that the Respondent Rajpal Singh Ahluwalia, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this investigation and enquiry fixed in the amount of £41,251.10.

Dated this 8th day of June 2017
On behalf of the Tribunal

A. E. Banks
Chairman