The First Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 9 January 2018 in respect of its decision to proceed in his absence. The appeal was heard by Mrs Justice Lang DBE on 26 April 2018 (Judgment handed down on 25 May 2018). The appeal was dismissed.
Lindsay v Solicitors Regulation Authority [2018] EWHC 1275 (Admin.)

On 24 January the Court of Appeal refused the First Respondent permission to appeal against Lang J's decision.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11576-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

ANDREW LINDSAY — First Respondent

MARINA FRANKEL — Second Respondent

Before:

Mr J. A. Astle (in the chair)
Mr P. Booth
Mrs L. McMahon-Hathway

Date of Hearing: 20-29 November 2017

Appearances

Mr Andrew Tabachnik QC, counsel, of 39 Essex Chambers, 82 Chancery Lane, London WC2A 1DD (instructed by Paolo Sidoli, solicitor of Russell-Cooke Solicitors of 2 Putney Hill, London, SW15 6AB), for the Applicant.

The First Respondent did not attend and was not represented.

The Second Respondent attended (in person and by video-link) and represented herself.

JUDGMENT

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Allegations

1. The allegations against the First and Second Respondents made by the Applicant were set out in a Rule 5 Statement dated 7 February 2017.

The allegations against the First Respondent were:

1.1 The First Respondent caused or permitted Tandem XJA Limited (trading as Tandem Law) ("Tandem") to accept, and use, monies received (on dates between 21 December 2011 and 16 October 2012) from an investment fund totalling £5,920,225, in circumstances where it was improper for the First Respondent to do so for the following reasons (and each of them):

(a) He knew and/or was reckless and/or was careless to the fact that Tandem had not complied with the terms of a Litigation Funding Agreement, pursuant to which the monies were purportedly advanced, intended to protect the interests of the investment fund and of the ultimate investors in the investment fund.

(b) He knew and/or was reckless and/or was careless to the fact that the Litigation Funding Agreement pursuant to which the monies were purportedly advanced did not reflect the purpose for which Tandem intended to use and/or in fact used the monies, and that the intended and actual use of the monies was not properly documented.

(c) He had no intention that Tandem would repay the monies within the time required by the Litigation Funding Agreement and/or knew and/or was reckless and/or was careless as to the fact that repayment was very unlikely.

(d) He misused the funds received by failing to apply them only towards "*Eligible Legal Expenses*", as defined in and required by the Litigation Funding Agreement, dishonestly, recklessly or carelessly.

(e) Despite being on notice of the serious risk that the investment fund's Investment Managers, in arranging for the monies to be paid to Tandem, was acting fraudulently, or committing some other serious breach of duty, towards the investment fund and/or the ultimate investors, he failed to make any or sufficient enquiries reasonably to satisfy himself that the payments did not involve any such conduct by the Investment Managers.

(f) He disregarded and failed to act appropriately on clear suspicions which he had as to the propriety and competence of the conduct of those at the Investment Managers.

(g) He unreasonably and/or carelessly risked Tandem being a party to transactions in fraud of the investment fund and/or of the ultimate investors, or which involved other serious breach of duty by the Investment Managers towards them (or one of them).

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

The First Respondent thereby acted without integrity, in breach of Principle 2 of the SRA Principles 2011 ("the Principles"), and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.

1.2 The First Respondent failed to ensure that the aforesaid £5,920,225 (or any part thereof) was paid into client account, alternatively failed to ensure an office account was opened whose sole purpose was to hold the monies pending their use for an authorised purpose, contrary to Principles 2, 6, 8 and 10 of the Principles and to rules 1.2(a), 1.2(b), 6 and 14.1 of the SRA Accounts Rules 2011 ("SAR"). Dishonesty was alleged, although this was not a requirement for the allegation to be proved.

1.3 The First Respondent assisted the conduct of the Investment Managers despite being on notice of the serious risk that the Investment Managers were acting fraudulently, or committing some other serious breach of duty, towards the investment fund and the ultimate investors. The First Respondent thereby acted without integrity, in breach of Principle 2 of the Principles, and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.

1.4 The First Respondent caused or permitted false and misleading representations (to the effect that no partner or employee of Tandem had been subject to disciplinary proceedings by the Law Society) to be made to the investment fund and its representatives, for the purpose of persuading them to provide funding to Tandem, well knowing the same to be untrue (as the First Respondent had himself been subject to such disciplinary proceedings), alternatively by failing to review or review properly the relevant application form. The First Respondent thereby acted in breach of Principles 2 and 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.

1.5 The First Respondent improperly signed an agreement for the purchase by Tandem of the business and assets of Signey Law Limited ("Signey"), improperly transferred £2,000,000 of Axiom funding from Signey's office account to Tandem's, and improperly allowed the said monies to be used by Tandem, and thereby breached Principles 2, 6 and 10 of the Principles and rules 1.2(a), 1.2(b), 6 and 14.1 of the SAR. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.

1.6 The First Respondent gave instructions for a redundancy exercise at Signey which disregarded statutory consultation requirements, and thereby breached Principles 1, 2 and 6 of the Principles.

1.7 The First Respondent improperly authorised the transfer of £1,700,000 from Tandem to City Equities Limited or City Equities Investment Management Limited, and thereby breached Principles 2, 3, 6 and 8 of the Principles. Recklessness was alleged, although this was not a requirement for the allegation to be proved.

1.8 The First Respondent made an improper proposal to co-own a solicitors firm with non-solicitors, prior to any application for (let alone approval of) ABS status, and thereby breached Principles 2 and 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.

1.9 The First Respondent instructed or advised Ms VM (his personal assistant) to give a chartered accountant a false and misleading answer concerning 24/7 CC Limited and thereby breached Principles 2 and 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.

1.10 The First Respondent provided the Applicant with false and misleading responses concerning the availability of Frion documentation and thereby breached Principles 2 and 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.

1.11 The First Respondent falsely denied at his SRA interview that he had received a £50,000 financial benefit out of Crosslaw and thereby breached Principles 2 and 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.

1.12 The First Respondent failed to deal with the SRA in an open, timely and co-operative manner, and thereby breached Principles 2, 6 and 7 of the Principles as well as Outcomes 10.1, 10.8 and 10.9 of the SRA Code of Conduct 2011 ("SCC"). Dishonesty was alleged, although this was not a requirement for the allegation to be proved.

2. The allegations against the Second Respondent were that:

2.1 The Second Respondent failed to ensure that the aforesaid £5,920,225 (or any part thereof) was paid into client account, alternatively failed to ensure an office account was opened whose sole purpose was to hold the monies pending their use for an authorised purpose, contrary to rules 1.2(a), 1.2(b), 6 and 14.1 of the SAR.

2.2 The Second Respondent failed to make any or sufficient proper inquiries to establish the propriety of the Asset Purchase Agreement relating to Signey before signing it, and thereby breached Principle 6 of the Principles.

2.3 The Second Respondent carried out, without protest or objection, a redundancy exercise at Signey which disregarded statutory consultation requirements, and thereby breached Principles 1, 2 and 6 of the Principles.

2.4 The Second Respondent failed to deal with the SRA in an open, timely and co-operative manner, and thereby breached Principles 2, 6 and 7 of the Principles as well as Outcomes 10.1, 10.8 and 10.9 of the SCC. Recklessness was alleged, although this was not a requirement for the allegation to be proved.

2.5 The Second Respondent abrogated her responsibilities as director and principal of Tandem, and thereby breached Principles 3, 6 and 8 of the Principles.

3. In respect of the First Respondent, it was alleged that he acted dishonestly in relation to each or all of the matters set out at paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, 1.8, 1.9, 1.10, 1.11 and 1.12. For the avoidance of doubt, if he was not dishonest (as alleged) he was reckless (and in respect of paragraph 1.1 in the further alternative, he was careless). It was also alleged that the First Respondent acted recklessly in relation to the matters set out at paragraph 1.7. In respect of the Second Respondent, it was alleged that she acted recklessly in relation to the matters set out at paragraph 2.4. The allegations do not, however, depend on the Tribunal making a finding of dishonesty or recklessness.

Documents

4. The Tribunal considered all the documents in the case which included:

Applicant

- Application and Rule 5(2) Statement dated 11 November 2016 with exhibits "PAS1" and "PAS2".
- First Witness Statement of Lindsey Barrowclough with exhibit "LB1" dated 19 September 2017
- Second Witness Statement of Lindsey Barrowclough dated 5 October 2017
- Witness Statement of Paolo Sidoli dated 19 September 2017
- Witness Statement of Jennifer Poole dated 19 September 2017
- Report of Professor Hart dated 20 June 2017
- Letter to the First Respondent dated 3 November 2017 in respect of the test for dishonesty
- Hearing bundles (consisting of files: 1 to 8; A to F; bundle of the authorities on which the Applicant relied; and previous Axiom Judgments)
- Applicant's schedules of costs (1) up to the filing of the Rule 5 Statement; (2) in respect of the First Respondent's Application for a Stay dated 8 February 2017; (3) in respect of the Second Respondent's Application for a Stay dated 15 August 2017; (4) for the substantive hearing commencing on 20 November 2017 and (5) updated schedule received on 29 November 2017

First Respondent

- The First Respondent's email to the Tribunal dated 8 February 2017 in respect of his health and an application for a stay
- Email and letter from the First Respondent to the Tribunal and the Applicant dated 19 September 2017
- Correspondence from the First Respondent to the Applicant and from the Applicant to the First Respondent contained in Files D and E
- Report of Dr Gall dated 27 January 2017.
- Report of Dr Saleem dated 11 November 2017

- First Respondent's Application for a re-hearing dated 13 November 2017
- Emails from the First Respondent dated 19 November 2017,20 November 2017 (two emails), 21 November 2017 and 27 November 2017 (two emails)
- First Respondent's email in respect of mitigation and costs dated 29 November 2017

Second Respondent

- The Second Respondent's Answer dated 18 December 2016 and exhibit
- The Second Respondent's Application for a Stay dated 15 August 2017
- The Second Respondent's Witness Statement and exhibits dated 15 November 2017
- The Second Respondent's Skeleton Argument for the Substantive Hearing (undated)
- Letter from Ms JM to the SRA headed "to whom it may concern" dated 15 December 2016 and witness statement dated 9 November 2017 (made in her married name of Mrs JB)
- The Second Respondent's Statement of Means (including Statement provided on 23 July 2017) dated 23 October 2017
- The Second Respondent's emails in respect of costs dated 27 November 2017 (including her submissions on the issue of costs) and 28 November 2017.
- Emails from 2011, 2012 and 2013 disclosed by the Second Respondent during the hearing.
- Emails from the Second Respondent dated 20 November 2017 and 27 November 2017

Preliminary Matters – The First Respondent's Application for a Stay and the Applicant's application to proceed in the absence of the First Respondent

The First Respondent's Position

5. On 15 November 2017 the Tribunal considered an application made by Glassbrook Solicitors (on behalf of the First Respondent) for a rehearing of his application for a stay. This was supported by a medical report from Dr Saleem dated 11 November 2017. On 16 November 2017 the Tribunal received an email from the First Respondent stating that:

> "In the interests of proportionality I do not now wish for the SDTs order of the 24th October 2017 to be reviewed.
>
> I do however wish to renew my application for a stay to be heard at the outset of the substantive hearing commencing on the 20th November, based on the new medical evidence submitted by Glassbrook's on my behalf.
>
> The basis of my renewed application is set out in the document drafted and filed and served by Nick Glassbrook, which I adopt."

6. The First Respondent was advised that the application had been considered before the Tribunal received that email and that the Tribunal's decision did not prevent him renewing his application on 20 November 2017.

7. On 19 November 2017 the First Respondent sent the Tribunal an email in respect of his renewed application for a stay based on health considerations. At that stage he did not feel able to travel and said that he would advise the Tribunal further. On 20 November 2017 he emailed the Tribunal to inform it that he was not fit to travel and would be arranging an urgent medical appointment. He stated that he was prepared to undertake to apply to be removed from the Roll as a condition of any stay or adjournment. He was also prepared to be assessed by an independent expert.

8. There was a suggestion in the documentation that the First Respondent was seeking an adjournment of his own renewed application for a stay. The Tribunal decided to consider the position in the following order: firstly whether the First Respondent's application for a stay should be adjourned; if not whether the proceedings should be stayed; and if that application was unsuccessful whether the hearing should proceed in the First Respondent's absence.

The Applicant's Position

9. The Applicant invited the Tribunal to proceed in the Respondent's absence. Mr Tabachnik briefly outlined the matters that the Tribunal had considered at the hearing on 13 and 24 October 2017. The First Respondent had instructed solicitors to make an application for a rehearing. It was not clear why he could not have instructed solicitors earlier. The First Respondent had also produced a report from Dr Saleem. The Applicant had obtained the letter of instruction to Dr Saleem and drew the Tribunal's attention to the way in which the instructions had been phrased. In the Applicant's view the wording of the instructions undermined the quality of the medical report. The report did not address the First Respondent's ability to participate in the proceedings with reasonable adjustments. The Applicant considered that it was a particularly partial way to instruct an expert and that the questions asked of Dr Saleem were not the sort of questions that one would expect to be asked.

10. The Applicant submitted that the First Respondent had been able to correspond with the Applicant and Tribunal by email and as late as 19 November 2017 had been considering travelling to the hearing. There was no persuasive medical evidence before the Tribunal that meant it should grant the First Respondent's application for a stay and should not proceed in his absence.

11. Although the First Respondent had said that he was seeking an appointment with his GP on 20 November 2017 nobody knew what was going to emerge because of that appointment. The First Respondent had referred in his email of 20 November 2017 to the case of SRA v Newton (Tribunal Case No. 11334-2015). In that case there was agreed medical evidence and the two cases were not analogous.

12. Mr Tabachnik referred the Tribunal to the case of R v Jones [2001] EWCA Crim 168 and the factors that the Tribunal needed to consider when deciding whether or not to proceed in the First Respondent's absence. The Applicant's position was that the First Respondent was voluntarily absent. He had chosen not to attend and even if the case was adjourned there was no suggestion that the First Respondent would attend.

13. Jones had been appealed to the House of Lords in R v Jones [2002] UKHL 5. The decision to proceed in the First Respondent's absence was one that should be exercised with great care and it was only in rare and exceptional circumstances that it should be exercised in favour of the hearing continuing in the absence of the First Respondent.

14. The case of The Governor and Company of the Bank of Ireland v Jaffery and Gill [2012] EWHC 734 (CH) emphasised the need for proper medical evidence. There was an absence of medical evidence that addressed the question of reasonable adjustments and what could be done to ensure that the First Respondent had a fair and safe hearing whilst before the Tribunal.

15. There was not an exact cross-over between criminal and disciplinary proceedings. The Tribunal were referred to General Medical Council v. Adeogba [2016] EWCA Civ 162 and paragraphs 18, 19, 20 and 23 in particular:

> "18. It goes without saying that fairness fully encompasses fairness to the affected medical practitioner (a feature of prime importance) but it also involves fairness to the GMC (described in this context as the prosecution in *Hayward* at [22(5)]). In that regard, it is important that the analogy between criminal prosecution and regulatory proceedings is not taken too far. Steps can be taken to enforce attendance by a defendant; he can be arrested and brought to court. No such remedy is available to a regulator.
>
> 19. There are other differences too. First, the GMC represent the public interest in relation to standards of healthcare. It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed.
>
> 20. Second, there is a burden on medical practitioners, as there is with all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.
>
> 23. Thus, the first question which must be addressed in any case such as these is whether all reasonable efforts have been taken to serve the practitioner with notice. That must be considered against the background of the requirement on the part of the practitioner to provide an address for the purposes of registration along with the methods used by the practitioner to communicate with the GMC and the relevant tribunal during the investigative and interlocutory phases of the case. Assuming that the Panel is satisfied about notice, discretion whether or not to proceed must then be exercised having regard to all the circumstances of which the Panel is aware with fairness to the

practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account; the criteria for criminal cases must be considered in the context of the different circumstances and different responsibilities of both the GMC and the practitioner."

16. In regulatory proceedings there was an onus on the regulated person to take steps to ensure that they co-operated with their regulator. This was part of what they agreed to when they signed up to the profession.

17. In the circumstances of this case, Mr Tabachnik invited the Tribunal to dismiss the First Respondent's application for a stay and to proceed in his absence.

The Second Respondent's Position

18. Prior to the hearing commencing on 20 November 2017 the Second Respondent sent an email to the Applicant, First Respondent and the Tribunal. She believed that justice could be served even without the Tribunal waiting for the First Respondent's attendance. She stated that what the Tribunal had before them was a case where the allegations raised by the Applicant (such as those relating to Tandem's breach of the SAR) were contentious. What was not contentious was her allegation of breach of trust by the First Respondent. That issue was not and had never has been in dispute. On evidence presented by the Second Respondent and Ms JM there could be no doubt that the First Respondent was dishonest. He was clearly dishonest, when he abused his position as a Financial and Managing Director and 95% shareholder in his dealings with the Second Respondent and other management of the firm.

19. The Second Respondent submitted that the First Respondent committed a serious breach of trust, when he removed effective visibility of accounts and financial information from her placing her in the position (as the HR Director and 5% shareholder) whereby she was unable to co-operate with the Applicant in provide the disclosure of documents. He did not inform her properly of the requests made by the Applicant for disclosure, but instead, he provided warranties to her that he was replying properly. There was evidence of the First Respondent requiring the Second Respondent to submit her bank cards to him with him giving her warranties for the proper operation of accounts by the firm's Cashier, Ms VM, who acted under his strict supervision. However, the moment he had her cards, the Second Respondent alleged that the First Respondent used those to redirect Tandem's bank communication with her to his home address, to hide the fact that he paid himself huge bonuses, at the time when her wage was lower than that of Solicitors with the same post qualification experience as her in the firm.

20. As such, based on her evidence, which the First Respondent could not disprove at all, he was dishonest and abused his position of trust as the senior principal. He should not, for that reason alone, ever be able to practise in the profession or be a senior partner in charge. For that reason alone he should be struck off. The Second Respondent thought that it would serve the profession well, if the application of the dicta that a solicitor "should be trusted to the ends of the earth" was extended in cases where the Tribunal found clear evidence of abuse by a senior partner of his position in relation to more junior ones. It should be said, that a junior partner also should be able to trust the senior partner/solicitor "to the ends of the earth". She

believed that the Tribunal needed to recognise that there were cases, such as this one, where there was irrefutable evidence that such breach of trust by the managing partner caused prolonged investigation by the Applicant in respect of both partners and other management of the firm.

21. In her submission the Tribunal did not actually need the First Respondent's attendance. His dishonesty was established based on her evidence. It was not even in dispute. If the Tribunal followed her Skeleton Argument for the hearing, it would be clear from that Skeleton and her witness evidence, that there was only one logical way of dealing with this matter, which was as stated in the Skeleton and above.

22. On 20 November 2017 the Second Respondent wanted the hearing to proceed. Her position was that the First Respondent was not co-operating with the Tribunal in exactly the same way that he had not co-operated with her since 2011. If he was so affected by his condition he could not travel he could give evidence by video link.

The Tribunal's Decision

23. The Tribunal noted the Second Respondent's submission. It did not consider the merits of what she had said as to how the First Respondent's "guilt" could be proved by her evidence. This was not based on the legal principles that the Tribunal had to consider when determining the applications made by the First Respondent and Applicant. It was clear that the Second Respondent wished the hearing to proceed. The Tribunal, if it decided to proceed, would only consider the allegations that were set out in the Rule 5 Statement and would not consider the allegations that the Second Respondent had outlined in her email.

24. The only new evidence before the Tribunal since it had made its decisions on 15 November 2017 was the further correspondence from the First Respondent and the letter of instruction to Dr Saleem. The First Respondent had referred to having been unwell for seven to ten days and the Tribunal would have thought he might have been able to produce some updating medical evidence but had not done so.

25. The Tribunal was not prepared to adjourn further consideration of the First Respondent's application for a stay. The First Respondent said that he was now willing to be assessed by an independent expert having declined to co-operate with that assessment since July 2017. The First Respondent had sent a number of cogent emails during the course of the proceedings. He had understood the reasons for the assessment and had declined to co-operate with it. There was no evidence that he would now co-operate with it other than his email of 20 November 2017. The application for a stay was refused.

26. The Tribunal proceeded to consider the application to proceed in the First Respondent's absence. He had put himself at a disadvantage by failing to file an Answer. There was a public interest in the hearing proceeding. The case against the First Respondent involved serious allegations including a number of allegations of dishonesty.

27. The Tribunal also had to consider the impact on the Second Respondent if the hearing was adjourned. The investigation had been ongoing for some years. The recollection of events in 2014 would not become any clearer with the further passage of time.

Given the way in which the allegations were interlinked it would not be in the interests of justice for the cases to be severed and none of the parties had made this application to the Tribunal.

28. The Tribunal carefully considered Mr Tabachnik's submissions and the factors set out in the case law it had been referred to. The First Respondent had not substantively engaged with these proceedings, he was aware of them and aware of the hearing date, having confirmed that he was not going to be attending the hearing. In the circumstances the Tribunal concluded that the First Respondent had voluntarily absented himself and it would proceed in his absence. It was in the interests of fairness and justice for the substantive hearing to go ahead.

Correspondence with the First Respondent during the course of the hearing

29. For the sake of completeness, at 17.46 on 20 November 2017 the First Respondent informed the Tribunal he had been sent to Accident and Emergency for investigations. On 21 November 2017 the First Respondent emailed the Tribunal to confirm that the cardiac pain was not related to myocardial infarction. He had not been admitted to hospital and had been discharged home but was unable to travel.

30. On 21 November 2017 the Applicant wrote to the First Respondent informing him that the Tribunal had decided to proceed with the substantive hearing. The letter set out the proposed timetable for 22 to 29 November 2017 inclusive.

31. On 24 November 2017 the Applicant wrote to the First Respondent updating him as to the progress of proceedings and advising that the hearing would recommence at 9:00 a.m. on 27 November 2017 and that if he did not attend the Tribunal would commence its deliberations.

32. On 27 November 2017 the First Respondent emailed the Tribunal advising that he was not well enough to attend.

33. On 28 November 2017 the clerk to the case emailed the First Respondent informing him that the Tribunal had found all of the allegations against him proved beyond reasonable doubt and that the Tribunal would hear mitigation from the Second Respondent that afternoon and would then adjourn until the next morning at 9:30 a.m. to give him an opportunity to participate in the hearing and put forward any mitigation that he wished the Tribunal to consider. This email stated that attendance could be arranged via video link. The First Respondent was informed that once the Tribunal had heard mitigation it would hear any applications for costs, it would then make a decision as to sanction and its order would be announced at the conclusion of this process.

34. On 29 November 2017 the First Respondent emailed the Tribunal in respect of the adjourned hearing for mitigation, sanctions and costs.

Application on 27 November 2017

35. The Applicant invited the Tribunal to treat the First Respondent's email dated 27 November 2017 (stating that he was not well enough to attend) as a renewed

application for an adjournment based on his health. The Applicant relied on its previous submissions set out above.

36. The Tribunal had not received any fresh medical evidence in relation to the First Respondent's attendance at hospital. He had said that he would send the discharge notice but had not yet done so. Having reviewed all of the previous considerations, including the requirement to be fair to all the parties, and recent correspondence the Tribunal rejected the application for an adjournment or stay that was implicit in the email dated 27 November 2017.

Application for the documents in bundle F to be admitted

37. On 20 November 2017 the Applicant applied for the disclosure in relation to Signey (contained in bundle f) to be admitted as evidence. This was disclosure that the Applicant had given to Respondents and which the Second Respondent would be relying upon. The Second Respondent agreed to the evidence being admitted. The First Respondent's views were not known. In the circumstances, the Tribunal consented to these materials being admitted.

Factual Background

38. The First Respondent was admitted to the Roll on 1 September 1989. He was at all material times, from 3 November 2010, the 95% owner and a director of Tandem and was employed by Tandem as its Managing Director and Finance Partner. At the time of the Rule 5 Statement he held a Practising Certificate for 2015/16 which was subject to conditions that (a) he may act as a solicitor only as an employee, (b) he may not act as a manager or owner of any authorised body or authorised non-SRA firm, (c) he may not act as COLP or COFA for any sole practitioner, authorised body or Head of Legal Practice or Head of Finance and Administration in any authorised non-SRA firm, and (d) he shall immediately inform any actual or prospective employer of the preceding conditions and the reasons for their imposition.

39. The Second Respondent was admitted to the Roll on 1 July 2008. At the time of the Rule 5 Statement she did not hold a current Practising Certificate. She was at all material times the 5% owner, and a director and principal, of Tandem.

40. Ms Barrowclough, a Forensic Investigation Officer ("FIO") employed by the SRA commenced an inspection of the books of account and other documents of Tandem on 26 June 2012. Notices under S.44B of the Solicitors Act 1974 were served on the Respondents dated 18 June 2012 and 27 February 2013.

41. During the investigation, both Respondents were interviewed, the First Respondent on 27 August 2014 and the Second Respondent on 4 July 2014. Following the interview with the First Respondent further written questions were submitted to him by the FIO under cover of letters dated 5 September 2014 and 16 September 2014. The First Respondent did not respond to these letters. The investigation resulted in a Forensic Investigation Report ("FIR") dated 16 January 2015.

42. The Applicant wrote two Explanation with Warning ("EWW") letters to the First Respondent dated 30 April 2015 and 13 May 2016. He did not respond substantively to either. The Applicant wrote an EWW letter to the

Second Respondent dated 14 July 2015. The Second Respondent provided a partial response by letter dated 21 September 2015 and a fuller response by letter sent on 20 October 2015. She also provided an annotated version of the transcript of her 4 July 2014 interview.

43. Both Respondents had applied for a stay of the proceedings. At a hearing on 13 and 24 October 2017 the Tribunal considered and dismissed these applications determining that the substantive hearing should proceed. The First Respondent made a further application in writing which the Tribunal rejected on 15 November 2017. At the commencement of the hearing on 20 November 2017 and again on 27 November 2017 the Tribunal considered whether or not to proceed in the absence of the First Respondent and decided to do so as detailed above. The First Respondent was informed of the progress of the hearing, including when the Tribunal was deliberating and when it had reached its findings. He was given an opportunity to submit mitigation between lunch time on 28 November 2017 and the morning of the following day and did so.

Witnesses

44. The following witnesses gave written and oral evidence:

- The Second Respondent
- The FIO
- Ms JM/Mrs JB

45. The Tribunal found the FIO to be a credible witness. The Tribunal did consider that Ms Barrowclough in her evidence put a certain complexion on things that was favourable to her. The investigation had commenced over five years ago and the FIR was dated January 2015. This may have resulted in her being mistaken on one or two points. For example, the FIO had been quite adamant that the Second Respondent had been present during a meeting whereas the Second Respondent said that she left that meeting at the First Respondent's request. However, this did not cast a doubt on the reliability of the rest of Ms Barrowclough's evidence which was given in a forthright and believable manner.

46. A number of the areas that the Second Respondent asked the FIO about where not relevant to the allegations that the Second Respondent faced and are not set out in this Judgement. The Tribunal noted that the FIO had not had personal conduct of certain aspects of the matter and could not answer some of the Second Respondent's questions, particularly around the disclosure of emails. The Tribunal was sure that the FIO had not deliberately altered the transcript or failed to provide emails.

47. The Tribunal found the Second Respondent to be an inconsistent witness. Accepting that she was an inexperienced advocate, in a strange environment and was unrepresented, her evidence was clearly coloured by her almost complete incapacity to acknowledge that she got it wrong and should not have allowed herself to get into the position she had. Her evidence was a consistent struggle to justify her own actions and to blame everybody else. The Second Respondent saw herself as a victim of the First Respondent and she was; but this did not excuse her going along with him.

48. At times the Second Respondent seemed to accept that what she had done was wrong but she then backtracked. Her evidence gave the impression that she knew more than she had first suggested about the Axiom monies. On the one hand her approach was that she was just the HR Director, knew nothing about the finances and had been denied information by the First Respondent. On the other she demonstrated a substantial amount of knowledge about what was going on at the firm.

49. The Tribunal found that on the whole Ms JM was a credible witness. There were areas that she could not recollect and the evidence that she was able to give was necessarily limited to the short period that she had been at the firm.

50. There was a conflict of evidence as to who had and had not been present at certain meetings. Ms JM recollected a meeting at which she and the Second Respondent met with the FIO but was then asked to leave by the First Respondent. This accorded with the Second Respondent's recollection. The Tribunal recognised that this was an important issue to the Second Respondent. Ultimately whether or not the Second Respondent had participated in a lengthy meeting with the FIO or had been asked to leave by the First Respondent was not determinative in respect of the allegations the Second Respondent faced. However, on this point the Tribunal preferred the evidence of Ms JM and the Second Respondent.

51. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

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

53. **Allegation 1.1 - The First Respondent caused or permitted Tandem to accept, and use, monies received (on dates between 21 December 2011 and 16 October 2012) from an investment fund totalling £5,920,225, in circumstances where it was improper for the First Respondent to do so.**

<u>The Applicant's Case</u>

53.1 The Applicant's case was that at various points the First Respondent was on notice of the serious risk that the investment fund's Investment Manager was acting fraudulently, or committing some other serious breach of duty, towards the investment fund and the ultimate investors. For the avoidance of doubt, the Applicant did not seek to establish that the Investment Manager was in fact acting fraudulently or committing other serious wrongdoing, since that does not need to be established in these proceedings for the purpose of assessing the First Respondent's conduct.

The material facts:

(1) The Axiom Funds

53.2 At all material times:

- JP SPC 1 was a segregated portfolio company incorporated in the Cayman Islands comprising various sub-funds, known as "segregated portfolios", incorporated on 31 October 2007.

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

- JP SPC 4 was another segregated portfolio company incorporated in the Cayman Islands.

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

- The Axiom Fund owned shares in, and was the feeder fund for, the Axiom Fund Master.

- The Investment Manager of the Axiom Fund and of the Axiom Fund Master was (a) The Synergy Solution Limited ("Synergy") between the 25 May 2009 Investment Management Agreement and 1 March 2012, and (b) subsequently Tangerine Investment Management Ltd ("TIM"), from 1 March 2012, upon the signing of the Deed of Assignment.

- The Investment Management Agreement did not permit the Investment Manager to charge the Facilitation Fee. It was not alleged by the Applicant at this time that the First Respondent saw the Investment Management Agreement at the material time.

- The expression "the Axiom Funds", where used below, refers to both the Axiom Fund and the Axiom Fund Master.

- By 2012, investors had invested over £100,000,000 in the Axiom Funds.

- The Axiom Fund was promoted to investors as a feeder fund that invested in the Axiom Fund Master, which would provide funding to law firms in the UK to finance the conduct of legal cases.

53.3 The basis on which investors invested in the Axiom Funds was set out in Offering and Supplemental Offering Memoranda. There was one Offering Memorandum dated June 2009 and Supplemental Offering Memoranda dated August 2010, January 2012 and September 2012. Of particular relevance was the August 2010 Supplemental Offering Memorandum. The First Respondent's response dated 17 May 2013 to the 27 February 2013 s.44B Notice confirmed that he had a copy of this document in advance of any agreement with or receipt of funds from the Axiom Fund. To like effect was paragraph 5 of his 28 October 2014 witness statement made in unrelated

proceedings before the Tribunal. Relevant contents of the August 2010 Supplemental Offering Memorandum are set out below.

53.4 The following was stated on page 3, under the heading "Important Information":

> "Participating Shares sold after the date of this Supplemental Offering Memorandum and the date of the Offering Memorandum will be sold on the basis of the information contained in this Supplemental Offering Memorandum and the Offering Memorandum. Any further information given or made by any dealer, salesman or other persons must be regarded by prospective investors as unauthorised. In particular, no person has been authorised to make any representations concerning the SPC, the Segregated Portfolio or the Participating Shares which are inconsistent with or in addition to those contained in this Supplemental Offering Memorandum or the Offering Memorandum and neither the SPC nor the Directors accept responsibility for any representations so made."

53.5 On page 9, it was stated that:

> "The Master Segregated Portfolio provides short term fixed interest loans to law firms in the United Kingdom (excluding Scotland) to pursue legal claims on a no-win, no-fee basis for the misselling of financial services products on behalf of claimants". The document added (page 9) that "the first type of case" it was intended to finance was "where breaches to the Consumer Credit Regulations in the United Kingdom are identified on a client's loan agreement which breach renders the agreement unenforceable by the lender against the client", and it was stated that it was "planned to finance other types of case unrelated to consumer credit as the fund grows in size".

53.6 Under the heading "*Investment Criteria*", the following was then stated (pages 9-10):

> "Loans are provided to suitably qualified law firms exclusively in the United Kingdom (excluding Scotland), for "Permitted Uses". Permitted Uses include but are not limited to:
>
> "Meeting the costs of disbursements or other costs approved by the Investment Manager related to cases involving credit card or loan agreements that breach the Consumer Credit Regulations in the United Kingdom.
>
> "As the Investment Manager believes that the market for loans to law firms is an expanding market, other categories are under consideration and will be considered for inclusion by the Investment Manager as Permitted Uses if they are of a similar nature and the same standards of integrity and assurance of returns can be maintained. Permitted uses of the loans are determined by the Investment Manager using the criteria that:
>
> 1. Cases must carry insurance underwriting.
> 2. It must be straightforward to determine the likely success of each case easily.
> 3. There is a high probability that cases can be completed in under a year."

53.7 Further and to similar effect, under the heading "*Use of the Money*" on page 10, it was stated:

> "Loans to law firms are only available to meet permitted costs related to Permitted Uses. These Permitted Uses shall, for the time being, be restricted to different types of litigation funding."

53.8 On page 9, it was stated:

> "To provide investors with the potential for a higher-level of capital security, the funding facilities are fully insured against the non-return of the loans by the law firms. The Master Segregated Portfolio is dependent upon the credit risk of the underlying insurance policies for the return of the loans made on cases that do not succeed. However, the Investment Manager believes that this risk is significantly reduced by a second insurance policy that protects against failure of the law firm and failure of the loan insurer". Further, under the heading "Capital Risk Management: Security for the return of the Loan", the following was stated (page 10):
>
> > "Use of the Master Segregated Portfolio is restricted to Permitted Uses and shall always include the provision of an insurance policy to cover any risks related to litigation with respect to such policies. Monies shall not be released to any law firm, or disbursements made on its behalf, until an insurance policy has been issued by an authorised insurer.
> >
> > "At the conclusion of the litigation conducted by the respective law firm, the loan amount, including the insurance premiums plus the interest on the loan, are recovered from the losing side as provided under the Access to Justice Act of the United Kingdom. If the case is lost, a claim is made on the loan insurance.
> >
> > "A further level of security is taken out by the Master Segregated Portfolio based on a loan protection policy which protects the Master Segregated Portfolio from the potential insolvency of the law form or of the insurer of the litigation action.""

53.9 On pages 10-11, under the heading "*Law Firm Security*", it was stated:

> "English, Welsh and Northern Irish solicitors' practices are governed and regulated businesses; as a result, facilities provided to solicitors have a high level of security. All solicitors have to abide by the relevant law society rules and regulations and must be members of the respective solicitors' indemnity fund that helps to ensure their solvency. In the unlikely event that a solicitor's practice does go bankrupt, the cases and the loan facility could simply be transferred to another solicitor approved by the Investment Manager who would then take over conduct of the case".

53.10 The August 2010 Supplemental Offering Memorandum made no mention at all of the 50% Facilitation Fee which the Investment Manager purported at all times to charge Tandem. Indeed, the August 2010 Supplemental Offering Memorandum was wholly inconsistent with any entitlement to levy such a charge (or to deduct the same from

loan monies advanced to Tandem), as occurred. Pages 27-28 contained extensive provisions under the heading "*Fees and Expenses*". Reference was made to the "*operating costs of the Investment Manager*" being deducted from the loans made to law firms, but it was not credible (as the First Respondent would have appreciated) that such "*operating costs*" amounted to the 50% Facilitation Fee purportedly charged. Further, the August 2010 Supplemental Offering Memorandum specifically stated that the Investment Manager would not be entitled to receive a "*management fee*", but would be entitled to a "*performance fee*" (which itself was only chargeable in the event the Axiom Funds made a return of more than 10% per year).

53.11 Like statements to those in the August 2010 Supplemental Offering Memorandum highlighted above were also contained in documents which the First Respondent printed from Axiom's website ("*the Axiom website documents*") prior to Tandem receiving any Axiom funding. In particular, the Axiom website documents contained statements as to (a) "*100% allocation*" of monies, with no management fee or "*fixed charge to the fund*" by the Investment Manager (or Strategic Adviser), (b) that the Solicitor's Indemnity Fund "*should ensure*" the solvency of borrower firms, (c) that monies were loaned for specific cases, of a particular variety, and (d) that there would be two insurance policies, one being ATE insurance and the other insuring against the risk of the borrower firm going bankrupt.

53.12 In addition, as is evident from his description of the due diligence claimed to have been undertaken before Tandem accepted funding from the Axiom Funds (17 May 2013 response to 27 February 2013 s.44B Notice, at paragraph 8), the First Respondent was at all material times aware that those who owned the Axiom Funds (Mr TS and Mr DK) were the joint owners of The Synergy Solution Limited (the original Investment Manager), and Synergy (IOM) Limited (the Loan Manager). Mr TS was at one time a solicitor, but was struck off the Roll on 14 May 2014.

53.13 From August 2012 onwards, articles appeared on an internet site called "*Offshore Alert*" and other websites accusing Mr TS, who had established the Axiom Funds, Synergy and TIM, of fraud, and alleging that Axiom was a fraudulent scheme.

53.14 On 26 October 2012, the directors of the Axiom Funds suspended the calculation of net asset values for participating shares and suspended share redemptions, with effect from 30 September 2012.

53.15 In December 2012, the Axiom Funds' directors applied to the Grand Court of the Cayman Islands to appoint receivers. The application was acceded to, and on 12 February 2013, Grant Thornton were appointed as receivers of the Axiom Funds.

53.16 On 26 February 2013, the solicitors acting for the receivers sent a letter to Tandem demanding repayment of the monies that had been provided to it, on the grounds that the monies had not been used in accordance with the terms of the Litigation Funding Agreement (as defined below), which constituted an event of default.

53.17 On 21 May 2013, the receivers of the Axiom Funds commenced civil proceedings against various people associated with TIM and others seeking damages of over £100,000,000 on various grounds including fraud, conspiracy, breach of fiduciary duty and breach of contract.

53.18 The Axiom Funds remain in receivership.

(2) Tandem and its application for funding from the Axiom Fund Master

53.19 Tandem was incorporated on 3 November 2010 and became a recognised body on 8 August 2011. At all material times, the First Respondent owned 95% of the shares in Tandem, and the Second Respondent owned 5%. The Respondents were directors and principals of Tandem at all material times from 3 November 2010.

53.20 On 26 April 2013, the Applicant received an email from Leonard Curtis to the effect that they had been appointed by the directors of Tandem to proceed with the lodging of a Notice of Intention to Appoint Administrators filed the previous day. Tandem went into administration on 3 May 2013, and its assets were bought by another law firm under a "pre-pack" sale arrangement. Tandem was put into liquidation on 3 May 2013.

53.21 Prior to the receipt of funding from Axiom, Tandem's position was described by the First Respondent in his 28 October 2014 witness statement, paragraph 3.4 as follows:

> "It was clear that we couldn't obtain anything other than nominal funding going through the traditional routes for practice finance, which would have meant the slower and organic growth of the business".

53.22 To like effect, when asked at a 12 July 2012 meeting with the FIO "*why Axiom?*", the First Respondent's response was recorded as "*only ones which would fund*" Tandem.

53.23 In or about December 2011, Tandem completed and dispatched the Legal Funding Facility Application Form. The Application Form was accompanied by a business plan and a funding model document. It was to be inferred that, before dispatch, the said Application Form was completed or reviewed and approved by the First Respondent given his pre-eminent position within Tandem, and the importance of the document. The Application Form answered the question whether any partner or employee of the firm had been "*subject to disciplinary proceedings by the Law Society*" by indicating "*no*". This was demonstrably false. In Findings dated 4 January 2006, the First Respondent had been found guilty by the Tribunal of four counts of professional misconduct, and was ordered to pay a fine of £2,500 and costs of £10,600.

53.24 The Application Form sought £12,000,000 of phased funding in respect of an estimated 6000 cases to be funded over the following twelve months. The Application Form indicated that "*FRION*" was anticipated to provide both ATE insurance policies as well as "*any fund guarantee insurance*".

53.25 Baker Tilly were appointed by Checkmate Audits Limited to conduct a "*brief desktop review*" of Tandem's application. Baker Tilly's 16 December 2011 "*initial review of application information*" made the following observations on Tandem's funding application:

- Tandem had received £9.9k in the period 22 September 2011 to 5 December 2011.

- The Directors had not prepared a forecast profit and loss or a forecast balance sheet.

- The volume of cases forecast to be processed "*would appear to be aggressive growth*", materially exceeding the "*run rate*" of the preceding three months.

- Overheads "*appear too low for the size of the operation once it reaches peak levels of forecast activity*".

- There was an inconsistency as to when loan advances were assumed to be repaid.
- The "*peak funding requirement*" suggested by Tandem's proposals (taking into account forecast repayments) "*amounts to £4m in month 11*", and in consequence "*it would appear that the Applicant would not require the level of funding applied for in order to achieve forecast*".

- Corporation tax payments had not been reflected in the cash flow forecasts.

53.26 Baker Tilly's 16 December 2011 letter was addressed to Checkmate Audits Limited, with a view to that company advising the Investment Manager (then Synergy) on Tandem's suitability for substantial funding. The First Respondent regarded Checkmate Audits Limited as "*inefficient*" as stated at paragraph 10.1 of his 28 October 2014 witness statement. There was no evidence that, prior to the first advance to Tandem on 21 December 2011 (or at any time thereafter) any of Synergy or TIM or Checkmate Audits Limited made any further inquiries of Tandem or the First Respondent, or that Tandem or the First Respondent provided any further information that would have addressed or commented on any or all of the points raised by Baker Tilly's letter. It was to be inferred that no such further inquiries were made, and no such further information provided.

(3) The Litigation Funding Agreements

53.27 According to paragraph 5.2.1 of the First Respondent's 17 May 2013 response to the 27 February 2013 s.44B Notice, he said that he signed a funding agreement on behalf of Tandem in or about December 2011. He also asserted in the same letter that he did not have (and had never had) a copy of the same. In a 12 July 2012 meeting with the FIO, the First Respondent informed her that the December 2011 Agreement was "*lost*", but that the April 2012 Litigation Funding Agreement (see below) was a "*mirror copy*". The Applicant had obtained a copy of a draft document dated 16 December 2011 from Axiom's Receivers. The unsigned December 2011 Litigation Funding Agreement ("the December 2011 draft") was, in material respects, identical to the April 2012 Litigation Funding Agreement described below, save for the following:

- "*Investment Manager*" was defined as "*The Synergy Solution Limited*" in the December 2011 draft instead of "*Tangerine Investment Management Limited*" as it became in the April 2012 Litigation Funding Agreement;

- "*Total Commitments*" increased from £6,000,000 in the December 2011 draft to £12,000,000 in the April 2012 Litigation Funding Agreement;

- The Maximum number of Loans at clause 3.5 changed from "*[18] loans*" to "*an Investment Manager approved number of loans*";

- "*Interest*" at clause 10 changed from "*18% of the aggregate of the Loans advanced*" to "*1.5% per month of the aggregate of the Loans advanced*";

- The contact details of the Lender were left blank in the December 2011 draft;

- Schedule 2 of the December 2011 draft contained specific details of the loan, not reflected in the April 2012 Litigation Funding Agreement.

53.28 On 30 April 2012, The First Respondent signed, on behalf of Tandem, a Litigation Funding Agreement with the Axiom Fund Master ("the April 2012 Litigation Funding Agreement"). Under the April 2012 Litigation Funding Agreement, the Axiom Fund Master agreed to make available to Tandem a revolving loan facility in an aggregate amount stated in the agreement to be £12,000,000 (clause 2.1 and the definition of "*Total Commitments*" in clause 1.1).

53.29 As the First Respondent knew, the April 2012 Litigation Funding Agreement contained various terms restricting and controlling the use of the monies provided thereunder. The evident purpose of these terms was to reduce the risk that sums provided by the Axiom Fund Master to Tandem would not be repaid, and to protect the interests of the Axiom Fund Master (and of its ultimate investors, namely investors in the Axiom Fund). So far as presently material, the April 2012 Litigation Funding Agreement provided that monies advanced could only be used for two specific purposes (clause 2.2), which were:

(a) To fund "*Eligible Legal Expenses*", as defined in clause 1.1, which essentially were disbursements in respect of a claim evidenced by an invoice. "*Legal Expenses*" were defined as meaning "*any sum payable in respect of Counsel's fees, expert's fees, Court fees, arbitration fees, the Legal Expenses Insurance or referral fees in relation to the Claimant's Claim or its Proceedings*".

(b) To fund the insurance premium relating to the Financial Guarantee Insurance.

53.30 The Agreement specifically prohibited monies provided thereunder from being used towards Tandem's fees (clause 1.1, definition of "*Legal Expenses*") or in respect of any cases other than a funded case (as detailed in the relevant Utilisation Request) (clause 2.2(c)). Monies received from Axiom were effectively required to be paid into a client account, since their purpose was to fund individual client's claims, not Tandem generally (see clauses 4.2(a) (iii) and 4.4, and the definition of "*Client Account*" in clause 1.1). Tandem could not draw funds unless the Investment Manager (TIM) had received (per clause 3.1) all of the documents and other evidence listed in Part A of Schedule 1, which included:

- Various documents concerning Tandem's constitution and its ability to enter into the Agreement.

- Written confirmation from the insurers to the Axiom Fund Master that the Axiom Fund Master was or would be included as a co-insured under the Financial Guarantee Insurance policy.

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

53.31 It was a further condition precedent for each provision of funding that Tandem provide the Investment Manager (TIM) with details of the relevant Legal Expenses for which the money was requested and all related invoices, and that TIM confirm that it was satisfied that the Legal Expenses were Eligible Legal Expenses (clause 3.2 and Part B of Schedule 1). As further conditions precedent for the first provision of funding in respect of each claim, Tandem was required (clause 3.3, and Part C of Schedule 1) to provide the Investment Manager with certain documents, including:

a) A copy of any conditional fee agreement for the claimant.

b) A copy of the Legal Funding Facility Application Form for the claimant.

c) A copy of the written advice regarding the claimant's prospects of success in its claim or related proceedings.

d) A copy of the Legal Expenses Insurance in relation to the claimant and claim.

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

a) It should specify the client account to which the proceeds were to be credited.

b) In the case of Eligible Legal Expenses, copies of the relevant invoices should be attached.

c) Tandem was required to take out what was described as "*Financial Guarantee Insurance*" to cover amounts outstanding under the Agreement and procure the inclusion of the Axiom Fund Mater as co-insured (clauses 5 and 12.3).

53.33 The Facility was to be repaid in full on 30 April 2013 (clause 6, coupled with the definition of "*Termination Date*" in clause 1.1). Clause 1.1 defined the Facilitation Fee as 50% of the amount of each Loan. The Facilitation Fee was also to be repaid in full on 30 April 2013 (clauses 1.1 and 10.2). The First Respondent was well aware of the requirement that the Facilitation Fee be repaid together with the principal sum received by Tandem and interest. Such a requirement was clearly stated on page four of the Baker Tilly 16 December 2011 letter.

53.34 Interest (on monies received and on the Facilitation Fee) was charged at 15% in the first 12 months, and 1.5% per month thereafter (clause 10.1). There was an entire agreement clause, which made it clear that the written terms of the Litigation Funding Agreement superseded any prior arrangement, agreement or representation (clause 22). Specifically, clause 22 was in the following terms:

> "This Agreement and the other Finance Documents are the entire agreement between the Parties concerning the subject matter of the Finance Documents. Any prior arrangement, agreement, representation or undertaking is superseded and, except as expressly provided, each Party acknowledges that it has not relied on any arrangement, agreement, representation or understanding not expressly set out in the Finance Documents."

53.35 By clause 11.1, Tandem represented and warranted to the Lender that the obligations expressed to be assumed by it in the Finance Documents were legal, valid, binding and enforceable obligations. The Finance Documents were defined (clause 1.1) as including the April 2012 Litigation Funding Agreement itself.

53.36 The Applicant's position was that the suggestion of an oral variation to the Litigation Funding Agreement was wholly inconsistent with the Litigation Funding Agreement, the Offering Memorandum and what was known to the First Respondent. There was no evidence to substantiate the argument that Tandem had an enforceable oral agreement with the Axiom Fund. Neither Respondent had produced any evidence of the alleged variation.

(4) The Facilitation Fee

53.37 At all material times, the First Respondent was aware that the Investment Manager would receive a payment of 50% of the sums provided by the Axiom Master Fund to Tandem, as a so-called "*Facilitation Fee*", and that the amount of the Facilitation Fee would be paid from the Axiom Master Fund's funds and added to the debt due from Tandem to the Axiom Master Fund under the Litigation Funding Agreements. Further, as set out above, the First Respondent was aware that the August 2010 Supplemental Offering Memorandum, and the Axiom website documents, made no reference at all to a Facilitation Fee, indeed were wholly inconsistent with the same being charged.

(5) Monies received by Tandem

53.38 Tandem received total payments of £5,920,225 (net of the Facilitation Fee) from the Axiom Fund Master, purportedly pursuant to the Litigation Funding Agreement. The First Respondent was aware of the receipt of the monies and of Tandem's use of them. As set out on a spread-sheet provided by Tandem to the FIO, after including Tandem's liability for the 50% Facilitation Fee, insurance and acquisition costs and "*1st year interest at 15%*", Tandem's total liability to the Axiom Fund was in excess of £10,686,000. The Facilitation Fees alone totalled £3,097,500. So far as the Applicant was aware, not a penny of this liability has been repaid to the Axiom Funds.

53.39 The details of the £5,920,225 drawn down by Tandem under the Litigation Funding Agreements were evident from Tandem's office account as follows:

- £287,500 on 21 December 2011.
- £475,000 on 25 January 2012.
- £237,500 on 29 February 2012.

- £264,100 on 4 April 2012.
- £475,000 on 23 April 2012.
- £302,488 on 27 April 2012.
- £573,000 on 22 May 2012.
- £573,000 on 28 June 2012.
- £657,358.33 on 2 August 2012.
- £1,238,062 on 16 August 2012.
- £837,216.67 on 16 October 2012.

53.40 All monies were provided specifically in relation to "*Right to Buy*" ("RTB") cases (i.e. professional negligence litigation against solicitors involved in the RTB scheme for the purchase of houses from councils and housing associations).

(6) Tandem's use of the monies received from the Axiom Funds

53.41 With the knowledge, consent and approval of the First Respondent, Tandem used, or substantially used, the monies received for (inter alia) the following purposes, none of which were permitted under the Litigation Funding Agreement. £54,750 was utilised by the First Respondent on or about 6 December 2012 to purchase a Porsche Cayenne for himself, when he was required to return his previous car. He contended at interview that this was a legitimate use of Axiom's loan monies "because it got me around the country and able to do my firm's business".

53.42 Further, in addition to wages of £83,978.99 between April 2012 and April 2013 and the £54,750 Porsche acquisition, Tandem paid the First Respondent additional sums totalling £107,000 in the relevant period, including £30,000 on 7 January 2013, which The First Respondent described as a "*bonus*"; and £15,000 on 2 May 2013 (the day before Tandem went into administration). The First Respondent explained at interview that the £15,000 was in anticipation of legal fees arising from the Applicant's application (which had been issued and was awaiting determination) for an Order that he comply with the 27 February 2013 s.44B Notice. The First Respondent asserted at interview that this was a legitimate use of Axiom funding.

53.43 £1,536,925.26 was paid to Crosslaw Limited between 2 February 2012 and 14 February 2013 for referral fees. There was evidence that the First Respondent benefitted from these monies to the tune of at least £50,000. £41,930.40 of Axiom's monies were spent, in the period January to April 2013 setting up and operating a new company called Hallmark Costings Limited. This company was incorporated on 29 October 2012. The First Respondent was a director from 29 October 2012 until his resignation on 17 May 2013. At all material times, he held 45% of the issued shares in the company.

53.44 £80,000 was utilised, on or about 16 November 2012, substantially to fund the purchase of a new house for the First Respondent's personal assistant (Ms VM). He asserted that the sum in question was a "*bonus*" for Ms VM because even though approximately double her salary "*that's what I believed she was worth*". The First Respondent confirmed that the £80,000 bonus was funded from Axiom monies.

53.45 £30,000 was utilised to fund a bonus payment to Mr XR on 7 January 2013. This was in addition to wages paid to him in the relevant period. Mr XR was not a solicitor, but, at the material times, was the Head of Marketing and Business Development at Tandem. The First Respondent stated at interview that he had promised to pay Mr XR a portion of any profits he made out of Tandem.

53.46 £90,000 (being £75,000 plus VAT) was utilised to fund an attempt to persuade the Cayman Courts not to approve the appointment of Grant Thornton as receivers, but to support a purported "*rescue bid*" involving individuals considered in relation to Allegations 1.7 and 1.8 below. The balance of the funding, or a substantial part of it, was used to fund the general overheads of Tandem, including (inter alia) its substantial wage payroll, rent and "*general expenditure*" (per paragraph 11 of the First Respondent's 28 October 2014 witness statement).

53.47 As admitted by the First Respondent (paragraph 11.1 of his 28 October 2014 witness statement:

> "… very little was spent on case disbursements as such, mostly because the Right to Buy litigation had changed into a group action from fast track, thus not requiring specific case disbursements".

53.48 Use of the Axiom loan monies as aforesaid was in all cases with the First Respondent's consent and approval. In a 6 December 2011 email exchange, the First Respondent informed the Second Respondent that he proposed to have "*sole control of accounts*", together with his personal assistant (Ms VM), and the Second Respondent agreed.

53.49 **Particular A - He knew and/or was reckless and/or was careless to the fact that Tandem had not complied with the terms of a Litigation Funding Agreement, pursuant to which the monies were purportedly advanced, intended to protect the interests of the investment fund and of the ultimate investors in the investment fund.**

53.49.1 When each provision of funds was received and/or used, the First Respondent knew and/or was reckless and/or was careless to the fact that Tandem had not complied with the terms of the Litigation Funding Agreements intended to protect the interests of the Axiom Fund Master and of the investors in the Axiom Fund (the ultimate investors in the Axiom Fund Master). In particular, the First Respondent knew and/or was reckless and/or was careless to the facts that:

- Tandem had not provided the Investment Manager with the documents and other information that was a condition of drawing down sums in accordance with clause 3 and of Schedule 1 of the Litigation Funding Agreements, or with the Utilisation Requests required by clause 4. These

included details of the relevant Legal Expenses and copies of all related invoices (Part B of Schedule 1).

- Further, as admitted by the First Respondent at a meeting with the FIO on 8 August 2012, the documents required by Part C of Schedule 1 had not been "*provided ... to funder*".

- Tandem had not paid the monies received into a client account.

- Tandem had not executed a fixed charge over a collection account in accordance with clause 7.6(a) (iii) of the Litigation Funding Agreements.

53.50 **Particular B - He knew and/or was reckless and/or was careless to the fact that the Litigation Funding Agreement pursuant to which the monies were purportedly advanced did not reflect the purpose for which Tandem intended to use and/or in fact used the monies, and that the intended and actual use of the monies was not properly documented.**

53.50.1 When each provision of funds was received and/or used, the First Respondent knew and/or was reckless and/or was careless to the fact that the Litigation Funding Agreements did not reflect the purpose for which Tandem intended to use or was using the money, and that the intended and actual use of the monies was not properly documented.

53.50.2 At paragraph 7.4 of his 28 October 2014 witness statement the First Respondent asserted:

> "The suggestion that the expensive funding could only be utilised solely to support an individual case, and that borrowed money could not be used maybe for months after borrowing the same at a very high interest rate is, frankly, ludicrous, and could not even begin to be regarded as a realistic business model".

53.50.3 The position described by the First Respondent as "*ludicrous*" was, however, precisely what was required by the terms of the Litigation Funding Agreements he had signed. It was also in accordance with the representations made to investors in the Axiom Fund, as he was aware from his review of the August 2010 Supplemental Offering Memorandum and the Axiom website documents. Moreover, in a 21 September 2012 email, the FIO wrote to both Respondents as follows: "*You confirmed that despite section 2.2(c) of the written funding agreement with Axiom being very specific about the use of the loan obtained to fund RTB matters, the funders are aware of and have agreed that you can use the same loan to fund other types of litigation at the firm. As this differs from the agreement I would like you to obtain written confirmation of this variation from the funders themselves*". At no time did the First Respondent provide the requested confirmation (or otherwise respond to the FIO on this request).

53.50.4 The First Respondent asserted at interview that he would "*probably*" have mentioned this request to Mr DR of TIM, but he could not recall any specifics. This evidence was speculative and incredible, and it was not corroborated by any documentary evidence. In any event, Mr DR was then at TIM and was not a "*funder*". Mr DR was a middle man, he did not have the authority to agree variations as suggested. There was no proper evidence that the First Respondent took any steps to secure the relevant confirmation from the "*funders*", and it was to be inferred that he did not. The foregoing was a clear example of the First Respondent declining to ask difficult or uncomfortable questions which may have imperilled further loans, alternatively if the confirmation was sought but not provided this would itself have put an honest and careful solicitor on notice of potential fraud or wrongdoing. Notwithstanding the above, the First Respondent thereafter approved Tandem seeking, receiving and spending £837,217 of additional Axiom funding (received on 16 October 2012).

53.50.5 Further, notwithstanding the First Respondent's alleged view that it would be "*ludicrous*" to adhere to a funding model as set out in the Litigation Funding Agreements, Tandem's requests for funding specifically linked the monies to particular RTB cases (as confirmed on Tandem's spread-sheet). This was the basis on which funding continued to be extended, as was apparent even in relation to the last two tranches of funding received (a) on 16 August 2012, where the email from TIM expressly linked the £1,238,062 to RTB cases, and (b) on 16 October 2012, where the email from TIM specifically linked the £837,216.67 to "*526 RTB cases you send in July/August*".

53.51 **Particular C - He had no intention that Tandem would repay the monies within the time required by the Litigation Funding Agreement and/or knew and/or was reckless and/or was careless as to the fact that repayment was very unlikely.**

53.51.1 At the time each tranche of funds was received and/or used, the First Respondent had no intention that Tandem would repay the monies within the time required by the Litigation Funding Agreements and/or knew and/or was reckless and/or was careless as to the fact that repayment was very unlikely. For example, in a 6 September 2012 email to Mr DR (of TIM), the First Respondent referred to a likely trial date of the first quarter of 2014 for RTB cases, approximately 18 months away. Notwithstanding, he allowed Tandem to apply for and receive further Axiom funding on 16 October 2012. Mr XR's comment on seeing this email was that Mr DR was "*gonna read it and think, right how do I [bull***t] the investors*", to which the First Respondent responded "*That is why he gets paid as much as he does and why he has a villa in Majorca*".

53.51.2 A draft witness statement prepared by the First Respondent (in respect of potential litigation against City Equities) recorded at paragraph 11 that "*the firms business model, upon which the funding had been approved, had not forecast any income until late 2013 at the earliest*". Further, at interview, the First Respondent accepted that "*soon*" after the commencement of the funding arrangements, it became apparent that much longer than twelve months would be required to repay, but that Synergy/TIM had indicated that requests for time to pay would be looked on favourably.

53.52 **Particular D - He misused the funds received by failing to apply them only towards "*Eligible Legal Expenses*", as defined in and required by the Litigation Funding Agreement, dishonestly, recklessly or carelessly.**

53.52.1 The First Respondent misused the monies received by failing to apply them only towards "*Eligible Legal Expenses*" (as defined), or otherwise as permitted by the Litigation Funding Agreements, dishonestly, recklessly or carelessly.

53.53 **Particular E - Despite being on notice of the serious risk that the investment fund's Investment Managers, in arranging for the monies to be paid to Tandem, was acting fraudulently, or committing some other serious breach of duty, towards the investment fund and/or the ultimate investors, he failed to make any or sufficient enquiries reasonably to satisfy himself that the payments did not involve any such conduct by the Investment Managers.**

53.53.1 The First Respondent was on notice of the serious risk that the Investment Managers (both Synergy and TIM) were acting fraudulently, or committing some other serious breach of duty, towards the Axiom Funds and the ultimate investors. The First Respondent, as an experienced solicitor, would (or should) have recognised and understood the implications of the following indicia of possible fraud or other serious wrongdoing on the part of the Investment Managers. As he knew, Synergy and TIM failed to ensure that Tandem complied with the terms of the Litigation Funding Agreements as regards both the purpose for which monies could be used and the manner in which they could be drawn down, and failed to properly document the provision of funding. The documents the First Respondent saw before accepting any funding made clear to any objective reader (and to him) what investors were being asked to invest in, namely short-term loans to pay proper expenses on limited case types. The First Respondent knew that this was not the purpose to which he (or Synergy, or TIM) proposed or intended that the Axiom funding be put.

53.53.2 The First Respondent knew that Synergy had failed to make the obvious further inquiries arising from the 16 December 2011 Baker Tilly letter, and that neither he nor Tandem had provided any further relevant information. He also knew that Synergy and TIM did not take or require any security in respect of the substantial monies advanced. It would have been obvious to The First Respondent that the prudent approach to funding reasonably to be expected of an Investment Manager in the position of Synergy and TIM was wholly absent. That is particularly so given the parsimonious information available to Synergy and TIM at the time it purported to commit the Axiom Funds to providing Tandem with a facility up to £12,000,000.

53.53.3 The First Respondent knew at all times about the 50% Facilitation Fee to which Synergy and TIM claimed to be entitled. That fee was suspicious because of its size, because of the incentive that it gave Synergy and TIM to lend recklessly on the Axiom Master Fund's behalf, and because it substantially increased the cost of funding to Tandem (thereby making the funding even riskier from the perspective of the Axiom Fund Master). He also knew that the Facilitation Fee was highly suspicious because there was

no mention of it at all in either (a) the August 2010 Supplemental Offering Memorandum, or (b) the Axiom website documents, both of which he had reviewed prior to receiving any monies from the Axiom Funds. Indeed, the said documents were wholly inconsistent with any purported entitlement of Synergy or TIM to levy the same.

53.53.4 The First Respondent knew that the basis on which Tandem had received, used and (in so far as unused) intended to use the said loan advances was inconsistent with representations made to the investors regarding the loans that the Axiom Fund Master would make. In particular, he knew that the August 2010 Supplemental Offering Memorandum and the Axiom website documents contained representations to putative investors which were inconsistent with the basis on which Tandem had used (and proposed to use) loans from the Axiom Master Fund. Specifically:

a) The said documentation did not provide for, indeed was inconsistent with, a Facilitation Fee.

b) The said documentation represented that loans were to be provided to law firms to pursue legal disputes. As the First Respondent knew, the purposes for which the loans were used or intended to be used by Tandem (whether general practice funding or otherwise) were outside the scope of such representations.

c) The August 2010 Supplemental Offering Memorandum represented that "*All solicitors … must be members of the respective solicitors' indemnity fund that helps to ensure their solvency*". The First Respondent knew that this was not a correct statement. By 1 September 2000, the Solicitors Indemnity Fund had ceased to indemnify new claims, save for certain run-off claims made against practices that ceased at least six years earlier, having been replaced by other arrangements, and in any event the Solicitors Indemnity Fund (and the arrangements that replaced it) did not help to ensure the solvency of solicitors' firms.

d) The August 2010 Supplemental Offering Memorandum represented that "*In the unlikely event that a solicitor's practice does go bankrupt, the cases and the loan facility could simply be transferred to another solicitor approved by the Investment Manager who would then take over conduct of the case*". The First Respondent knew that no such arrangements (even if possible) had been put in place to secure advance client consent to the same.

53.53.5 The First Respondent knew that Synergy and TIM were acting as representatives on behalf of the Axiom Fund Master and the Axiom Fund. He knew that Synergy and TIM were required to act within the scope of their authority and in the best interests of its principal (and of the ultimate investors). Synergy and TIM would not have appeared to the First Respondent to be well-established, reputable Investment Managers, and any representations that they may have made concerning the scope of their authority could not have been taken on trust in view of the abnormal and suspicious circumstances described above. Beyond the August 2010

Supplemental Offering Memorandum and the Axiom website documents, the First Respondent had no information direct from the Axiom Funds (nor did he ever seek any) as to the precise scope of the Investment Managers' authority.

53.53.6 The above-described circumstances individually and/or cumulatively put the Respondent on notice at all material times that there was a serious risk that Synergy and TIM, in arranging and purporting to agree funding on behalf of the Axiom Fund Master, were exceeding their authority to act on behalf of the Axiom Funds, and were not acting in good faith in its best interests, and were taking unauthorised fees, and were defrauding the Axiom Funds and their investors. He could not therefore properly cause or permit Tandem to accept and use the monies received without carrying out inquiries that reasonably satisfied him that Synergy and TIM were acting within their actual authority and in good faith in the best interests of the Axiom Fund Master, and that the Axiom Funds and their investors were not being defrauded. He failed to make any, or sufficient, inquiries in this regard (such as disclosing the material facts to the board of directors of the Axiom Funds, and/or obtaining information or confirmation from the Axiom Funds that reasonably dispelled any suspicions concerning Synergy and TIM). The Applicant alleged that the First Respondent deliberately refrained from making inquiries lest he learn something he would rather not know concerning Synergy or TIM, or lest he upset those at Synergy or TIM responsible for purporting to authorise additional funding to Tandem.

53.54 **Particular F - He disregarded and failed to act appropriately on clear suspicions which he had as to the propriety and competence of the conduct of those at the Investment Managers.**

53.54.1 The First Respondent disregarded and failed to act appropriately on clear suspicions which he had as to the propriety and competence of the conduct of those at Synergy/TIM.

53.54.2 Following a meeting with TIM personnel regarding potentially taking over 2000 cases from Ashton Fox, the First Respondent emailed Mr XR on 29 April 2012 noting: "*I didn't know until yesterday that despite AF not having one single CFA in place or any real instructions they have had funding for 2000 cases at £2000 each. Over £4,000,000*". His email added: "*There is no, or very little, WIP. Plus, there is no ATE or Loan insurance or CFA's ...*". Later in the email, the First Respondent wrote: "*To understand it more, it is necessary to understand what the fund want, in order to keep it going, which is important for all of us. The fund is going through a lot of auditing at the moment as well as some nervousness at Cayman Island control centre level, for a host of reasons. Nothing is straightforward, it would seem, which is no surprise to me*". This email revealed that the First Respondent was aware of apparently slack if not incompetent practices at Synergy/TIM which may have led to cavalier lending to Ashton Fox. Further, his recognition that it was not surprising that matters were not "*straightforward*" evidenced a clear suspicion that Synergy/TIM may not have been entirely honest and forthright with "*Cayman Island control centre*".

53.54.3 On 15 May 2012 the First Respondent proposed to Mr DR of TIM an arrangement in relation to the Ashton Fox cases where recoveries would be split between the firms, but noting: "*I don't mind Tandem carrying the loan until the final position is known – but, in the event of any shortfall, e.g. due to case drop off or discontinuation or other case losses, Tandem not to be responsible therefore*". Mr DR replied the same day: "*Can you draft to that effect asap re Mau Mau? So the debt is transferred but a side agreement is in place and it has no effect on credit limits etc*". The position was therefore that:

a) The First Respondent's email contained an improper and dishonest proposal to "*carry the loan*" (i.e., for purposes of any inquiries from "*Cayman Island control centre*"), while not actually accepting any liability for the same.

b) Upon Mr DR agreeing to the same in principle, the First Respondent was aware that he (Mr DR) was comfortable with encouraging an exercise in false accounting with the clear potential for deceiving the Axiom Funds, the investors, and their auditors and independent directors. This would have raised (and did raise) clear suspicions with the First Respondent as to the propriety of Mr DR's and thus TIM's conduct more generally.

53.54.4 The First Respondent took no steps to secure the written confirmation from the funders requested in the FIO's 21 September 2012 email, alternatively if he sought it from TIM he received nothing in response. In the former scenario, this would have reflected extant concerns that such a request would not be well received at TIM, and would cause potential difficulties for continued Tandem funding. In the latter scenario, this would have alerted the First Respondent to concerns as to the conduct of those at TIM (to the extent he was not already alert to them).

53.54.5 The First Respondent had concerns as to the manner in which insurance issues had been dealt with by the Investment Manager at the time funding was first extended to Tandem. Specifically:

a) In relation to the first tranche of RTB cases, on Synergy's recommendation, Tandem purchased in the region of 525 "*policies*" from Frion. In a subsequent 12 July 2012 meeting with the FIO, the First Respondent made clear that these insurance policies were taken out because the "*funders*" regarded them as "*good value*", and explained that he "*went with them as the funders [had] done due diligence*" (page 3). The First Respondent's aforesaid references to the "*funders*" were in fact to the then Investment Manager, Synergy.

b) The First Respondent was well aware from the August 2010 Supplemental Offering Memorandum, the Axiom website documents, and the express terms of the Litigation Funding Agreements, that insurance arrangements were fundamental to the protection of the Axiom Funds and the underlying investors.

(c) The First Respondent was sent the Frion policy schedules on 21 December 2011. Earlier, on 7 December 2011 he had been sent by Frion a "*policy wording*" document. This "*policy wording*" document had a number of obviously extraordinary and suspicious features, as the First Respondent would have appreciated, including:

(i) At paragraph 6.15, there was a reference to the FSA which implied that Frion was regulated by the FSA. The First Respondent, however, knew at all material times that Frion was not FSA regulated as evidenced by his 11 January 2012 email described below.

(ii) The policy was voided if Axiom went into liquidation or appointed receivers: paragraph 7.1.

(iii) The document asserted: "*This guarantee is underwritten by AAA rated securities, Goldman Saches [sic] Mortgage Securities to a level of $250,000,000. This is part of an overall security of $7,562,773,702*."

(d) The First Respondent expressed concerns about the Frion policies in an 11 January 2012 email to Mr XR. He stated that he was "*uneasy*" about Frion. He noted that he had concerns about recoverability of the "*premium*" at the conclusion of a case because "*it is not insurance*" and Frion "*is not FSA regulated*". He observed that the Frion product was "*not even a client "policy"*", but "*a policy for our benefit which we then apparently use to indemnify the client in the event of a claim*". He concluded: "*My other concerns relate to our SCOPE professional obligations as well as the ability of FRION to meet all and any liabilities in the event of disaster. Because they are not regulated the government compensation scheme does not apply, which is likely to bring into question our duties to act in our clients best interests, in all the circumstances. We need to speak.*"

(e) Mr XR replied the same day in the following terms:

> "We are fine under scope rules because it is a policy to us so we have no advice obligations on that respect. They using every loophole possible. I guess that they have check that it is not classed as self insurance. FSCS does not apply because it is an insurance to us. However I did not like their opening gambit about sausage factory a bit and their financial ability is unproven. I wouldn't mind if they provide the £50 policy because that it is for the fund and if the funder is happy … But not keen at all on them providing ATE. We need Enterprise asap. By the way the explanation of £50 upfront for capital adequacy is absolutely bull***, because they are not regulated and if they were they will need 15-30% of the written premium, so on a RTB policy they will need 3k to meet adequacy provisions."

(f) There was no evidence that the First Respondent either (a) sought and secured appropriate assurances that dispelled the above concerns, or (b) raised the suitability of Frion to provide Axiom-related insurance with the Axiom Funds (as opposed to Synergy). Furthermore, and notwithstanding the said undispelled concerns: (a) on 23 and 24 January 2012, the First Respondent authorised payment by Tandem to Frion of the total sum of £63,000; and (b) the First Respondent did not cause Tandem to refrain from spending the relevant Axiom funding.

(g) The First Respondent elected not to pursue with the Axiom Funds his concerns arising from the Investment Manager's recommendation to source policies from Frion, following its alleged due diligence.

53.55 **Particular G - He unreasonably and/or carelessly risked Tandem being a party to transactions in fraud of the investment fund and/or of the ultimate investors, or which involved other serious breach of duty by the Investment Managers towards them (or one of them).**

53.55.1 In all the circumstances, the First Respondent unreasonably and/or carelessly ran the risks that (a) Tandem was a party to a fraud of the Axiom Master Fund and of the ultimate investors, or that there were other serious breaches of duty by Synergy or TIM; and (b) Tandem was benefitting from Synergy's and TIM's wrongdoing.

53.56 **Particular H - In all the circumstances, as the First Respondent well knew or should have known, the transactions pursuant to which the monies were received were dubious, and the monies should not have been accepted or used.**

53.56.1 In all the circumstances, as the First Respondent knew or should have known, the funding was dubious, and should not have been accepted or used without further inquiry. In acting as described above, the First Respondent was motivated by personal financial gain, including (a) that Tandem (in which he held a 95% stake, and from which he drew a salary) should continue trading, and (b) that Tandem should continue to be in receipt of substantial funding advances, which he was able to continue expending in the manner described above.

54. **The First Respondent thereby acted without integrity, in breach of Principle 2 of the Principles, and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.**

54.1 The Applicant alleged that the acceptance and use of the monies by Tandem gave rise to a breach of Principles 2 and 6 of the Principles on the part of the First Respondent, for the reasons above. It also alleged that the First Respondent's conduct was dishonest.

54.2 By the time of the hearing the Applicant's position was that the test for dishonesty in regulatory proceedings was the test set out by the Supreme Court decision in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 which was:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

54.3 This differed from the test for dishonesty accepted in Bultitude v Law Society [2004] EWCA Civ 1853 which applied the combined test laid down in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 in disciplinary proceedings. That test was that the person has acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he or she was acting dishonestly. The Twinsectra test had been pleaded in the Rule 5 Statement and the Applicant had written to the First Respondent on 3 November 2017 advising him of the test in the Ivey case.

54.4 As an experienced solicitor, the First Respondent would have been aware (in light of his knowledge of the relevant circumstances described above) that he was acting dishonestly. He continued to permit Tandem to accept and use Axiom funding, notwithstanding his knowledge and concerns. Further or alternatively, the First Respondent's aforesaid conduct was reckless because he unreasonably ran the risks described above.

54.5 The Applicant alleged that the First Respondent acted without integrity, contrary to Principle 2 and failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services, contrary to Principle 6 of the Principles 2011. For the avoidance of doubt, the allegation that he breached Principle 6 of the Principles incorporated (inter alia) the criticisms of his conduct particularised above which asserted that he failed to exercise the degree of competence and care that the public would expect of a solicitor in comparable circumstances. In particular, but without prejudice to the generality of the foregoing, no reasonably competent and careful solicitor would have signed the Litigation Funding Agreements without first carefully reading it and taking such advice as he considered necessary. No reasonably competent and careful solicitor who had taken those steps could have believed that it permitted the Axiom monies to be used for general practice funding. No reasonably competent and careful solicitor would have failed to ensure that the intended and actual use of the money was properly documented. No reasonably competent and careful solicitor would have failed to notice the numerous warning signs that there was a serious risk that the Investment Managers were acting fraudulently or committing some other serious breach of duty.

The First Respondent's Position

54.6 The First Respondent had not engaged with the proceedings and had not filed a witness statement or Answer. The allegation was treated as denied.

The Tribunal's Decision

54.7 The allegation was that the First Respondent caused or permitted Tandem to accept, and use, monies received (on dates between 21 December 2011 and 16 October 2012) from an investment fund totalling £5,920,225, in circumstances where it was improper for the First Respondent to do so for a number of specified reasons.

54.8 The first finding the Tribunal had to consider was whether or not the First Respondent caused or permitted Tandem to accept the monies. There was no dispute that the monies were received. This was evidenced by Tandem's bank statements. Tandem drew down money on eleven occasions. On each occasion it was open to the First Respondent to say that he did not want the money. The application for Axiom Funding was made in the First Respondent's name and he signed the Litigation Funding Agreement. The First Respondent had never denied that he was responsible for the application for funding and for the acceptance of funding. It was inconceivable that he did not authorise the application. He had told the FIO that Axiom were the only ones who would fund Tandem. The fact that the First Respondent contended that the Litigation Funding Agreement had been varied was further evidence of him being closely involved in the process. He was very much the senior partner in the firm and had control of the firm's finances. The Tribunal found that the First Respondent caused or permitted Tandem to accept the money.

54.9 The First Respondent had told the Second Respondent that Ms VM would have sole control of the accounts. Ms VM was his personal assistant. It was clear from the evidence before the Tribunal that the First Respondent had control over the finances and limited the access to financial information. He made the decisions as to how the money was used from the purchase of his car to the bonuses for himself, Mr XR and for Ms VM that was used towards the purchase of a property. Ms JM had not been given the financial information she had requested resulting in her resignation. Through Ms VM the First Respondent had arranged for the Second Respondent to transfer £1,700,000 to City Equities Limited ("CEL"). It was clear that the First Respondent controlled the use of the monies received.

54.10 The Applicant had alleged that the Respondent's conduct was improper for a number of specific reasons. Having made the findings above the next question that the Tribunal had to answer was whether it was improper for the First Respondent to do so for each of the reasons alleged by the Applicant set out at Particulars A to H.

54.11 **Particular A - He knew and/or was reckless and/or was careless to the fact that Tandem had not complied with the terms of a Litigation Funding Agreement, pursuant to which the monies were purportedly advanced, intended to protect the interests of the investment fund and of the ultimate investors in the investment fund.**

54.11.1 The First Respondent had signed a Litigation Funding Agreement. That Litigation Funding Agreement set out the limited uses for which the monies could be used. It also included an Entire Agreement Clause. The monies had not been used in accordance with the Litigation Funding Agreement.

54.11.2 The First Respondent had contended that the Litigation Funding Agreement had been varied orally. He had not been able to provide any evidence of this variation. The FIO had asked him to obtain confirmation from the funders that they had agreed to the variation. The First Respondent had drawn down further monies under the Axiom arrangement after the FIO had asked him to obtain this confirmation. By that stage the First Respondent was on notice that his regulator had a concern about this issue.

54.11.3 The rate of interest was high as was the facilitation fee. It was inconceivable that a firm would borrow money at this rate of interest and not use the money straight away. However, the funding was not general practice funding, according to the Litigation Funding Agreement, it was case specific for use at different stages in the cases. Despite this restriction on the funds it was used for cars and bonuses. £15,000 was spent the day before Tandem went into administration.

54.11.4 The Tribunal was satisfied that it was not sufficient under the terms of the Litigation Funding Agreement for the Investment Managers to seek to vary the terms of the Litigation Funding Agreement. The Tribunal accepted that there may have been discussions about variations to the terms of the Litigation Funding Agreement but did not accept that the Litigation Funding Agreement had been orally varied. A solicitor of the First Respondent's experience would have understood the meaning of the Entire Agreement Clause and the restriction as to the use of the funding. He showed a reckless disregard for the purposes for which the money had been loaned. This was such an obvious risk that he must have been aware of it. Even if he believed that the Litigation Funding Agreement had been orally varied it was reckless not to obtain any written confirmation of this variation, especially once the FIO had requested it. His actions were more than careless. Particular A was proved.

54.12 **Particular B - He knew and/or was reckless and/or was careless to the fact that the Litigation Funding Agreement pursuant to which the monies were purportedly advanced did not reflect the purpose for which Tandem intended to use and/or in fact used the monies, and that the intended and actual use of the monies was not properly documented.**

54.12.1 The Tribunal found this Particular proved for the reasons given in respect of Particular A above.

54.13 **Particular C - He had no intention that Tandem would repay the monies within the time required by the Litigation Funding Agreement and/or knew and/or was reckless and/or was careless as to the fact that repayment was very unlikely.**

54.13.1 Tandem received the first Axiom monies in December 2011 which meant that under the terms of the Litigation Funding Agreement these monies were due to be repaid in December 2012. The Axiom Fund had gone into receivership in October 2012. Tandem had paid no monies back to Axiom or its receivers even though it was trading until May 2013. Despite not making the repayments due bonuses were paid to the First Respondent, Mr XR and

Ms VM. Monies were also used to set up another company and pay for external legal advice in the sum of £90,000.

54.13.2 £1,700,000 was transferred to CEL in January 2013. This money was deliberately transferred to put it out of the reach of Axiom's receivers. On 26 February 2013 the solicitor acting for the receivers wrote to Tandem demanding repayment. No repayment was made. There was no evidence before the Tribunal as to how the firm could have repaid the monies.

54.13.3 The Tribunal was sure that the First Respondent had no intention that Tandem would repay the monies within the time required by the Litigation Funding Agreement. He knew that repayment was very unlikely. In the circumstances the Tribunal did not need to consider whether or not he was reckless or careless. Particular C was proved.

54.14 **Particular D - He misused the funds received by failing to apply them only towards "*Eligible Legal Expenses*", as defined in and required by the Litigation Funding Agreement, dishonestly, recklessly or carelessly.**

54.14.1 There was an allegation of dishonesty in respect of Particular D and Allegation 1.1 as a whole. The Tribunal did not consider whether or not the First Respondent had specifically been dishonest in respect of Particular D and approached the question of dishonesty holistically as set out below.

54.14.2 In terms of recklessness and carelessness the Tribunal was satisfied that he had misused the funds as he had not applied them solely for Eligible Legal Expenses. The Tribunal found that this was reckless for the same reasons as set out in respect of Particular A above. Particular D was found proved.

54.15 **Particular E - Despite being on notice of the serious risk that the investment fund's Investment Managers, in arranging for the monies to be paid to Tandem, was acting fraudulently, or committing some other serious breach of duty, towards the investment fund and/or the ultimate investors, he failed to make any or sufficient enquiries reasonably to satisfy himself that the payments did not involve any such conduct by the Investment Managers.**

54.15.1 The Supplemental Offering Memorandum did not contain any reference to the Facilitation Fee. The Facilitation Fee was 50% of the value of the loan. This was alarmingly high. Whilst the Litigation Funding Agreement provided for the Facilitation Fee the fact that the Supplemental Offering Memorandum did not placed the First Respondent on notice that something was not quite as it should be. He did not contact the funders directly and relied on what he was told by the Investment Managers. The First Respondent had demonstrated that he was capable of independent research as evidenced by the enquiries he did make. The First Respondent had maintained that the Litigation Funding Agreement had been varied but had no written confirmation of that fact. The Tribunal found that he had failed to make any or sufficient enquiries to reasonably satisfy himself that the payments did not involve fraud or other breach of duty by the Investment Managers against the fund and/or the ultimate investors. Particular E was found proved.

54.16 **Particular F - He disregarded and failed to act appropriately on clear suspicions which he had as to the propriety and competence of the conduct of those at the Investment Managers.**

54.16.1 The Tribunal considered what evidence there was that the First Respondent had clear suspicions as to the propriety and competence of the conduct of those at the Investment Managers. On 21 September 2012 the FIO had asked both Respondents for written confirmation that the funders were aware of the alleged oral variation. Despite the FIO requesting this, which must have given the First Respondent a clear suspicion that there was a concern, he drew down further monies on 16 October 2012. As the Investment Managers received the 50% Facilitation Fee they clearly had a vested interest in Tandem continuing to borrow from the Axiom funds.

54.16.2 Further the First Respondent knew that the Investment Managers were not requiring the Conditional Fee Agreements nor counsel's advice as set out in the Litigation Funding Agreement before monies were loaned. This would have raised clear suspicions as to the competence of the Investment Manager's conduct. Particular F was proved.

54.17 **Particular G - He unreasonably and/or carelessly risked Tandem being a party to transactions in fraud of the investment fund and/or of the ultimate investors, or which involved other serious breach of duty by the Investment Managers towards them (or one of them).**

54.17.1 The First Respondent transferred £1,700.000 so that it was beyond the reach of Axiom's receivers. Further, the First Respondent had had concerns in respect of the validity of the Frion policies but on the evidence before the Tribunal he had not taken any action in this regard. The First Respondent's actions unreasonably and carelessly risked Tandem being a party to transactions involving fraud and/or serious breach of duty by the Investment Managers. Particular G was proved.

54.18 **Particular H - In all the circumstances, as the First Respondent well knew or should have known, the transactions pursuant to which the monies were received were dubious, and the monies should not have been accepted or used.**

54.18.1 Particular H was found proved for the reasons set out above at particulars A to G. Cumulatively, the First Respondent well knew or should have known, the transactions pursuant to which the monies were received were dubious, and the monies should not have been accepted or used.

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

54.19.1 Principle 2 requires a solicitor to act with integrity. In the case of Williams v Solicitors Regulation Authority [2017] EWHC 1478 Mrs Justice Carr had said that "Want of integrity arises when, objectively judged, a solicitor fails to meet the high professional standards expected of a solicitor.

It does not require the subjective element of conscious wrongdoing." The Tribunal had made a number of findings in respect of Particulars A to H and the overall receipt and use of the Axiom monies. In behaving as he had both in terms of his knowledge and his actions that had been found to be reckless the First Respondent had not met the high professional standards expected of a solicitor. He had lacked integrity and breached Principle 2.

54.19.2 Principle 6 requires a solicitor to behave in a way that maintained the trust that the public placed in him and in the provision of legal services. The public would not expect a solicitor to borrow monies that with interest and the Facilitation Fees amounted to over £10,000,000 without a clear plan as to how those monies could be repaid. The public would also expect that the monies were only used for authorised purposes not to buy cars, pay house deposits and bonuses. The First Respondent had not behaved in a way that maintained the trust the public placed in him and in the provision of legal services. He had breached Principle 6.

54.19.3 The Tribunal found Allegation 1.1 proved beyond reasonable doubt.

55. **Dishonesty**

55.1 The Tribunal considered whether or not the First Respondent had been dishonest. It applied the test set out in Ivey. Firstly, the Tribunal considered the First Respondent's actual state of knowledge or belief as to the facts. The First Respondent was an experienced solicitor. He wanted to start Tandem and grow his firm. For this he needed a source of funding. Axiom were the only ones that would fund Tandem. The First Respondent wanted to pursue lots of claims. He would not have been able to achieve these aims if he did not have the funding. He knew that the Litigation Funding Agreement did not reflect the purposes for which he was using the money. He claimed that there was an oral variation but he had not obtained confirmation in writing despite the Litigation Funding Agreement containing an Entire Agreement Clause. He knew that by 2013 he had not paid any monies back and he knew that he transferred £1,700,000 to CEL so that the monies were out of the reach of Axiom's receivers. The Tribunal found that this was the First Respondent's actual state of mind and knowledge and would have been genuinely held.

55.2 The First Respondent did not need to appreciate that his actions would be considered dishonest by the standards of ordinary decent people. The Tribunal found that ordinary, decent people would have considered the First Respondent to be dishonest. His actions were clear evidence of somebody who was not behaving honestly. In respect of Allegation 1.1, dishonesty was proved beyond reasonable doubt.

56. **Allegation 1.2 - The First Respondent failed to ensure that the aforesaid £5,920,225 (or any part thereof) was paid into client account, alternatively failed to ensure an office account was opened whose sole purpose was to hold the monies pending their use for an authorised purpose, contrary to Principles 2, 6, 8 and 10 of the Principles and to rules 1.2(a), 1.2(b), 6 and 14.1 of the SAR. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.**

56.1 The monies provided under the Litigation Funding Agreements were not at the free disposal of Tandem, and could be applied only for purposes for which they were provided. The Applicant's primary case was that in the highly suspicious circumstances described above the money should not have been received at all. However, having improperly received the monies, the First Respondent should have ensured that Tandem paid them into a client account, where they should have been held unless and until they were disbursed for a permitted purpose, thus giving effect to the intent of the Axiom scheme that law firms would not have to fund Eligible Legal Expenses themselves. This was necessary because the monies were provided to fund Eligible Legal Expenses in respect of each claim and further or alternatively because they were subject to a *Quistclose* resulting trust [Barclays Bank v Quistclose International Limited [1970] AC 567] and for the further reason that the Litigation Funding Agreements effectively required that the sums be credited to client account in any event (clauses 4.2(a) (iii) and 4.4, and the definition of "*Client Account*" in clause 1.1). The monies were therefore client monies within the meaning of rule 12 (in particular 12.2(c)) of the SAR.

56.2 Alternatively, the monies should have been paid into an office bank account whose sole purpose was to receive the monies, where they would not be mixed with other office monies (and/or consequently utilised for general running expenses or dissipated by the account being in overdraft), and proper records should have been kept to ensure that the funding was expended for an authorised purpose.

56.3 The First Respondent failed to do any of the above, in order to facilitate the wrongful use of the monies for purposes that were not authorised by the Litigation Funding Agreement. In allowing the monies to be held in and disbursed from Tandem's office account notwithstanding the matters aforesaid the First Respondent:

- Acted in breach of rules 1.2(a), 1.2(b), 14.1, 17 and 20 of the SAR.
- Failed to act with integrity, in breach of Principle 2 of the Principles.
- Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles.
- Failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8 of the Principles.
- Failed to protect client money, in breach of Principle 10 of the Principles 2011.

56.4 Further, given the First Respondent's knowledge as to the terms of the Litigation Funding Agreements (and of the August 2010 Supplemental Offering Memorandum, and the Axiom website documents), his aforesaid conduct was dishonest by the standards of reasonable and honest people, and (as a senior and experienced solicitor) he would have appreciated (and did appreciate) the same. Further or alternatively, his conduct was reckless as to the risks to which the Axiom Funds and the ultimate investors were exposed as a result of his misconduct.

The First Respondent's Position

56.5 The allegation was treated as denied.

The Tribunal's Decision

56.6 The monies had been paid into office account. At the time the first Axiom monies were received Tandem did not operate a client account. The First Respondent had signed a Litigation Funding Agreement that said that the monies had to be paid into client account but they had not been paid into a client account. The account number given on the application form was the account into which monies were paid and this was Tandem's general office account.

56.7 The Tribunal had found that there was no evidence of an effective oral variation of the Litigation Funding Agreement which contained an Entire Agreement Clause in any event. That Litigation Funding Agreement set out the purposes for which the monies could be used. The monies were specifically drawn down against individual client files for use in respect of that client matter. The Tribunal found that the monies were client monies and should have been paid into client account.

56.8 The Tribunal found that the First Respondent lacked integrity in not ensuring that client monies were paid into a client account and in allowing them to be paid into a general office account where they were used for practice funding and the payments described above. Principle 10 required the First Respondent to protect client money and assets and he had clearly not done so. For the same reasons as the Tribunal found Principles 2 and 10 breached the Tribunal found that the First Respondent had not behaved in a way that maintained the trust the public placed in him and in the provision of legal services. The public would expect a solicitor to keep client monies safe. Principle 8 required the First Respondent to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles. In arranging for client money to be paid into office account the First Respondent had not complied with Principle 8.

56.9 It was alleged that the First Respondent had not complied with rules 1.2(a), 1.2(b), 6 and 14.1 of the SAR. Rule 1.2(a) required that other people's money was kept separate from money belonging to the solicitor or the firm. Here client money had been paid into a general office account in clear breach of the rule. Rule 1.2(b) required other people's money to be kept safely in a bank or building society account identifiable as a client account (except when the rules specifically provided otherwise). None of the exemptions applied and the monies had not been paid into client account. This was in breach of the rule.

56.10 Rule 14.1 provided that client money must without delay be paid into a client account and held in client account except when the rules provide to the contrary. None of the exemptions applied and the monies had not been paid into client account either originally or by way of subsequent transfer. The monies had not been held in client account. This was in breach of the rule.

56.11 Rule 6.1 required that all principals in a firm must ensure compliance with the rules by the principals themselves and by everyone employed in the firm. This applied to directors of a recognised body that was a company. The First Respondent by his own actions had not complied with this rule.

56.12 Allegation 1.2 was found proved beyond reasonable doubt.

57. **Dishonesty**

57.1 The First Respondent knew that he had requested the funds and that he had asked for them to be paid into Tandem's general office account. He knew that those monies would be mixed with the firm's general funds. The First Respondent knew that he had signed a Litigation Funding Agreement that described the monies as client monies and specified that they should be paid into client account. He knew that the monies were being borrowed against specified cases.

57.2 The First Respondent did not need to appreciate that his actions would be considered dishonest by the standards of ordinary decent people. The Tribunal found that ordinary, decent people would have considered the First Respondent to be dishonest. His actions were clear evidence of somebody who was not behaving honestly. In respect of Allegation 1.2, dishonesty was proved beyond reasonable doubt.

58. **Allegation 1.3 - The First Respondent assisted the conduct of the Investment Managers despite being on notice of the serious risk that the Investment Managers were acting fraudulently, or committing some other serious breach of duty, towards the investment fund and the ultimate investors. The First Respondent thereby acted without integrity, in breach of Principle 2 of the Principles, and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.**

58.1 The First Respondent assisted Synergy and TIM (and their associates, such as Mr TS and Mr DR), despite being on notice of the matters giving rise to serious concern that they were acting fraudulently or committing some other serious breach of duty towards the Axiom Funds and the investors in the following ways:

- Improperly receiving the monies, in the manner described above, in the knowledge that the funding would provide the pretext for Facilitation Fees of 50%, and in fact enabling very substantial sums to be taken.

- Failing to act in the best interests of the Axiom Fund Master, and in particular failing to alert it to the various matters giving rise to concern that Synergy and TIM were acting fraudulently or committing some other serious breach of duty towards the Axiom Funds and the investors.

- As a result, in so far as Synergy and TIM were acting fraudulently or otherwise improperly, The First Respondent's conduct risked enabling them to prolong and further benefit their wrongdoing, to the detriment of the Axiom Funds and the ultimate investors.

58.2 The First Respondent:

- Failed to act with integrity, in breach of Principle 2 of the Principles.
- Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services, in breach of Principle 6 of the Principles.

58.3 Further, given the First Respondent's state of knowledge, his aforesaid conduct was dishonest by the standards of reasonable and honest people, and (as a senior and experienced solicitor) he would have appreciated (and did appreciate) the same. Further or alternatively, the First Respondent's conduct was reckless as to the risks to which the Axiom Funds and the ultimate investors were exposed as a result of his misconduct.

The First Respondent's Position

58.4 The allegation was treated as denied.

The Tribunal's Decision

58.5 The First Respondent was aware of warning signs in respect of the Investment Managers conduct. On 29 April 2012 the First Respondent had emailed Mr XR about discussions he had had with the Investment Managers in respect of Ashton Fox. He had recorded in that email that the Axiom Fund was going through a lot of auditing at that time and that there was some nervousness at Cayman Island control centre. The First Respondent stated "So, I feel a bit like a hare, staring at the headlights!!"

58.6 On 29 April 2012 Mr XR had emailed him and in the context of what was being discussed in that email (funding by Axiom of another stream of cases) had said "This game is raising the stakes and I am not sure we know the rules or I like the consequences".

58.7 Despite these concerns the First Respondent continued to draw down funds from the Axiom fund and purchased Ashton Fox, which also had liabilities to the Axiom Fund. He knew there was nervousness at the control centre and he knew that there was auditing going on, but he carried on regardless.

58.8 There was significant documentary evidence before the Tribunal that demonstrated the close working relationship between the First Respondent and the Investment Managers. The Second Respondent spoke of the close relationship between Tandem and the Axiom Fund. The Tribunal found that the First Respondent assisted the conduct of the Investment Managers despite being on notice of the serious risk that the Investment Managers were acting fraudulently, or committing some other serious breach of duty, towards the investment fund and the ultimate investors. This was clearly in breach of Principles 2 and 6 for the reasons set out in respect of Allegation 1.1 above. Allegation 1.3 was proved beyond reasonable doubt.

59. **Dishonesty**

59.1 The First Respondent's state of knowledge was evidenced by the documents before the Tribunal. He knew that there were warning signs as to the Investment Managers

conduct. He still continued to borrow funds from Axiom and deepen his level of involvement with the Investment Managers. The Tribunal found that ordinary, decent people would have considered the First Respondent to be dishonest. Nobody who was acting honestly would have acted as the First Respondent did. In respect of Allegation 1.3, dishonesty was proved beyond reasonable doubt.

60. **Allegation 1.4 - The First Respondent caused or permitted false and misleading representations (to the effect that no partner or employee of Tandem had been subject to disciplinary proceedings by the Law Society) to be made to the investment fund and its representatives, for the purpose of persuading them to provide funding to Tandem, well knowing the same to be untrue (as the First Respondent had himself been subject to such disciplinary proceedings), alternatively by failing to review or review properly the relevant application form. The First Respondent thereby acted in breach of Principles 2 and 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.**

60.1 The Application Form for Axiom funding answered the question whether any partner or employee of the firm had been "*subject to disciplinary proceedings by the Law Society*" by indicating "*no*". This answer was demonstrably false. In Findings dated 4 January 2006 the First Respondent had been found guilty by the Tribunal of four counts of professional misconduct, and had been ordered to pay a fine of £2,500 and costs of £10,600. The allegations upheld concerned (a) breaches of the Solicitors Accounts Rules, and (b) breaches of Rules 3 and 13 of the Solicitors Practice Rules 1998 regarding the treatment of introductions and referrals, and as to the exercise of proper supervision. It was to be inferred that, before dispatch, the said Application Form was completed or reviewed and approved by the First Respondent. In support of the foregoing proposition:

- The inference arises naturally from the First Respondent's pre-eminent position within Tandem, and the importance of the document to Tandem.

- The First Respondent was the sole person whose contact details were provided, and he was also identified as the "*Finance Partner*".

- The First Respondent's 17 May 2013 response to the 27 February 2013 s.44B Notice stated that the application for funding consisted of the Application Form, a business plan and a funding model document which were sent to Baker Tilly. His letter stated "*I do not recall there being any other documentation*", evidencing (as would be expected given his senior managerial position and 95% shareholding within Tandem) his familiarity with the documents which comprised the application.

60.2 The Second Respondent's evidence at interview was that "*it would have been Andrew*" who completed the Application Form. Baker Tilly's 16 December 2011 "*initial review of application information*" stated that the Application Form had been "*completed by the Directors*", and this was not contradicted by the First Respondent at the time or subsequently. The First Respondent received the 16 December 2011 Baker Tilly "*initial review*", as he provided a copy of it to the Applicant. Further, by clause 11.8 of the April 2012 Litigation Funding Agreement, Tandem represented and

warranted to the Lender that all other written information provided by it to the Lender was true, complete and accurate in all material respects as at the date it was provided and was not misleading in any respect.

60.3 The First Respondent:

- Acted dishonestly. He knew that the relevant answer in the Application Form he completed or approved was false.
- Failed to act with integrity, in breach of Principle 2 of the Principles.
- Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles.

The First Respondent's Position

60.4 The allegation was treated as denied.

The Tribunal's Decision

60.5 It was not clear whether the First Respondent had actually completed the application form for Axiom Funding. He could not remember whether he had done so but accepted that he had probably reviewed it. The Second Respondent said that the First Respondent completed the application form. At that time she said she did not know he had been subject to disciplinary proceedings. The First Respondent exercised a significant degree of control over the firm. It was inconceivable that he would have allowed the application for funding to be made without at least reviewing the relevant application form. If he had reviewed the form properly he would have seen that the information was wrong. The information related to him and his own disciplinary record. It was within his own knowledge and not something that he would need to go away and check. By acting as he did the First Respondent had clearly not acted with integrity nor had he maintained the trust the public placed in him and in the provision of legal services. Whether he personally completed the form or reviewed it, a solicitor applying for any funding had to ensure that all of the information provided on the relevant application form was completely correct, let alone information about something as important as that person's own regulatory history. Allegation 1.4 was proved beyond reasonable doubt.

61. **Dishonesty**

61.1 The First Respondent wanted funding to grow his firm. He knew that Axiom were his only potential source of funding. He knew he had been subject to disciplinary proceedings. He would have known that declaring that he had been subject to disciplinary proceedings could jeopardise his chances of securing funding. The Tribunal found that ordinary, decent people would have considered the First Respondent to be dishonest. The irresistible inference was that he had lied to increase his chances of securing funding without which he could not achieve his aim of growing his firm. In respect of Allegation 1.4, dishonesty was proved beyond reasonable doubt.

62. **Allegation 1.5 - The First Respondent improperly signed an agreement for the purchase by Tandem of the business and assets of Signey, improperly transferred £2,000,000 of Axiom funding from Signey's office account to Tandem's, and improperly allowed the said monies to be used by Tandem, and thereby breached Principles 2, 6 and 10 of the Principles and rules 1.2(a), 1.2(b), 6 and 14.1 of the SAR. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.**

62.1 Another law firm which had been in receipt of funding from Axiom was Signey. Signey's Litigation Funding Agreement contained the same provisions as did Tandem's whereby (a) funding was to be used for "*Eligible Legal Expenses*", not general practice funding (clauses 1.1, 2.2 and 4.2); and (b) notice was required to be given to the Lender promptly upon a change of control at Signey (clause 7.2), and the appropriate person to whom such notice was to be given was identified in clause 17.2 as JP Fund Administration Cayman Limited. The Axiom Funds were entitled, on a change of control, to serve notice that outstanding loans were immediately repayable: clause 7.2(c).

62.2 On or about 23 October 2012, the First Respondent acquired from Mr Signey 100% of the shares in Signey. The First Respondent began acting as a director of Signey shortly thereafter, and was formally so appointed on or about 1 November 2012. Immediately after his acquisition of the shares in Signey, the First Respondent instructed Mr XR to attend Signey's offices to review its business and report on its prospects. Mr XR did so and concluded that Signey was not financially viable. It was to be inferred that the First Respondent accepted and agreed with Mr XR's conclusions and, in consequence (having regard to the full extent of Signey's liabilities to the Axiom Funds) regarded Signey as insolvent. Days later, on 30 October 2012, an Asset Purchase Agreement ("the APA") was signed between Signey and Tandem. The APA was signed by the First Respondent and Mr PM as directors on behalf of Signey, and by both Respondents as directors on behalf of Tandem. So far as presently material, the terms of the APA were as follows:

- Signey sold the entirety of its business and assets (including the balance in any Signey office account) to Tandem, apart from "Excluded Liabilities" (which were defined as trade debts): clause 2.

- Clause 3.1 was in the following terms:

> "3.1 The consideration for the acquisition of the Business and the Assets passing between the parties and pursuant to this agreement shall be:
>
> 3.1.1 The sum of £45,000 payable by the Buyer to the Seller;
>
> 3.1.2 Subject to 3.1.3 an indemnity to the Seller, from the Buyer, in relation to the Seller's liability to repay all loans provided to it by Axiom Legal Funding ("the funders"), as per the funding agreement between Seller and the funders, and in accordance with the Schedule of Total Funding to Date annexed hereto and all and any other debts of the Seller incurred in the ordinary course of business other than the Excluded Liability.

3.1.3 The indemnity referred to at 3.1.2 is subject to the following events:

3.1.3.1 that the relevant client continues to retain the Buyer's services; and

3.1.3.2 that the relevant client's case is successfully concluded and the Buyer receives its agreed fees in respect thereof."

62.3 The parties agreed that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") applied, in consequence of which the contracts of all employees of Signey transferred to Tandem: clause 11. The twenty two relevant employees who were entitled to the benefit of this clause were listed at schedule 2. The effect of clauses 3.1.2 and 3.1.3 of the APA was that it was entirely at Tandem's option what part of Signey's debt to the Axiom Funds (if any) was assumed. Tandem could simply decline to seek or secure the consent of the relevant clients to instruct Tandem and/or subsequently abandon the litigation. Meanwhile, there was no corresponding (or indeed any) express restriction on the use by Tandem of Signey's assets (in particular, unspent Axiom funding).

62.4 Forthwith upon Tandem's acquisition of Signey's assets and business, a redundancy process was carried out whereby the Signey staff were dismissed, the vast majority with immediate effect. The First Respondent involved the Second Respondent to carry into effect the same, but stipulated that there should be no consultation exercise with affected employees. As both Respondents appreciated, this was contrary to the requirements of TUPE reg 13 and of chapter II to Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992.

62.5 On or about 23 November 2012, the First Respondent transferred £2,000,000 from Signey's office account to Tandem's office account. There was no evidence that the First Respondent (or anyone else) sent the required notice to JP Fund Administration Cayman Limited notifying a change of control at Signey, whether before the £2,000,000 transfer or afterwards, and it is to be inferred that no such notice was given. Certainly, the First Respondent had no proper basis at the material time for thinking that the Axiom Funds themselves had been duly notified of the change of control at Signey.

62.6 The Applicant alleged that it was improper for the First Respondent to procure or sign the APA (for either Signey or Tandem) in the terms on which it was finalised and/or to transfer the £2,000,000 from Signey to Tandem and/or to use the said monies, in that:

- The monies in question were client monies and/or were only to be used in accordance with Signey's Litigation Funding Agreement. These strictures were not observed by the First Respondent.

- In light of the First Respondent's view (based on Mr XR's business review) that Signey's business was not financially viable, and thus (given its liabilities to the Axiom Funds) insolvent, the APA and transfer of the £2,000,000 were in breach of his duties as a director of Signey to consider and act in the best interests of its creditors.

- The APA resulted in it being entirely at Tandem's option what part of Signey's debt to the Axiom Funds (if any) was assumed while there was no corresponding (or indeed any) express restriction on the use by Tandem of Signey's assets (in particular, unspent Axiom funding).

- The First Respondent failed to take steps to notify JP Fund Administration Cayman Limited of the change of control at Signey, and had no proper basis for thinking that the Axiom Funds themselves had otherwise been duly notified. It had been especially important that this occur prior to the APA and transfer of the £2,000,000.

- The apparent upshot of the above dealings was that the First Respondent secured £2,000,000 of working funding for Tandem at virtually no cost and with no necessity to assume any additional liability. Such a scenario was manifestly to the disadvantage of the Axiom Funds, and required any solicitor acting honestly and with integrity to take the most careful steps to ensure the Axiom Funds themselves were content with such an outcome. He failed to take any such steps.

62.7 The Applicant alleged that the First Respondent:

- Acted dishonestly. He knew that his aforesaid actions were manifestly to the disadvantage of the Axiom Funds, but (intent on securing additional practice funding for Tandem) took no steps to satisfy himself that the relevant arrangements were known and agreed by the Axiom Funds. Further, he used for Tandem's purposes monies which he knew had been loaned for other specific purposes.

- Failed to act with integrity, in breach of Principle 2 of the Principles.

- Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles.

- Failed to protect client money, in breach of Principle 10 of the Principles and rules 1.2(a), 1.2(b), 6 and 14.1 of the SAR.

<u>The First Respondent's Position</u>

62.8 The allegation was treated as denied.

<u>The Tribunal's Decision</u>

62.9 Under the Asset Purchase Agreement between Signey and Tandem the First Respondent took 100% of the shares in Signey. The Asset Purchase Agreement stated that Signey was solvent. The First Respondent sent Mr XR into Signey who very quickly concluded that Signey was not financially viable. There was a gap between the date of the Asset Purchase Agreement (30 October 2012) and the specified completion date (20 November 2012). The effect of the Asset Purchase Agreement was that it was entirely at Tandem's option what part of Signey's debt to the Axiom Fund was assumed. Signey had borrowed monies from Axiom on the same basis that

Tandem had borrowed monies, namely that the monies were client monies secured against specific cases.

62.10 On or about 23 November 2012 £2,000,000 was transferred from Signey's office account to Tandem's office account. This meant that the First Respondent secured £2,000,000 of working funding for Tandem for less than £45,000. Despite the First Respondent securing the assets of Signey the agreement provided that any claims by Signey's staff arising out of the transfer and the need to reduce staff would remain the responsibility of Signey.

62.11 The monies transferred to Tandem from Signey were clearly used by Tandem. After the £1,700,000 was paid to CEL at the end of January 2013 Tandem's office account balance was below £40,000. None of the monies were repaid to Axiom.

62.12 The Tribunal found that the First Respondent improperly signed an agreement for the purchase by Tandem of the business and assets of Signey, improperly transferred £2,000,000 of Axiom funding from Signey's office account to Tandem's, and improperly allowed the said monies to be used by Tandem. No solicitor who was acting with integrity or in a way that maintained the public trust in him or the provision would have acted in this manner. Principles 2 and 6 had been breached.

62.13 Monies that Signey had borrowed from Axiom as client monies were paid into Tandem's office account. They were not transferred to a client account. This was in breach of rules 1.2 (a), 1.2 (b) and 14.1 of the SAR. Due to the way in which these monies were dealt with Principle 10 was breached as the First Respondent had not protected client money and assets. The First Respondent was a director of both Signey and Tandem and had not ensured compliance with the SAR in breach of rule 6 of the SAR. Allegation 1.5 was proved beyond reasonable doubt.

63. **Dishonesty**

63.1 The Tribunal found that the First Respondent had believed that he could secure £2,000,000 for £45,000 and no liability. There was in fact no evidence that the £45,000 was ever paid. The First Respondent must have known that this was not consistent with his responsibilities and duties as a director of Signey. He knew that the terms of Signey's Litigation Funding Agreement were the same as the terms of Tandem's Litigation Funding Agreement. He knew that the money was client money. The First Respondent had been advised by Mr XR that Signey was not financially viable.

63.2 The Tribunal found that ordinary, decent people would have considered the First Respondent to be dishonest. In respect of Allegation 1.5, dishonesty was proved beyond reasonable doubt.

64. **Allegation 1.6 - The First Respondent gave instructions for a redundancy exercise at Signey which disregarded statutory consultation requirements, and thereby breached Principles 1, 2 and 6 of the Principles.**

64.1 The Applicant's case was that as both Respondents appreciated, the aforesaid Signey redundancy exercise was contrary to the requirements of TUPE reg 13 and of chapter II to Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992. In

giving instructions for the same, in full knowledge that it was unlawful, the First Respondent:

- Failed to uphold the rule of law, in breach of Principle 1 of the Principles.
- Failed to act with integrity, in breach of Principle 2 of the Principles 2011.
- Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles 2011.

The First Respondent's Position

64.2 The allegation was treated as denied.

The Tribunal's Decision

64.3 The Second Respondent's position was that she had advised the First Respondent that consultation should be carried out and that she had been assured that nineteen people or less were to be made redundant and therefore consultation was not required. The fact more than nineteen people were dismissed resulted from a mistake. The First Respondent had clearly wanted to jettison as many Signey staff as quickly as possible, even if this resulted in financial claims that needed to be settled.

64.4 Mr PM had told the FIO in his interview that the reason that there had not been a proper redundancy process and consultation period was because "Just the time, Andrew said I want it done now." He was of the view that the proper process had not been followed. The Tribunal noted that this did not match the witness statement he made for the case of Mr L where, in a statement which included a statement of truth, he confirmed there was no breach of consultation. However, Mr PM's explanation to the FIO was largely consistent with the Second Respondent's position in her interview with the FIO.

64.5 The First Respondent was the 100% shareholder at Signey and the 95% shareholder at tandem. At Tandem what he said happened, happened. The Tribunal was satisfied that the First Respondent gave instructions for a redundancy exercise at Signey which disregarded statutory consultation requirements. There was confusion as to the precise number of leavers but what was clear was that the Second Respondent, who emphasised several times that in this respect she was acting as Signey's employment lawyer, had initially advised that there should be consultation and that advice had been disregarded and proper process had not been followed. In giving instructions for the redundancy exercise to take place in this way the First Respondent had not upheld the rule of law and proper administration of justice. In failing to do so he had not acted with integrity and had failed to behave in a way that maintained the trust the public placed in him and the provision of legal services. The public would expect a solicitor to ensure that they complied with statutory procedures. He had breached Principles 1, 2 and 6. Allegation 1.6 was proved beyond reasonable doubt.

65. **Allegation 1.7 - The First Respondent improperly authorised the transfer of £1,700,000 from Tandem to City Equities Limited or City Equities Investment Management Limited, and thereby breached Principles 2, 3, 6 and 8 of the Principles. Recklessness was alleged, although this was not a requirement for the allegation to be proved.**

65.1 The First Respondent claimed that on or about 28 or 29 January 2013, he made some form of arrangement with CEL and/or City Equities Investment Management Limited ("CEIM") in relation to the holding of £1,700,000 of the Axiom monies then in Tandem's office account. At interview with the Applicant, the First Respondent sought to outline an arrangement whereby CEL or CEIM would return the £1,700,000 in tranches as and when needed, and would continue funding Tandem even when those funds were used up. He failed to retain a copy of whatever document he says he signed with CEL or CEIM on or about 28 or 29 January 2013, and claimed to have been unable thereafter to secure a copy.

65.2 CEL was, at the material times, controlled by Mr YY, and was FSA authorised. Mr YY was working together with a Mr DA, who was a convicted fraudster and who was, and to the Applicant's knowledge and understanding remained, a lawyer suspended from practice at the Israeli Bar. CEIM was incorporated on 29 November 2012, and at the material times its sole director was Mr YY. CEIM was not FSA registered. The First Respondent admitted at interview that he had made no checks on CEIM at the material time, and had simply assumed CEIM was also FSA registered. He described CEIM's inclusion as a participant as "*sleight of hand*".

65.3 Allegedly pursuant to the said arrangement, on 29 January 2013, the First Respondent authorised the payment of £1,700,000 from Tandem's office account to CEL and/or CEIM. The transfer brought the balance of Tandem's office account to below £40,000. A draft witness statement prepared by the First Respondent stated at paragraph 34: "*Before I gave instructions for the money to be transferred, that day, I signed a Memorandum of Understanding / Statement of Intent to the effect that it was intended that Tandem and CEL/CEIM (I cant (sic) recall which) would together enter into an agreement relating to the funding of Tandem. I don't recall the precise words but I recall being satisfied it did not contain any enforceable agreement since it was absent any offer, acceptance or consideration or indeed any enforceable terms. I do not have a copy of this document, having left it at the offices of CEL by mistake on the 29th January*".

65.4 The said instructions to transfer £1,700,000 are referred to in a letter entitled "*instructions from Tandem Law to City Equities Limited*" dated 29 January 2012 (but misdated for 2013) signed by the First Respondent. The letter stated: "*We are today making a transfer to your client account of £1.7 million. This money is to [be] used on the instructions of City Equities Investment Management Limited, whose director is Mr [YY]. I confirm that I have the authority to sign this instruction.*"

65.5 Also on 29 January 2013, CEIM wrote to the First Respondent acknowledging receipt of the £1,700,000 into CEL's account and noting "*we confirm that these funds will be used strictly as no part of our undertaking of the general funding of the firm described in the agreement of 28th January 2013*". Further, in a 1 March 2013 letter from CEL to Tandem, CEL acknowledged receipt of £1,700,000 "*received into our 'Client Settlement Account'*".

65.6 In a 1 February 2013 email the First Respondent reported to the FIO "*I gave instructions last Tuesday, following agreement with an FSA regulated business, to pay £1.7 million into a client account with them in our name, to which we have access at any time. This measure is designed to avoid any heavy handed tactics any Cayman Court Receivers may wish to employ in the weeks to come. I will ask for a copy of our client account balance with them and let you have a copy of that also next week.*" The same sentiment was set out at paragraph 19 of his draft witness statement, which referred to "*a perceived risk that the Receivers would then seek to end the funding agreements and seek full repayment of the monies owing and may even seek a freezing injunction against Tandem*". Similarly, paragraph 26 of the said draft statement recorded a discussion between the First Respondent, Mr YY and Mr DA where it was agreed "*we must do something to protect against the possibility of a Receiver being appointed and thereafter 'coming in with a wrecking ball' and with a freezing injunction*". And to like effect, at paragraph 31 of the said draft statement, "*because of the perceived risk of a freezing injunction being served on Tandems bank, in the event the Cayman Court appointed receivers (as happened). This was a potential disaster scenario which I was not even prepared to contemplate risking*".

65.7 On 6 February 2013, the Applicant requested a copy of the statement for the account in which the £1,700,000 was held. This had not arrived by 14 February 2013, when the Applicant chased for it. No such statement was provided. At appendix AL9 of his 17 May 2013 letter the First Respondent provided a document supplied by Mr YY which, while containing the Barclays logo and purporting to be a client account statement, had a number of suspicious features including the phrase "*Latest Cleared for Fate*". The First Respondent stated at interview that the said statement was a forgery.

65.8 Thereafter, there were dealings between the First Respondent and CEL/CEIM/Mr YY/Mr DA whereby the latter drip-fed (sometimes after pressing from the First Respondent) repayments of part of the £1,700,000 for purposes of funding the practice's expenses. However, by the time Tandem went into administration, CEL/CEIM still retained £858,000 of the original £1,700,000. In March 2013, the First Respondent demanded that CEL/CEIM returned the balance of the retained £1,700,000. Mr YY declined to do so, explaining in a 12 March 2013 email:

> "As you are well aware, you have signed an agreement and ancillary instruction with City Equities Management Limited (CEIM) that included various commitments on both sides basically where CEIM undertook to finance the operation of the firm going forward. In accordance with this agreement The money in City Equities Clients account is held for CEIM, not for you so there is no reason and you have no legal right to approach City equities".

65.9 The First Respondent disputed Mr YY's email, but this did not result in the return of the balance of the monies. Indeed, in a 14 March 2013 email, Mr YY asserted: "*The funds you transferred to CEIM does not belong to you or anyone else that comes in your shoes, and I made that point very clear in our meeting yesterday. Transferring these funds to CEIM was our condition in order to undertake the work and to continue to arrange the needed funds of the business.*" The email also noted that it "*is not comfortable to be financially managed by a third party*" and "*that CEIM now*

controls the finances and pays for all the expenses". CEL maintained the same stance in a letter to Gateley's (then acting for Tandem) dated 30 April 2013.

65.10 On 3 May 2013, Tandem went into administration, and thereafter into liquidation. Steps were taken to pursue the unreturned £858,000, but to no avail. As set out in the liquidators' 14 November 2014 letter: (a) CEL went into administration, and its administrator refused to admit the claim; and (b) CEIM was judged to be a shell company with no assets, which was then dissolved.

65.11 The First Respondent authorised the transfer of £1,700,000 to CEL and/or CEIM in circumstances where:

- His purpose (or one of them) was to put the monies beyond the reach of any freezing injunction secured by the receivers of the Axiom Funds. This purpose was evident from his 1 February 2013 email to the Applicant, and the extracts of the draft statement he prepared cited above.

- The First Respondent was reckless and incompetent in transferring the monies (a) without being sure to which party he was transferring it, (b) without a clear and enforceable agreement as to who was holding the monies, where, and on what basis, (c) without retaining a copy of the document he says he signed on or about 28 January 2013, (d) without making any inquiries as to CEIM or Mr DA, (e) knowing it would enable non-lawyers to exercise very considerable control over Tandem, and (f) in apparent expectation (but without any clear or enforceable obligation) that some or all of CEL, CEIM, Mr YY and/or Mr DA would continue funding Tandem even when the £1,700,00 had been expended.

65.12 Accordingly, it was improper to authorise the said transfer, and the First Respondent thereby:

- Failed to act with integrity, in breach of Principle 2 of the Principles. He was reckless as to whether it was proper to take steps to frustrate Orders of the High Court, or to put the relevant monies beyond the reach of any freezing injunction secured by the receivers of the Axiom Funds. He was also reckless in disregarding the risks that were obviously present in his proposed course of paying the said monies to CEL/CEIM in the way he did.

- Allowed his (and Tandem's) independence to be compromised, in breach of Principle 3 of the Principles.

- Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles.

- Failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8 of the Principles.

<u>The First Respondent's Position</u>

65.13 The allegation was treated as denied.

The Tribunal's Decision

65.14 The purpose of the transfer was to put the money beyond the reach of Axiom's receivers. The First Respondent had said that he did this to secure drip feeding of funding back to Tandem. Mr YY had denied having the money and not all of the money was recovered. This was a substantial sum of money that was transferred without there being a secure, enforceable agreement in place. This money was client money and should have been in client account not being transferred to a third party. The Tribunal found that the First Respondent improperly authorised the transfer of £1,700,000 from Tandem to CEL and/or CEIM. In making the arrangement that he made with them he allowed his independence to be compromised. He was reliant on non-lawyers to provide him with Tandem's money as and when requested. This was in breach of Principle 3. The First Respondent had not carried out his role in Tandem in accordance with proper governance and sound financial and risk management principles in breach of Principle 8. In acting as he did the First Respondent had lacked integrity. A solicitor of integrity did not seek to put funds out of the reach of its lender's receivers. For the same reason he had not maintained the trust that the public placed in him and in the provision of legal services. The First Respondent had breached Principles 2 and 6.

65.15 Any reasonably experienced solicitor would have seen the risks inherent in the course of action that the First Respondent undertook. Not only was there a risk of losing the money itself but there was a risk of losing Tandem's autonomy to make decisions about how it wanted to use the money. It also left Tandem with less than £40,000 in its office account. The First Respondent was not sure who he had transferred the money to and did not have a copy of the agreement. The Tribunal found that the First Respondent was reckless. Allegation 1.7 was proved beyond reasonable doubt.

66. **Allegation 1.8 - The First Respondent made an improper proposal to co-own a solicitors firm with non-solicitors, prior to any application for (let alone approval of) ABS status, and thereby breached Principles 2 and 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.**

66.1 In the period 30 January 2013 to 28 February 2013 (at least), the First Respondent was engaged in the negotiation of a possible acquisition of Firm G, another solicitor's firm, from its principal Mr NG. This may have been related, at least indirectly, to attempts by (inter alia) Mr TS and Mr YY to resist the appointment of Grant Thornton as receivers of the Axiom Funds. The proposed transaction was frequently "*on and off*" during the above period, before it was finally abandoned when Mr NG declined to proceed with it. In a 10 February 2013 email to Mr XR, the First Respondent commented on the purpose of the possible acquisition of Firm G:

> "What are we trying to achieve? Answer – inter alia, the creation of a separate business into which we can ram lots and lots of good clean work, with a funding ticket, so that it becomes a healthy, wealthy, well invested law business, with offices all over and with a shed load of commercial stuff from USA and Israel and London etc etc. I think, from what I have seen and heard both [Mr DA] and [Mr YY], that this is part of their master plan. It is therefore important to both us and to Rachel and the funders. We are therefore important and are being seen as willing participants with a decent portfolio of

work that will reap good rewards and a healthy financial platform over the next 2 years. It is more attractive to them to have a business like this than start from scratch."

66.2 By 12 February 2013, draft documents had been prepared whereby the First Respondent would acquire 95% of the shares in Firm G. In a 13 February 2013 email, Mr XR wrote to the First Respondent: "*We need a side letter from you allocating your shares. And also CE [City Equities] wants to have 51% voting rights. Thoughts?*" The First Respondent replied the same day): "*Can't do. Breach of rules. I am controller. It has to be a soft agreement. Can do this when ABS applied for. Will consider further and revert.*" Later on 13 February 2013, he wrote a further email to Mr XR noting: "*They cant be the formal holders of ordinary shares in any law regulated firm other than within a regulated ABS, but even then under strict controls*". He then proposed that "*the most I can agree to do presently is to agree in principle*" to a structure whereby he held the shares subject to an "*express equitable trust*" in favour of "*named beneficiaries*", to whom the appropriate number of shares could be transferred once ABS status had been "*formalised*".

66.3 Thereafter, on 23 February 2013, the First Respondent emailed Ms RH (of TIM), Mr DA and Mr XR in the following terms so far as material:

> "Just to confirm the deal with [Mr NG] is £20k non refundable deposit on Monday – plus £150k on completion on the 1st March 2013 …The agreements to be executed are those submitted previously which will need some simple updating which Nick will do on Monday. As I have said Nick is a decent honest forthright bloke. I trust him absolutely. He will make a good "partner" and wants to continue in the practice for at least 2 years.
>
> "He will hold my 95% shares on trust for me, to my order and direction absolutely, under a simple trust deed, which the world will not see. That way the share registration will not be notified to Companies House until I say so and in the meantime Nick will sign an undated transfer.
>
> "For your comfort, I hereby confirm I will hold the beneficial entitlement to those 95% shares in trust for all of 7 of us, [Mr DA], [Mr YY], you, Alan, Steve and [Mr XR] and myself of course (works out at 13.57 shares each).
>
> "As far as voting is concerned, in the meantime, until we acquire ABS, the spirit of our agreement is that we operate on a democracy in accordance with what our position would be if we were already formal shareholders.
>
> "However, in relation to any matter that impacts on regulatory compliance issues (COLP/COFA) etc, the final word always has to be that of the lawyers whose responsibility it is to ensure compliance (but, in any event, this would be no different if it were already an ABS).
>
> "I propose to put either [Mr PM] or [Mr MF] into [Firm G], alongside [Mr NG], as a director in my stead. Their agreed mandate will be to follow my (our) direction as majority shareholder(s). Both of these individuals are totally trustworthy and excellent lawyers in their own right.

"I also propose to apply for ABS immediately following completion, subject to [us] agreeing it is appropriate to do so. …"

66.4 The 23 February 2013 email contained an improper proposal by the First Respondent to co-own a solicitors firm with non-solicitors, prior to any application for (let alone approval of) ABS status, contrary to the SRA Authorisation Rules 2011. Among the "*7 of us*", only the First Respondent was a solicitor. He was well aware that such a proposal was improper and contrary to the relevant rules, because he had stated his clear understanding of the relevant rule restrictions in his 13 February 2013 emails.

66.5 At interview, the First Respondent asserted that he had no intention of going ahead with the Firm G deal, but was just "*playing a game*". This explanation was not credible, and was contradicted by later answers from him at interview in which he referred to telling Mr NG that the deal was "*there if you want it*". But even if this explanation were true, it would be equally improper for a solicitor to string along (for ulterior reasons) those he was deceiving into thinking he was negotiating seriously by giving the impression he was prepared to enter into a prohibited arrangement for co-ownership of a law firm.

66.6 The First Respondent made, on 23 February 2013, an improper proposal to co-own a solicitors firm with non-solicitors, prior to any application for (let alone approval of) ABS status, contrary to the SRA Authorisation Rules 2011. Accordingly, he:

- Acted dishonestly. He was well aware of the relevant restrictions and appreciated that such a proposal would infringe them.
- Failed to act with integrity, in breach of Principle 2 of the Principles.
- Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles.

<u>The First Respondent's Position</u>

66.7 The allegation was treated as denied.

<u>The Tribunal's Decision</u>

66.8 The First Respondent's own email made it clear that he knew what the requirements were in respect of any proposal to co-own a solicitors firm with non-solicitors. However, despite this he proposed an arrangement whereby of seven people, he would be the only solicitor. It was clear that the First Respondent knew what he was doing and that he was trying to circumvent the legislation. The First Respondent had emailed Mr XR on 23 February 2013 and said "I suppose I can act as a de factor director." Mr XR had responded "yes, we can justify to danny (sic) so you are not linked to it just yet".

66.9 A further email sent by the First Respondent to Mr XR dated 10 February 2013 set out that what they were trying to achieve was "the creation of a separate business into which we can ram lots and lots of good clean work, with a funding ticket, so that it becomes a healthy, wealthy, well invested law business…" The First Respondent

clearly intended to circumvent the law and the relevant regulatory requirements. These were not the actions of a solicitor of integrity nor one who was behaving in a way that maintained the trust that the public placed in him and the provision of legal services. Principles 2 and 6 had been breached. Allegation 1.8 was proved beyond reasonable doubt.

67. **Dishonesty**

67.1 The First Respondent's knowledge and belief was set out in the two preceding paragraphs. He knew he was not allowed to do what he was proposing to do and was trying to circumvent the requirements. The Tribunal found that ordinary, decent people would have considered the First Respondent to be dishonest. In respect of Allegation 1.8, dishonesty was proved beyond reasonable doubt.

68. **Allegation 1.9 - The First Respondent instructed or advised Ms VM (his personal assistant) to give a chartered accountant a false and misleading answer concerning 24/7 CC Limited and thereby breached Principles 2 and 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.**

68.1 As from 16 August 2012, Ms VM was the sole director of, and the sole registered legal shareholder in, 24/7 CC Limited. On 5 March 2013, Mr DU (a chartered accountant at Rawcliffe & Co) inquired of Ms VM, in relation to the annual return for 24/7 CC Limited, "*what is the company's main activity or has the company not started trading*". Ms VM forwarded the inquiry to the First Respondent noting "*can you help with this urgently as I don't want to say anything out of turn*". Also on 5 March 2013, the First Respondent replied to Ms VM with the instruction or advice: "*Tell him not started trading*". This instruction or advice was palpably false and misleading, as the First Respondent well knew. 24/7 CC Limited had commenced trading many months before the date of the First Respondent's 5 March 2013 instruction or advice.

68.2 24/7 CC Limited's role had been to contact and re-sign as many as possible of the approximately 3,000 clients intended to be transferred from Ashton Fox, whose files were received by Tandem in early August 2012. The nature of 24/7 CC Limited's work was explained by the First Respondent at interview. The work in question no doubt started forthwith upon receipt of the relevant files from Ashton Fox. By 22 January 2013, 1,458 such clients had agreed to their files being transferred to Tandem, as he would (at least in broad-brush terms) have known.

68.3 On 6 September 2012, the First Respondent confirmed to Ms VM that she could use Tandem's card to pay "*24cc debt*". Plainly, 24/7 CC Limited would not have incurred debts if it had not started trading. On 26 September 2012, the First Respondent was informed of the details of the account which 24/7 CC Limited had opened at Barclays. On 27 September 2012, he was sent an email in which Mr XR asked Ms VM to produce an "*invoice from 24/7 cc to Legal apps for £48,280 for professional management services*". £50,000 was paid by Tandem to 24/7 CC Limited on 18 October 2012.

68.4 In instructing or advising Ms VM to provide the accountant with what he knew to be a false and misleading answer, the First Respondent:

- Acted dishonestly, as he well knew that 24/7 CC Limited had commenced trading.

- Failed to act with integrity, in breach of Principle 2 of the SRA Principles 2011.

- Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the SRA Principles 2011.

The First Respondent's Position

68.5 The allegation was treated as denied.

The Tribunal's Decision

68.6 There was documentary evidence that set out the fact that Ms VM asked the First Respondent what she should tell the chartered accountant and that the First Respondent had told her what to say. There was also documentary evidence that demonstrated that what the First Respondent had told her to say was incorrect and that he would have known that it was incorrect. Emails between Mr XR and Mr RH dated 5 January 2013 referred to a second payment. It was clear that 24/7 was trading by the time Ms VM told the charted accountant that it had not yet started trading. A solicitor of integrity would not tell Ms VM to tell a chartered accountant something he knew was incorrect. In doing so he did not behave in a way that maintained the trust that the public placed in him and the provision of legal services. Principles 2 and 6 had been breached. Allegation 1.9 was proved beyond reasonable doubt.

69. **Dishonesty**

69.1 The First Respondent knew that 24/7 had been trading for at least six months. The First Respondent knew that the information he told Ms VM to provide was a lie. It was a lie to be told to the accountant who wanted the information for the purposes of a statutory return. The Tribunal found that ordinary, decent people would have considered the First Respondent to be dishonest. In respect of Allegation 1.9, dishonesty was proved beyond reasonable doubt.

70. **Allegation 1.10 - The First Respondent provided the SRA with false and misleading responses concerning the availability of Frion documentation and thereby breached Principles 2 and 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.**

70.1 On 26 June 2012, during an initial meeting with both Respondents, the FIO was told that Tandem had purchased 525 ATE policies from Frion at a cost of £63,000. In a subsequent 12 July 2012 meeting with the FIO, the First Respondent was asked about the insurance policies taken out by Tandem. He stated that policies had been taken out with Frion, which the "*funders*" regarded as "*good value for them*". He stated that he had no paperwork from Frion, "*nothing at all*", no master copy of the policy, and no details of the agreement Tandem had entered into with Frion. He explained that he "*went with them as funders [had] done due diligence*". He added that the policies were not in the name of the client, but were to "*indemnify the firm*", and that a schedule of policy numbers was sent by Frion to Checkmate. In an email dated

23 July 2012, the FIO wrote to the First Respondent asking for documentation relating to Frion. In his 31 July 2012 response the First Respondent wrote: "*I have no further documentation relating to FRION. As I have told you these are not client related products*".

70.2 The First Respondent's statements on 12 and 31 July 2012 as to the availability of Frion documentation were palpably false and misleading, as he well knew. In particular (and as the First Respondent knew, in all respects):

- The First Respondent had been sent the Frion policy wording, "*Commercial Payment Protection Policy wording*", on 7 December 2011 and the policy schedules on 21 December 2011. The emails and attachments were available on Tandem's server, and were duly located by the FIO. As he well knew, such documentation was not provided by him to the Applicant at any time.

- The emails above were consistent with the First Respondent's email to Mr DR dated 15 May 2012 in which he recorded "*Re Frion policy for December, we got something so I will check and get back to you*".

- Furthermore, on 22 June 2012, just weeks before his false and misleading response to the FIO, the First Respondent had forwarded to Ms VM copies of 521 individual policies which had been purchased by Tandem from Frion.

70.3 In providing the aforesaid responses to the FIO, which he knew to be false and misleading, the First Respondent:

- Acted dishonestly. It was to be inferred that he was so embarrassed by the obvious deficiencies of the Frion policies (for reasons described above) that he actively took steps to prevent the Applicant locating the same.

- Failed to act with integrity, in breach of Principle 2 of the Principles.

- Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services, in breach of Principle 6 of the Principles.

<u>The First Respondent's Position</u>

70.4 The allegation was treated as denied.

<u>The Tribunal's Decision</u>

70.5 The First Respondent had told the FIO that he did not have Frion documentation that he had. The First Respondent had passed these documents to the Second Respondent who in turn had passed them to Ms VM. The First Respondent provided the SRA with false and misleading responses concerning the availability of Frion documentation. A solicitor acting with integrity would not mislead his regulator as to the availability of documentation that it had requested. By denying that he had documents that he did have the First Respondent did not behave in a way that maintained the trust that the public placed in him and the provision of legal services. Principles 2 and 6 had been breached. Allegation 1.10 was proved beyond reasonable doubt.

71. **Dishonesty**

71.1 The First Respondent had expressed concerns to Mr XR in an email dated 11 January 2012 about the recoverability of the premium as the policies were not insurance and Frion was not FSA regulated. He was unhappy with the documents and he knew he had concerns about them. He also knew that he had the documents. The Tribunal found that ordinary, decent people would have considered the First Respondent to be dishonest. In respect of Allegation 1.10, dishonesty was proved beyond reasonable doubt.

72. **Allegation 1.11 - The First Respondent falsely denied at his SRA interview that he had received a £50,000 financial benefit out of Crosslaw and thereby breached Principles 2 and 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.**

72.1 The First Respondent was asked at interview whether he had received a financial benefit from Crosslaw Limited. He replied "*No*". This was a false and misleading response, as he well knew. Specifically, in an email to Mr XR dated 15 October 2012 the First Respondent wrote:

> "Just trying to work out what money I am due, cos trying to work out what I can afford to pay for things, so forgive my ignorance. I am still owed circa £30k by Tandem from the big payment we had back in April. I kept it in Tandem for "contingencies". I might take it out now. With regard to the £60k (??) we paid to Matt, you paid that using the "Crosslaw" £50k which you said was due to me, plus £10k of your own. So, if we both put in £30k to Matt (to make up the £60k) that means you need to deduct £30k from my £50k, so you owe me £20k – which I think you decided to sort by not taking your money out of 24/7. Have I missed anything?".

72.2 The First Respondent was asked about this email, in particular the reference to "*the "Crosslaw" £50k which you said was due to me*" at interview, but was unable to offer any coherent explanation. He was asked about it again in the FIO's 5 September 2014 letter, to which he has refused to respond. In all the circumstances, the only possible inference is that he has received a financial benefit out of Crosslaw Limited (to the tune of at least £50,000), which he dishonestly denied in his SRA interview.

72.3 In denying that he had received a £50,000 financial benefit out of Crosslaw during his SRA interview, the First Respondent:

- Acted dishonestly.
- Failed to act with integrity, in breach of Principle 2 of the Principles.
- Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services, in breach of Principle 6 of the Principles.

<u>The First Respondent's Position</u>

72.4 The allegation was treated as denied.

The Tribunal's Decision

72.5 The FIO had asked the First Respondent about the £50,000 financial benefit. He had denied it. There was a referral agreement between Tandem and Crosslaw. It was not for the Tribunal to speculate as to why the First Respondent had not wanted to be associated with Crosslaw. There was an email from the First Respondent to Mr XR (dated 15 October 2012) about the £50,000 financial benefit he was due from Crosslaw and the fact that, after offsetting other payments, Mr XR had owned him £20,000 which had been sorted out by Mr XR not taking his money out of 24/7. It did not matter whether the First Respondent had ever directly received the money or whether he had received benefit in the equivalent sum. The Tribunal found that the First Respondent had falsely denied at his SRA interview that he had received a £50,000 financial benefit out of Crosslaw. A solicitor acting with integrity would not make a false denial to his regulator. By doing so the First Respondent did not behave in a way that maintained the trust that the public placed in him and the provision of legal services. Principles 2 and 6 had been breached. Allegation 1.11 was proved beyond reasonable doubt.

73. **Dishonesty**

73.1 The First Respondent knew that he had received a financial benefit from Crosslaw. He knew this when he denied receiving that benefit. The First Respondent knew that it was the FIO who was asking him the question and to whom he gave the false denial. The Tribunal found that ordinary, decent people would have considered the First Respondent to be dishonest. In respect of Allegation 1.11, dishonesty was proved beyond reasonable doubt.

74. **Allegation 1.12 - The First Respondent failed to deal with the SRA in an open, timely and co-operative manner, and thereby breached Principles 2, 6 and 7 of the Principles as well as Outcomes 10.1, 10.8 and 10.9 of the SCC. Dishonesty was alleged, although this was not a requirement for the allegation to be proved.**

74.1 The First Respondent's attitude towards co-operation with his regulator was evidenced by a 12 September 2012 email to Mr AL of TIM, in which he stated (in response to a question about his availability): *"Sorry Alec. Those f.....g [b*****d] SRA [t**ts] have been in today and are in again tomorrow. Can we look at next week?"*

74.2 The investigation of Tandem and the Respondents commenced in June 2012. On 18 June 2012, s.44B Notices were served on the First Respondent and Tandem. Thereafter, the FIO raised, as appropriate, further inquiries, both in writing and at meetings with the First Respondent. On 17 December 2012 and again on 9 January 2013, the FIO asked the First Respondent various questions regarding Axiom funding, inter alia including as to the due diligence undertaken at Tandem before funding was received. Extensive correspondence followed with the First Respondent in which he was obstructive and uncooperative, unreasonably questioning the relevance of the inquiries (which would have been obvious to him) and inappropriately seeking undertakings as to the manner in which any information provided would be used.

74.3 In consequence, s.44B Notices dated 27 February 2013 were served on both Respondents on 28 February 2013. The Notices set a deadline of 5pm on 8 March 2013 for the information and documents to be produced. By the time the deadline passed, no substantive response had been provided by either Respondent. On 14 March 2013, the FIO emailed the Respondents chasing responses to the s.44B Notices. The Second Respondent replied on 14 March 2013, to the effect that The First Respondent was dealing with the substantive matter. The First Respondent replied on the same day, stating that he would not comply with the s.44B Notices without a Court order, or without provision of the undertaking he had previously requested.

74.4 Accordingly, having no other option to secure compliance with the s.44B Notices, the Applicant applied on 19 April 2013 for orders against (inter alia) the First and Second Respondents that they comply with the said Notices. The application was supported by the first witness statement of Mr Alan Godson dated 19 April 2013. For the reasons explained at paragraphs 60-65 of Mr Godson's statement, the First Respondent's purported objection (most recently set out in his 14 March 2013 email to the provision of the relevant information and documents (a duty of confidence to his former client, Mr TS) was not a legitimate basis of objection. Further, it was not credible that the objection (even if valid) prevented disclosure of any information and documents responsive to the s.44B Notices, in all of the requested categories.

74.5 By a Consent Order made by Arnold J on 14 May 2013 both Respondents agreed, by 4pm on 17 May 2013, to "*provide, produce or deliver to the [SRA's] appointed agent, Russell-Cooke LLP, all documents and information requested by the Notices dated 27 February 2013*". The Respondents purported to respond to the s.44B Notices by letter (and enclosures) dated 17 May 2013. Limited further material was provided thereafter. By the time of both the 14 May 2013 Consent Order and the 17 May 2013 letter, Tandem had gone into administration, with an ensuing "*pre-pack*" sale to another firm. The Respondents were suspended on 4 June 2013, and their employment with that firm terminated shortly thereafter. In due course, the Applicant secured access to Tandem's available servers through the purchasing firm. It was plain that substantial material responsive to the s.44B Notices was not provided by the Respondents.

74.6 Question 8 of the s.44B Notice dated 27 February 2013 sought a "*detailed breakdown of how the £5,920,225.00 received from the Fund has been spent by the Firm from 21 December 2012 to 25 February 2013*". The response to this question given in the First Respondent's 17 May 2013 letter exemplified once again his attitude to co-operation with the Applicant. Instead of treating the reference to "*2012*" as an obvious typographical error for "*2011*", as he perfectly well knew was the case, the First Respondent replied at paragraph 12.1 "*The firm has not spent this much during these dates, being a matter of only 56 days. Clarification is therefore required before answering this question*".

74.7 On 27 August 2014, the First Respondent was interviewed by the SRA. On 5 September 2014, the FIO wrote to the First Respondent, raising a number of clearly relevant inquiries which the First Respondent had been unable or unwilling to explain at interview, including (by way of example):

a) Regarding Crosslaw Limited. The First Respondent was asked to explain the extent of financial benefits received by him from Crosslaw Limited, in particular his reference to "*'Crosslaw' £50K due to me*" in his 15 October 2012 email. The First Respondent was also asked to explain evidence which appeared to suggest that he was aware of Tandem accepting Crosslaw Limited referrals before Crosslaw Limited received its MOJ registration.

b) Regarding the relationship between Legal Apps Limited and 24/7 CC Limited, and the nature of any financial benefit derived by the First Respondent from payments by Tandem to either or both of those companies. Particularly suspicious matters in this regard which the First Respondent was asked to explain were: (i) a 25 July 2012 email from Mr XR to the First Respondent (upon receipt of a spread-sheet from Mr H at Legal Apps Limited) in which the former noted "*see spreadsheet 75% of bottom figure ie excess is ours*"; and (ii) a 4-5 January 2013 email exchange between Mr H and Mr XR which appeared on its face to be making arrangements for kick-backs from Legal Apps Limited to the First Respondent and Mr XR personally.

c) Regarding Window To Ltd. This was another company of which the First Respondent and Mr XR were directors at the material times and the First Respondent admitted at interview that he had been a shareholder too. Concerns which the 5 September 2014 letter invited the First Respondent to explain included: (i) a payment by Tandem on 6 March 2013 of £9,990 (to Changing Horizon Limited) which appeared to relate to a debt owed by Window To Limited, not Tandem; and (ii) whether Tandem had improperly disclosed confidential client details to Window To Limited so that clients could be cold-called in relation to remortgage services. In an email exchange dated 12 February 2013 the First Respondent had agreed to such a "plan" with Mr XR. As evidenced by an 11 March 2013 email, the Second Respondent requested "*urgent clarification about clients being contacted by Window Co Ltd*".

74.8 The First Respondent was asked to explain certain aspects of the dealings in relation to Firm G, and in particular his emails dated 10 February 2013 and 23 February 2013 referenced above. This particular line of questioning by post-interview letter was specifically requested by the First Respondent, who stated at interview:

> "… do you know what, you've had the wonderful privilege of being able to go through all that documentation and make copious notes over goodness knows how many hours its taken to prepare it and you're expecting me to remember something verbatim minute by minute like a video approach right now. Do you know what, I think may be what we should do is give me that stuff and let me give you a better explanation that I already have done because I'm obviously making a real shit job of it at the moment, let's do that."

74.9 Further, by letter dated 16 September 2014 the FIO raised a number of questions for the First Respondent regarding matters which there had not been time to discuss at the interview. These included:

a) Questions regarding the transfer of files from Ashton Fox to Tandem (and consequential responsibilities to repay Axiom funding), including seeking explanations for various emails to which the First Respondent was a party in June and July 2012.

b) Questions regarding dealings and discussions between the First and Second Respondents in advance of the APA relating to Signey.

c) Questions regarding Frion, in particular why the First Respondent had told the FI Officer that he had no Frion-related paperwork when it was abundantly clear that he did have.

74.10 The First Respondent had indicated during the interview that he would revert to the Applicant with responses to questions that he was unable to answer during the interview, and which there was not time to address at interview. He was advised by his solicitor (Mr MS, a partner at an external firm) during the interview to "*be completely open and disclose anything which the SRA want*". However, no substantive response had been received from the First Respondent in the ensuing period of more than twenty months. It was evident that the First Respondent had no intention of responding or otherwise discharging his obligations of co-operation with his regulator.

74.11 Despite his unwillingness to respond in any meaningful way to the Applicant's letters dated 5 and 16 September 2014, the First Respondent prepared and signed a witness statement dated 28 October 2014. The witness statement was served on the Applicant by Mr Richard Barnett in support of his resistance to allegations of professional misconduct arising from his involvement with the Axiom Funds which were before the Tribunal. Mr Barnett wished to call The First Respondent to give evidence to the Tribunal. However, following a 6 July 2015 letter from Russell-Cooke LLP giving the First Respondent notice of certain matters on which he would be cross-examined at the Tribunal, the First Respondent took legal advice and refused to appear.

74.12 The Applicant sent the First Respondent an EWW letter dated 30 April 2015 in relation to Tandem matters covered by the Forensic Investigation Report. A response was required by 21 May 2015. Further, the Applicant sent the First Respondent an EWW letter dated 13 May 2016 in relation to matters covered by the Signey Forensic Investigation Report. A response was required by 6 June 2016, which was subsequently extended to 20 July 2016 then to 23 August 2016. Both EWW letters reminded the First Respondent of his obligations to co-operate with the Applicant. He has failed to respond substantively to either (save for brief comments on the 13 May 2016 EWW letter in a 30 August 2016 email), and it was to be inferred that he had no present intention of doing so.

74.13 The First Respondent:

- Failed to deal with the Applicant in an open, timely and co-operative manner by declining to give or secure full and complete responses to all questions in the FIO's 17 December 2012 and 9 January 2013 requests, such that it became necessary to serve s.44B Notices upon him and the Second Respondent.

- Failed to deal with the Applicant in an open, timely and co-operative manner by declining to provide the information and documents stipulated by the 27 February 2013 s.44B Notices such that it became necessary to apply to the High Court for enforcement of the same.

- Failed to deal with the Applicant in an open, timely and co-operative manner by refusing to respond substantively to either of the 5 and 16 September 2014 letters or to either of the two EWW letters sent to him.

74.14 Accordingly, the First Respondent:

- Failed to comply with his legal and regulatory obligations to deal with his regulators in an open, timely and co-operative manner, contrary to Principle 7 of the Principles and Outcomes 10.1, 10.8 and 10.9 of the SCC.

- Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles.

- Failed to act with integrity, in breach of Principle 2 of the Principles. In particular:

  a) The First Respondent had no legitimate basis for considering himself entitled to refuse to respond fully, completely and timeously to the 17 December 2012 and 9 January 2013 requests, or the 27 February 2013 s.44B Notice.

  b) The First Respondent has no legitimate justification for the long-standing refusal to respond substantively to either the 5 or 16 September 2014 letters. This is especially so given his ability to prepare a witness statement in support of Mr Barnett in October 2014, and the clear advice he was given by his solicitor (Mr MS) at the SRA interview to "*be completely open and disclose anything which the SRA want*".

  c) Similarly, the First Respondent has no legitimate justification for his refusal to respond substantively to either of the EWW letters.

- Acted dishonestly and with conscious impropriety in refusing to respond substantively to the 5 and 16 September 2014 letters, or the EWW letters, which he must (and did) appreciate was a flagrant breach of his professional responsibilities.

<u>The First Respondent's Position</u>

74.15 The allegation was treated as denied.

<u>The Tribunal's Decision</u>

74.16 The Tribunal found that the First Respondent failed to deal with the SRA in an open, timely and co-operative manner. Principle 7 required the First Respondent to comply with his legal and regulatory obligations and to deal with his regulator and

ombudsmen in an open, timely and co-operative manner. The First Respondent had breached Principle 7.

74.17 Outcomes 10.1, 10.8 and 10.9 of the SCC state:

> "You must achieve these outcomes:
>
> O(10.1) you ensure that you comply with all the reporting and notification requirements in the Handbook that apply to you;
>
> ….
>
> O(10.8) you comply promptly with any written notice from the SRA;
>
> O(10.9) pursuant to a notice under outcome 10.8, you:
>
> (a) produce for inspection by the SRA documents held by you, or held under your control;
>
> (b) provide all the information and explanations requested; and
>
> (c) comply with all request from the SRA, as to the form in which you produce any documents you hold electronically, and for photocopies of any documents to take away;
>
> in connection with your practice or in connection with any trust of which you are, or formerly were, a trustee;"

74.18 The First Respondent had been particularly concerned about disclosing information in respect of the RTB cases. This had perhaps been understandable given the Applicant's potential compensatory role in respect of those matters. It did not explain why the First Respondent was generally uncooperative and either did not provide information or had to be chased time and time again for that information. The First Respondent had left the Applicant with no choice but to issue proceedings to secure compliance with the s.44B Notice. The First Respondent had been advised by his solicitor to provide the Applicant with the information and answers it was requesting.

74.19 The First Respondent had not complied promptly with the requests from the Applicant. The Applicant had had to issue proceedings to enforce the second s.44B Notice. The First Respondent had not achieved Outcomes 10.1, 10.8 and 10.9 despite there being a requirement for him to do so. In failing to comply with his legal and regulatory obligations and to deal with his regulator in an open, timely and co-operative manner he had not acted with integrity and had not behaved in a way that maintained the trust that the public placed in him and the provision of legal services. Principles 2 and 6 had been breached. Allegation 1.12 was proved beyond reasonable doubt.

75. **Dishonesty**

75.1 The First Respondent knew that he was failing to co-operate. The First Respondent would have known that such failure to co-operate would delay and/or impede the

investigation. The First Respondent knew that he had used the monies for a purpose that was not permitted. The First Respondent knew that if he provided the information being requested he would incriminate himself. He had taken positive steps to frustrate the process and had lied about the Frion documents and about the financial benefit from Crosslaw. The Tribunal found that ordinary, decent people would have considered the First Respondent to be dishonest. In respect of Allegation 1.12, dishonesty was proved beyond reasonable doubt.

76. **Allegation 2.1 - The Second Respondent failed to ensure that the aforesaid £5,920,225 (or any part thereof) was paid into client account, alternatively failed to ensure an office account was opened whose sole purpose was to hold the monies pending their use for an authorised purpose, contrary to rules 1.2(a), 1.2(b), 6 and 14.1 of the SAR.**

76.1 The Applicant's case in respect of this allegation was set out above in relation to Allegation 1.2 against the First Respondent. The Applicant alleged that the Second Respondent was liable as a principal for the aforesaid breaches of rules 1.2(a), 1.2(b), 14.1, 17 and 20 of the SRA Accounts Rules 2011.

The Second Respondent's Case

76.2 In December 2011, when Ms VM came on board, the First Respondent wished her rather than both the Second Respondent and Ms VM to make postings at the Barclays accounts to speed up the process. She was trained and appointed Tandem's Cashier. Ms VM did not have her own Barclays Access card (necessary to make bank transfers), so the First Respondent asked the Second Respondent to provide her with her card for convenience. By the end of January 2012 Ms VM kept hold of the card with the Second Respondent borrowing it from time-to-time to help her make postings. The Second Respondent kept nudging the First Respondent to give her his card and documented her requests. On 19 April 2012, the Second Respondent was told by the First Respondent to also provide to Ms VM her Barclays Debit Card. The Second Respondent was not happy because this had the effect of her not being able to obtain Mini-statements of the firm's balance and latest transactions at any ATM. She was not happy even after the First Respondent provided her with his indemnity for the proper operation of the Accounts. She had been a Company director for eight months and knew of the Principals' joint liability in the SAR. However, Ms VM was the Cashier and by then the Second Respondent used her card only to check the balance. The First Respondent used his constantly, because he had to go to numerous outside meetings.

76.3 The Second Respondent denied that she trusted the First Respondent blindly. She exercised a high level of diligence and care, when it came to the monies of the firm. The First Respondent did not provide the Second Respondent with the financial information she requested. In the summer of 2012, she had no knowledge of any impropriety. Tandem did not operate a "client account" at that time. When Ms JM was leaving the firm, in August 2012, the Second Respondent questioned her about the state of accounts, her attendance on the SRA's Investigator (Ms Barrowclough) and Axiom Fund's Manager (Mr AL) and she reassured her. The only issue that transpired was in the First Respondent increasing staff salaries behind the Second Respondent's back. However, this was not a breach of the SAR.

76.4 The Second Respondent had no contact with the funders. The First Respondent had not shown the Second Respondent either the Panel Law Firm Agreement ("PLFA") No. 1 (of December 2011) or PLFA No. 2 (of April 2012). This was not because she did not ask to see them, this was because she was told that she would receive a copy when the negotiation of the exact terms, on which Axiom funding was advanced to Tandem, were finalised. The First Respondent always said that the Axiom Fund was suitable for Tandem primarily based on the flexibility it offered and that he was in the process of negotiating the terms of the agreement, which he said as drafted by the Axiom's representative lacked clarity. The Second Respondent accepted that she knew about the Axiom money. She recalled working on the spreadsheets of cases and the First Respondent working on the three year financial projections for Axiom's Auditors Baker Tilly in December 2011.

76.5 The Second Respondent knew that by 16 August 2012 Tandem had received ten tranches of Axiom payments. She was not sure how much exactly to the penny as she could only check accounts from time-to-time, but she knew they paid Tandem several million. The Second Respondent also knew that Axiom was happy with advancing Tandem that money and that all the Axiom money was placed in the Office Account. The Second Respondent thought it was reasonable for her to rely upon the confirmation by Ms JM and the Accountants' Report prepared by Rawcliffes, which confirmed there were no breaches of the SAR. She also believed that, if the Applicant had found there to be any issues with the accounts, the FIO would have informed her.

76.6 The Second Respondent believed Axiom money was "Office money". It was obvious from what she saw happening in practise, that money was received in connection with running the firm.

76.7 The Applicant never found a copy of signed PLFA No. 1. The Administrators sent a copy of an unsigned draft document from their copy of Tandem's Server looking similar to the PLFA No. 2, which the Applicant said must have been the PLFA No. 1. The copy of the PLFA No. 2 submitted by the First Respondent to the Applicant in 2013, was a "counterpart". It was not signed on behalf of Axiom. There was the following clause contained in that document:

> "24. Counterparts
> Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document."

76.8 The Second Respondent submitted that if one looked at the meaning of "Finance Document" in the Definitions and Interpretation Clause at page 3, one could see that it meant "this Agreement, the Account Charge and any other document designated as such by the Investment Manager and the Panel Firm." At page 6 the agreement had a further definition. It stated:

> ""a Finance Document" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced and includes any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under that Finance Document or other agreement or instrument."

76.9 The Second Respondent argued that as long as you had any written document that referred to any change of purpose or increase or addition of any facility, that document could be classed as a Finance Document and be added as a "counterpart". So, apart from the counterpart (PLFA No. 2) the Applicant had, there could have been numerous other documents designated by Mr TS, Mr DR and the First Respondent as "Finance Documents". Those could have been emails or annotated copies of the agreement, as the contract was not specific; it only referred to "expressly" agreed terms, which meant not impliedly, i.e. in writing not verbally. All of those could have been "counterparts" which, when put together would have been representative of the whole agreement Tandem and Axiom had.

76.10 The agreement also contained Clause 20 "Amendments and Waivers", which stated:

> "Any term of the Finance Documents may be amended or waived only with the consent of each Party to the relevant Finance Document and any such amendment or waiver will be binding on all Parties"

76.11 According to the Second Respondent if the Investment Manager and the First Respondent agreed any amendments in any email and agreed that the email was classed as a Finance Document, then that email was capable of amending the agreement, it became a part of the agreement and was binding on both Parties.

76.12 The PLFA No 2 had an "Entire Agreement Clause" (clause 22). It stated:

> "This Agreement and the other Finance Documents are the entire agreement between the parties concerning the subject matter of the Finance Documents. Any prior arrangement, agreement, representation or undertaking is superseded and, except as expressly provided, each Party acknowledges that it has not relied on any arrangement, agreement, representation or understanding not expressly set out in the Finance Documents."

76.13 The Second Respondent explained that this meant that the PLFA No. 1 never mattered in assessing the agreement between Tandem and Axiom, as it would have been superseded by PLFA No. 2. So, when the FIO was insisting on the First Respondent providing her with the December's PLFA it was not reasonable for her to do so, given PLFA No. 2. However, the Second Respondent accepted that the FIO was not a Contracts Lawyer and that the PLFA No. 2 was badly drafted. Yet, it was drafted quite precisely on the points described above. The FIO should have taken advice from a contract lawyer who would have said that, even the PLFA No. 2 (regardless of being signed or not) could have been superseded by any email as long as that email confirmed the parties saw it as a Finance Document.

76.14 This meant that when the First Respondent stated during his meeting with the Applicant in August 2014 that there were emails in which the terms of this agreement were varied, in absence of any other evidence or explanation, based on the terms of the counterpart (PLFA No. 2) the Applicant had no other reasonable choices but to either believe him as they had no other evidence but for his word, or disbelieve him and obtain evidence (all counterparts from Axiom Administrators). The Applicant did not have an option open to them to pursue allegations of misconduct against the First and Second Respondents based on what was stated in the PLFA No. 2. It was totally inappropriate to do this. It was also unclear (due to the First Respondent's lack

of ability to participate in these proceedings) whether he would have appreciated the above at the time or not. Because if he did, then his signature on the PLFA No. 2 could not be seen as reckless.

76.15 The Second Respondent stated that the Applicant's entire case based on the non-conformity of Tandem to the PLFA No. 2 could be compared to taking one piece of the puzzle and arguing the complete puzzle looked like the Tower of London. The only people who knew the puzzle piece was a piece from the "Tower of London" puzzle were, in this case, the Investment Manager and the First Respondent. If the Panel Firm (the First Respondent) was unable to show the Applicant all the pieces of the puzzle, because (as it was uncontended) he could not find his emails due to the computer failure, the only other party that had those emails was, clearly, the Investment Manager.

76.16 The Second Respondent had "googled" Mr TS, found his website and contacted him seeking explanations. He confirmed they exchanged emails and annotated copies. He confirmed that the First Respondent did not agree with various provisions in the agreement, among which was the Applicant's contention that the Axiom money was payable into any other account but "Office". He confirmed that Tandem was free to utilise funding as "practise funding". The Second Respondent fully understood the Applicant's contention that Mr TS' evidence should be weighed by the Tribunal with a proviso that he was struck off as a Solicitor (although of course he was not struck off for Axiom matter). However, the Tribunal should consider the following:

a) there was overwhelming evidence in all previous cases of Axiom funded solicitors that had come before the Tribunal, in which Solicitors said the agreements were varied in writing and by course of dealing. Richard Barnett admitted he was redrafting these contracts.

b) Clause 24 (Counterparts) was clear in that it allowed the Investment Manager and Panel Firm to designate and add counterparts if they agreed, the Agreement was a collection of all counterparts of which the Applicant had only one, if that was a valid counterpart (which we did not know).

c) the First Respondent had maintained during all his meetings with the Applicant that the contract was amended in emails and the Applicant admitted they had no evidence to prove otherwise, even when both, they and the Administrators, searched Tandem's Server.

d) Ms JM (the Accountant who met Mr AL) confirmed he was happy with the way Tandem placed the money in Office Account and dealt with it.

e) the First Respondent on behalf of Tandem took legal advice regarding this at a very early stage. There was not a single email or piece of communication from the Applicant, which told the Second Respondent that that advice was unreliable. In fact, if the Applicant confirmed it was wrong, Tandem's Administrators would have by now sued the solicitors for negligence and recovered their fees (of over £90,000) back to the creditors. If this was not done then their advice must have been good.

76.17 In these circumstances the Second Respondent did not believe the SAR were breached by Tandem, when Tandem placed Axiom moneys in the Office Account and used the money in connection with the running of the firm.

76.18 The email Ms JM sent after her meeting with Mr AL was very important, because not only did it show, that Mr AL was happy with the accounts, it referred to the fact that Axiom did not have procedures for monthly reports by the firms developed in June, they only had plans to develop those then. So, when it was alleged Tandem wilfully breached those monthly reporting procedures, just because the PLFA dated April 2012 said they were compulsory, this was wrong.

76.19 The Second Respondent's position was that as with all other cases of Axiom funded Solicitors, the case against the Respondents alleged breaches of express terms of the PLFA No. 2 which, the Applicant contended, represented the purpose and the terms of the funding agreement between Tandem and Axiom. However, upon closer reading of the terms of the agreement, it was evident that what the Applicant was relying upon, was not the complete agreement, but merely one of the documents which, only when they were added together, represented the entire agreement between the parties. Moreover, the counterpart (PLFA No. 2) contained an express provision allowing the variation of the purpose of the agreement provided the Fund Manager and the Panel Firm expressly consent to that variation. There was clear evidence before the Tribunal that the provisions in PLFA No. 2 were varied because the parties wished to rectify mistakes in the construction of the contract. There was also clear evidence that PLFA No. 2 contained obligations (such as compliance with system of managing the loans via monthly reporting as per PLFA No. 2, Schedule 3), with which Tandem could not comply due to the systems still being under development even in June 2012.

76.20 The Second Respondent's position was, that the Applicant should not be allowed to make serious allegations (to include that of dishonesty of the First Respondent) at the time when the Applicant had made no attempts to request all documents (emails and annotated copies comprising the entire agreement between the Axiom and Tandem) from the Administrators of the Axiom Fund. The First Respondent did not have the emails and annotated copies of the agreement due to no fault of his own. With permission from the First Respondent, on or about 30 May 2013, during the time he was in Kenya, the IT Managers, Ms VM and the Second Respondent were trying to obtain copies of those emails from his email box. They were gathering evidence for s.44B disclosure. Unfortunately, the recovery of his emails was found to be impossible due to computer errors. In his report to the Applicant of 31 May 2013, Mr S (one of the IT managers) stated: "Whilst every effort has been made to recover these emails, and some staff still have their old mailboxes, some emails will have been irretrievably lost"

76.21 Following that weekend, the Second Respondent was suspended never to return to work, the Company documents were seized by AVH LLP (who bought Tandem as a Pre-Pack a few months earlier) and both the First Respondent and Mr XR resigned from their positions in protest. Considering that it was made perfectly clear to the Applicant that the emails regarding the PLFA amendments were not in possession of the Respondents, the onus was on the Applicant (as the prosecutor) to obtain them from the Administrators of Axiom. They did not do that.

76.22 The Tribunal was asked to note that, despite the passing of just under six years since the date of the signing of PLFA No. 2 by the First Respondent, no claim for the breach of this contract was issued by the Administrators of the Axiom fund as against Tandem. The Tribunal needed to ask itself, why not? Could this be because the legal advice received by Tandem from [the external firm] in 2012, was correct? Could this be because, based on all documents and correspondence available to the Administrators of Axiom in relation to the funding agreement between Tandem and Axiom, they did not have substantive evidence to issue a valid claim?

76.23 In the absence of all documents that comprised the agreement between the parties, during their meeting in July 2014, the FIO insisted that the Second Respondent speculate what the terms were and what they were not. When the Second Respondent refused to speculate, the matter was escalated to the Tribunal, who were now asked by the Applicant to speculate, what was the purpose of the agreement in 2011-2012, based on the construction of the agreement between the parties interpreted by the Applicant itself. Instead of attempting to obtain the documents representing the entire agreement between the parties from Axiom's Administrators, the Applicant based their entire case on some of the Tribunal's previous judgements against Axiom Panel firms, in which the Tribunal, having perused the terms of the written agreement before it had found for the Applicant. This was a totally misguided approach, because the Tribunal was unable to decide on the construction or interpretation of one funding agreement, based on the terms or the other ones, however many.

76.24 The Tribunal was invited to consider whether the Applicant (or the Tribunal itself) had the adequate expertise to judge on the correct interpretation of the terms of commercial agreements. These agreements were usually interpreted at Commercial Court of England and Wales (a part of Business & Property Courts) by the specialist judges who were drawn from a list of those authorised due to their specialist knowledge and expertise. When contracts are considered at Commercial Court, the Court examines the true construction of the contract, namely, whether the agreement was oral, written, part oral and part written, or to be implied from conduct. The court would imply a term into a contract on various grounds, including:

a) Because of general use or custom of a particular trade.

b) Because of a previous course of dealings between the parties.

c) If it is apparent from the facts that the parties must have intended the term to form part of the contract.

d) Terms may also be implied by statute or common law.

e) Defendants are entitled to apply to the court for rectification of the mistakes there may be in the drafting of any agreement.

76.25 The Second Respondent said that the Applicant was asking the Tribunal to judge on the matters in disregard of English Civil Procedure Rules, which dictated that the matters of interpretation of commercial contracts between the parties are dealt with by the specialist judges at Commercial Court. If there was a claim against Tandem in a Commercial Court, such claim would have been dealt with by Tandem's insurer. Both Respondents were insured and would have been legally represented. Instead, legal

representation was effectively precluded, because as a result of stigma from the lengthy five year-long investigation, the Second Respondent could not earn a living practising as a Solicitor and could not afford to pay for representation. There had clearly been inequality of arms introduced by the Applicant. The Applicant had flooded the Tribunal with numerous documents, files upon files of them. The Second Respondent asked the Tribunal to see that none of those documents actually mattered in absence of the documents showing what express terms of funding actually applied.

76.26 As such, the Tribunal had no other option but to find that the Applicant's case was flawed in its entirety and believe the Respondents' evidence that the purpose of the agreement was varied from what stated in the counterpart PLFA No. 2. Based on evidence from Mr TS, the parties agreed that Tandem could use the money as "practice funding" for as long as the cases based on the approved model were litigated. As Axiom advanced its money for "Practice funding", Axiom money properly belonged in its Office Account and Tandem could use the money for the general running of the firm, to include paying wages, bonuses, contractors as the First Respondent saw fit.

76.27 The Second Respondent submitted that Allegation 2.1 did not allege dishonesty or lack of integrity in respect of her. However, the obligation was on all the Principals of Tandem to ensure compliance with the Accounts Rules as set out in rule 6 of the SAR. The Second Respondent said that the Tribunal found itself in a position whereby, due to the First Respondent's state of health, he was not co-operating with the Applicant or defending himself in these proceedings. This did not mean that the Tribunal was able to find he committed breaches of SAR (and consequently that the Second Respondent was automatically liable for those) based only on the Applicant's evidence. The Tribunal was required to assess all evidence provided by the Applicant in this case to include evidence adduced by her.

76.28 The Applicant's position was that the First Respondent would have been aware that by placing Axiom money in the Office Account he would have committed a breach of the agreement existed between Axiom Legal Financing Fund and Tandem. Allegation 1.1 and Allegation 2.1 included that Tandem received the £5,900,000 of Axiom funding pursuant to Funding Agreement, which stated that the money was to be used for "Eligible Legal Expenses" only. It was not. It was accepted and used by the First Respondent as "practice funding".

76.29 The Tribunal was asked to consider what were the terms of the Agreement between Tandem and Axiom? Based on the evidence the Tribunal had, could those terms have been varied by the parties in emails as the First Respondent alleged. The Tribunal was also asked to consider whether the written PLFA No. 2 that contained the definition of "Eligible Legal Expenses" actually represented the complete terms of the express agreement between the parties. If the Tribunal found that the Applicant had failed to show beyond reasonable doubt that the written PLFA No. 2 represented the complete terms of the agreement, then the allegation was unsubstantiated and it followed that the firm could use the Axiom money as "practice funding" and, as such, it was proper to place it in Office Account. If the Tribunal found that the Applicant had succeeded in showing beyond reasonable doubt that the written PLFA No. 2 represented the complete terms of the agreement between the parties, then the Tribunal needed to consider whether or not the First Respondent had knowingly (dishonestly or

recklessly) breached the terms of PLFA No. 2. Tribunal would need to apply the Supreme Court decision on the correct test for dishonesty in Ivey.

76.30 If the Applicant failed to establish (beyond reasonable doubt) that the First Respondent breached the terms of PLFA No. 2 dishonestly or recklessly, then the allegation was unsubstantiated. If the Applicant established beyond reasonable doubt that the First Respondent breached the terms of PLFA No. 2 dishonestly or recklessly, the case of the Applicant in respect of breach of the SAR was substantiated.

76.31 The allegation raised against the Second Respondent related to her being potentially "automatically" liable for the breaches of SAR under Rule 6. The allegation against her was drafted narrowly. The Tribunal was required to judge whether the Applicant could prove beyond reasonable doubt that the Axiom money was incorrectly placed by the First Respondent in Office Account and used for the running of Tandem (by applying the test above). If the Applicant failed to prove this allegation against the First Respondent beyond reasonable doubt, then the allegation failed in respect of both of the Respondents (as the Second Respondent could not be automatically liable for the unsubstantiated breach). If the Applicant succeeded in proving this allegation against the Second Respondent beyond reasonable doubt, then the Tribunal was required to assess the extent of the Second Respondent's "automatic" liability for the breach as follows. The Tribunal had to look at the circumstances of the case to include consideration of the Second Respondent's role in the firm, the advice received from others and whether, on evidence before it, the Second Respondent "had let the First Respondent run the whole thing; ... took no interest, asked no questions, made no enquiries and signed documents."

76.32 If the Applicant failed to establish the above beyond reasonable doubt, then the case of misconduct against the Second Respondent should fail and sanction should be significantly reduced in line with reported cases. If the Applicant succeeded in establishing beyond reasonable doubt, then the automatic liability would apply and the Tribunal would assess the Second Respondent's liability in line with the reported cases. There were no reported cases reflecting similar circumstances to this case whereby access to financial information and decision making was effectively removed from the Second Respondent by the First Respondent (in full knowledge of the Applicant). There were no reported cases where the FIO was aware that the firm kept money in Office Account and having a suspicion this could be wrong, said nothing to the Accountants of the firm or one of its Directors.

76.33 The Second Respondent submitted that the Tribunal could be helped in assessing her liability for the breach, if it looked at the position she actually held in Tandem and considered, whether on the facts of this case, her position was akin that of a "salaried" rather than "equity" Partner. If her position was seen to be akin that of a Salaried Partner, there were numerous cases that could assist the Tribunal in assessment of her culpability and be helped with what could be the applicably reduced sanction.

76.34 In Law Society v. Weston CO/0225/98 Lord Bingham said:

> "The Accounts Rules exist to afford the public the maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording this protection and assuring the public

> that such protection is afforded, an onerous obligation is placed on solicitors to ensure that the Accounts Rules are observed."

76.35 In Weston the SRA intervened into a two-partner solicitors' firm. There was a shortfall of £110,000 on client account. The firm had been in a perilous financial position and the partner who oversaw the client account had transferred client monies to office to pay tax liabilities. He was convicted of a criminal offence, imprisoned and struck off. The other partner had taken little or no interest in the accounting procedures and financial arrangements of the firm and had no knowledge of the impropriety. The Tribunal said that as one of only two equity partners he was aware of the perilous financial position of the firm and his failure properly to shoulder the heavy burden of responsibility placed upon a solicitor for the proper keeping of accounts and the fair and honest handling of clients' monies was extremely serious. In the circumstances of the case, the appeal was dismissed. The court paid particular regard to the facts that the partner knew the firm was in a perilous financial state, knew that a statutory demand had been served by Customs and Excise for £ 60,000, signed the cheque in payment of that sum (after it had been transferred from client to office by the dishonest partner) and would have been able to prevent the fraud if he had complied with his obligations under the Accounts Rules.

76.36 Lord Bingham also said, in relation to the principle that solicitors are obliged to ensure the Accounts Rules were observed:

> "Recognition of that principle does not mean that, in any case where one solicitor is dishonest and as a result both he and a partner commit breaches of the accounts rules, both must automatically be struck off even if the second partner is guilty of no dishonesty. That would be to lay down much too inflexible a principle. The striking off of any solicitor found to have acted dishonestly in relation to clients' monies must now be seen as all but automatic. The position of a partner guilty of non- compliance with the Accounts Rules but without dishonesty will depend on all the circumstances of the case."

76.37 The level of this automatically arising culpability was distinguished when the Tribunal considered cases of Salaried Partners. In SRA v. Farrell (Tribunal Case No. 9972-2008) the Tribunal imposed a lower sanction on the salaried partner after balancing the obligations which arise from the agreement to be held out as a partner against the facts that salaried partners often did not have access to the firm's accounts and sometimes find it difficult to challenge equity partners.

76.38 In R (Holden) v. SRA [2012] EWHC 2067 (Admin) Irwin J said that a strict liability breach of the Accounts Rules did not by itself amount to professional misconduct. Although there was strict liability for breaches, the Applicant will not always prosecute salaried partners for breaches of the Accounts Rules and when they are prosecuted the Tribunal will normally impose lower sanctions on salaried partners. In Lawson v. SRA [2015] EWHC 1237 (Admin) Mostyn J recognised that a younger salaried partner working under the supervision of equity partners who was not privy to the financial affairs of the firm could in theory receive a lower sanction. The Second Respondent argued that in the circumstances, the Tribunal should treat her position in the firm as that of a salaried partner, not equity partner, as on the facts of the case, she was:

a) Denied unfettered access to company accounts;

b) Denied adequate financial updates;

c) Denied status as an Equity partner.

d) Denied access to the meetings with the APPLICANT (with their full consent).

76.39 In addition, the extent of an equity partner's culpability for the breaches of the Accounts Rules will often depend on the extent to which they ensured that proper accounting systems and procedures were in place and that employees were properly supervised. In Hazelhurst v. SRA [2011] EWHC 462 (Admin) Davies J said that the fact that an employee was able to steal office and client account money over a period of three years raised a strong inference of a lack of supervision, but that inference could be rebutted by evidence that the employee was supervised properly. She said:

> "Determination of the appropriate sanction requires account to be taken of the appellants' conduct. Conduct which positively reflects upon the appellants' character can be viewed by the public as evidence of their own trustworthiness."

76.40 In SRA v. Lazar and Bajwa (Tribunal Case No. 10228-2009*)*, it was said that, the fact that misconduct had occurred did not necessarily indicate a lack of supervision. The system of supervision should be considered as a whole. It is said that it was likely to be very difficult to ensure strict supervision if the supervisee is permitted to operate independently in separate premises. So, it is important to note that the First Respondent had serious health issues towards the end of December 2011 and his involvement with another firm meant that he was frequently out of office. In the first quarter of 2012 he was recuperating and the Second Respondent was unable to ask him about the accounts. In November 2012, with the opening of the new office in Manchester the First Respondent and Second Respondent were primarily based in different offices.

76.41 The Second Respondent said that in order to assess her culpability for the breach and her own trustworthiness, the Tribunal needed to consider the extent to which she ensured that the First Respondent was properly supervised. In relation to supervision, the Tribunal needed to take into account what the Second Respondent actually knew and what she did about it. Was it correct for her whilst supervising him (due to her lack of experience) to rely on the opinions of others, who had more experience? This included the views of accountants and legal cashiers, of Mr MF (Head of Legal and Technical Practice); Heads of Departments and the Applicant's representatives (Miss Woods and Miss Barrowclough). The Second Respondent added that the perusal of the copy of the server and all emails between her, members of staff and the FIO showed there was not a single issue, warning or suspicion raised with her during her employment at Tandem.

76.42 The Second Respondent asked "Were those others placed by me in circumstances where they could whistle-blow to me without fear of repercussions? …Were those others placed in the position where they were obliged to inform me in an event of a suspicion?....Did they assure me (whether by their words or silence) that it was correct to keep the money should be kept in Office Account? …. Was the procedures I

adopted for financial information updates sufficient and what due diligence or self-training would I have done?... Did I ensure that Tandem had appropriate Risk Management Procedures, despite the difficulties of communication with The First Respondent?" If the answer was "Yes" to most of the above, then the allegation of lack of proper supervision (and/or her culpability for misconduct) was not established.

76.43 Ms JM had provided a witness statement and gave evidence to the Tribunal. She had also provided a letter dated 15 December 2016 addressed to the Applicant and "to whom it may concern". In that document she stated that when the Second Respondent had challenged the First Respondent telling her that she was not to get involved with the financial side of the business she had been threatened with her job. In evidence Ms JM described the First Respondent "bullying" the Second Respondent who had been distressed. Ms JM had resigned. She had discussed the question of the Second Respondent resigning with her but described the Second Respondent's circumstances as different to hers.

76.44 Ms JM was a chartered accountant who had worked for Tandem as financial controller in the period May to July/August 2012. At the time Tandem also had external accountants. Her witness statement set out the First Respondent's lack of co-operation with her, the second Respondent's limited experience and the fact that the First Respondent rarely discussed the business financial with the Second Respondent as her role was in HR.

76.45 Ms JM had met with Mr AL of Axiom on 26 June 2012. This was the day prior to the meeting arranged with the FIO. During that meeting Mr AL and Ms JM reviewed the current statement of the loan accounts and agreed the principal capital amounts and corresponding costs. In her statement Ms JM stated: "if [Mr AL] was in any way unhappy with the way he saw Tandem dealing with Axiom money, he would have told me and I would have had no hesitation of notifying the SRA during our consequent meeting. However, there were no such issues raised."

76.46 Ms JM recalled the Second Respondent being at the initial meeting with the FIO but being asked to leave when the First Respondent arrived unexpectedly and took over. Ms JM had not seen a copy of the PFLA and did not recollect being told the detail of how it worked. In Ms JM's view she suspected that the Second Respondent was told very little if anything by the First Respondent or Applicant. Ms JM had not alerted the Second Respondent to any material improprieties with the accounts. Due to the limited information the First Respondent passed to Ms JM during her short spell with Tandem she felt that she had no other option but to resign.

76.47 Ms JM said that the Second Respondent had made every attempt to provide her with the information that she required to carry out her financial duties, albeit in most cases the Second Respondent was not able due to do so due to the lack of visibility she was permitted by the First Respondent.

76.48 In evidence the Second Respondent said that she was familiar with the content of the SAR at the relevant time. She had at all times been a director and principal at Tandem. She had done everything in her power to ensure compliance with the SAR. She had taken all reasonable steps. She had told the First Respondent on a number of occasions that she was not happy and wanted to see the accounts. She had had access

to financial information through the accountants. The Second Respondent had not seen the Litigation Funding Agreement at the time. She had asked to see it but the First Respondent had told her that it was in the process of being drafted and had not given her a copy.

The Tribunal's Decision

76.49 The Second Respondent was a principal and director at Tandem. As such rule 6 of the SAR required her to ensure compliance with the rules by the principals and by everyone employed in the firm. Tandem had not had a client account until July 2012 by which time it had received seven payments from Axiom. The Second Respondent had had some concerns around the finances of the firm as evidenced by the assurances she sought from Ms JM.

76.50 The Tribunal had found that the First Respondent had not complied with rules 1.2(a), 1.2(b), 6 and 14.1 of the SAR. As a director (even a 5% HR Director) the Second Respondent was required to ensure that the First Respondent and everyone employed by the firm complied with the SAR. She did not do so and therefore the Tribunal found that the Second Respondent failed to ensure that the aforesaid £5,920,225 (or any part thereof) was paid into client account, alternatively failed to ensure an office account was opened whose sole purpose was to hold the monies pending their use for an authorised purpose, contrary to rules 1.2(a), 1.2(b), 6 and 14.1 of the SAR. Allegation 2.1 was proved beyond reasonable doubt.

77. **Allegation 2.2 - The Second Respondent failed to make any or sufficient proper inquiries to establish the propriety of the Asset Purchase Agreement relating to Signey before signing it, and thereby breached Principle 6 of the Principles.**

77.1 The Applicant's case in respect of this allegation was set out above in relation to allegation 1.5 against the First Respondent. The Applicant alleged that the Second Respondent did not make any or sufficient proper inquiries to establish the propriety of the APA before signing it. At the time she signed, the Second Respondent had no idea what Signey's liability might amount to. She had no basis for considering whether the APA was an appropriate arrangement for Tandem to enter into, and it is to be inferred that she took no steps whatsoever to secure the information necessary to satisfy herself on this score. When asked whether she was "*happy*" with the APA she had been asked to sign, the Second Respondent explained at interview that she "*wouldn't have had um the guts to oppose it*", and that it was in any event a "*done deal*". The Second Respondent failed to behave in a way that maintained the trust the public placed in her and in the provision of legal services, in breach of Principle 6 of the Principles.

77.2 It was not necessary for the Applicant to prove that the Signey Asset Agreement was improper. A solicitor should make enquiries of any agreement before they signed it. It was not an excuse to say that one had not made any enquiries before the document was signed but had one done so, it would have been ok. The issue was that the Second Respondent did not ask more than minimal questions before she signed the document. In any event the Signey Agreement was improper, it said the firm was solvent and days later Mr XR concluded that it was not financially viable.

The Second Respondent's Case

77.3 The allegation of whether or not the Second Respondent made any or sufficient enquiries needed to be approached by considering her role within the business as the HR Director (and a Principal of Tandem) and asking the question: "What enquiries would have been sufficient for the person in my position?"

77.4 The Second Respondent submitted that she made sufficient and proper enquiries, as evidenced by her: (a) being aware of management problems discovered at Signey by Mr SN; (b) being aware of the HR situation with the on-going nationwide recruitment campaign for the prospected offices in the centre of London, Manchester and Liverpool with insufficient money in accounts to sustain this campaign; and (c) being aware of the extent of profitability of Healthcare Claims and the benefits of diversification of Tandem's areas of practise.

77.5 Moreover, the Tribunal was also asked by the Applicant to judge on the parties' intentions based on the Applicant's interpretation of the construction of the Asset Transfer Agreement made between Signey and Tandem in October 2012. In relation to the Signey transfer allegations, the Tribunal had the contract which was signed between the parties. The Second Respondent signed the contract as a co-director of Tandem. Regarding this Agreement it contained express terms, however, a similar reasoning applied as with PLFA No. 2. Whilst the Applicant was able to adduce evidence of this contract and the Letter of Warranties dated 30 October 2012 signed by Mr PM the Applicant's interpretation of the terms of that contract differed from the interpretation of those terms by the parties (Signey Law and Tandem Law).

77.6 The Applicant had failed to apply to the Administrators of Tandem for evidence to support its allegations (raised by the FIO in her FIR) that the transfer was intended to prejudice the Creditors of Signey Law. In fact, on the proper reading of the contract, it expressed the opposite intention. The Applicant should have requested evidence from the Administrators of Tandem of whether or not the Creditors' debt (mostly to Axiom) was added to Tandem total liability to Creditors. If the Applicant had asked for this, it would have had this confirmed thus negating its claims. Again, the Applicant jumped to conclusions based on insufficient evidence.

77.7 As such the Tribunal had numerous instances of the Second Respondent's enquiries, which were definitely sufficient for her role at Tandem. As such the allegation was clearly unsubstantiated. The Second Respondent initially gave evidence that she had made sufficient and adequate enquires. She then acknowledged that she should have asked to see Signey's Litigation Funding Agreement as this was referred to in the Asset Transfer Agreement. On that basis she acknowledged in cross examination that she did not make sufficient enquiries before signing the Asset Transfer Agreement.

77.8 Later she resiled from this position stating she had made sufficient enquiries and in any event it was irrelevant. If she had not signed the First Respondent would have just gone ahead anyway. Additionally, even if she had asked for the document she doubted that the First Respondent would have provided it. The Applicant had not established that the Signey agreement was "not proper". The First Respondent had breached her trust. In all the circumstances she had made sufficient and proper enquiries.

The Tribunal's Decision

77.9 A company of which the Second Respondent was a director purchased another company. The Second Respondent knew about this purchase before it happened. Once Tandem purchased Signey the Second Respondent became the director of a bigger company.

77.10 By her own evidence she had signed the Asset Transfer Agreement without asking the First Respondent for sight of the Litigation Funding Agreement referred to therein. It did not matter whether or not the First Respondent would have given her a copy, what mattered was that she had not asked to see that document. The Second Respondent was aware that there were potential issues in relation to Tandem's purchase of Signey. She was aware that Signey had borrowed from Axiom. She needed to know whether or not the Asset Transfer Agreement was something that she should sign. On the face of it that Agreement was designed to avoid liability. She had not made sufficient enquiries to know whether or not it was proper for her to sign the document. Again it was irrelevant that had she refused to sign, the First Respondent as 95% shareholder in Tandem may have gone ahead in any event.

77.11 The Tribunal found that the Second Respondent failed to make sufficient proper inquiries to establish the propriety of the Asset Purchase Agreement relating to Signey before signing it. In failing to make sufficient inquiries she had not behaved in a way that maintained the trust the public placed in her and in the provision of legal services in breach of Principle 6. Allegation 2.2 was proved beyond reasonable doubt.

78. **Allegation 2.3 - The Second Respondent carried out, without protest or objection, a redundancy exercise at Signey which disregarded statutory consultation requirements, and thereby breached Principles 1, 2 and 6 of the Principles.**

78.1 The Applicant's case in respect of this allegation was set out above in relation to Allegation 1.6 against the First Respondent. The Applicant alleged that the Second Respondent in carrying out the redundancy exercise without questioning, objecting or challenging it, in full knowledge that it was unlawful:

- Failed to uphold the rule of law, in breach of Principle 1 of the Principles.
- Failed to act with integrity, in breach of Principle 2 of the Principles.
- Failed to behave in a way that maintains the trust the public places in her and in the provision of legal services, in breach of Principle 6 of the Principles.

The Second Respondent's Case

78.2 It was totally unfair on the Second Respondent for the FIO to require her to remember, in July 2014, the correct details of consultation requirements related to TUPE regulated transfer that happened on or about 30 October 2012. There was another issue there. The Second Respondent had notified the Applicant and FIO in her letter before the meeting that she was vulnerable during that period due to very difficult family issues she was going through relating to her husband's health, family bereavement, dismissal from her job at Tandem, not finding another job, living with

the stigma of the investigation attached and starting new business as a sole Consultant, all by herself. The Applicant knew that apart from the above she could not have properly refreshed her memory before the meeting. In relation to the way the meeting was held, it was not appropriate for a person who was vulnerable and who did not have relevant information for two years. Also, the way the meeting was held showed no consideration what-so-ever to English being her second language.

78.3 The transcript of the meeting confirmed that the Second Respondent had made no admissions at all (or not intended to have made any admissions) at the hearing and whatever text was being picked upon by the Applicant was not at all representative of her admission. It simply showed the Second Respondent being totally confused, an example of this was her stating there should have been a "60 day consultation".

78.4 Signey Law provided a warranty to Tandem confirming it continued to have liability for the staff made redundant on or about 2 November 2012. The Warranty was exhibited by the Applicant as attached to the Asset Transfer Agreement. Consequent to the lengthy investigation, Signey Law was approved by the Applicant for closure in 2013. No issues were found in relation to the Company then, as no closure of a regulated entity is agreed by the Applicant, if there were outstanding issues. The Applicant even failed to have a meeting with the Second Respondent during the Transfer of Signey, despite Signey staff being interviewed by the Applicant on Tandem premises.

78.5 With a delay of four years, the Applicant decided to resurrect documents from that closed Signey Law investigation and interpret the Respondents' actions (as a Director and 100% shareholder of Signey and as the Employment Solicitor acting for Signey) in light of their totally inaccurate understanding of the complex application of the TUPE and surrounding legislation applicable at the time. The allegations of breach of statutory consultation procedures were made regardless of clear evidence held on the Tandem server (in the list of "Leavers submitted to The First Respondent for the Accountants), that two weeks after the Transfer only nineteen people were dismissed as redundant, with the rest of "Leavers" on the list highlighted as "non-starters", those who resigned with a Settlement Agreement, those who were attached to the different "establishment" (i.e. not the Bluebell Way office but the Family office based in Cheshire), those who actually transferred (because their names are found in the schedule of transferred employees to the Agreement). It confirmed that there was no intention to dismiss more than nineteen employees as "redundant" from the same "establishment" within 90 days.

78.6 In addition, it was clear that the company was bought as a "going concern" so the Employment Tribunal would have been more lenient to the position of the Parties, who were clearly making attempts to rescue Signey's business and that there were "Economical, technical and organisational" reasons for dismissals.

78.7 The Second Respondent strongly suggested, that Tribunal was not a proper venue for determining whether in October 2012, Signey Law and/or Tandem Law breached statutory consultation requirements. The designated venue for those claims is the Employment Tribunal and only if those claims were brought to it by the claimants within the relatively short limitation period that applied. There were good reasons for the three month-limitation applicable in relation to most Employment Tribunal claims. One of the reasons is the speed at which the employment law changes occur.

So, it was unfair on the advisers if employment claims were brought against them five years after the relevant dismissals. Especially, when having every opportunity to ask the Second Respondent questions immediately after the transfer (during the attendance at Tandem in early December 2012) the Applicant decided to ignore her.

78.8 The extent of the remedy for the breach of consultation was also decided by an Employment Tribunal. The remedy for the claimants was not and never was, in the disciplinary proceedings raised with a four-year delay by the Applicant against the Employment Solicitor who advised during the consultation. There was absolutely no public interest in that approach. If the Tribunal allowed such claims, it would inevitably open floodgates of litigation whereby the claimants (or Trade Unions) who were unable to bring their (or their members') claims within the limitation period would threaten Employment Solicitors' to apply to the Tribunal with an allegation of breach of statutory consultation procedures by the Solicitors, hoping to get a quick settlement from the firm. In addition, the Applicant should be precluded from "re-opening" investigations into the Practices which were approved for closure. The Applicant approved proper closure of Signey Law in 2013.

78.9 The First Respondent had purchased Signey on or about 23 October 2012 and told the Second Respondent about his Signey acquisition in mid-October. The Second Respondent was not aware what due-diligence was exchanged between the parties prior to the First Respondent making a decision to buy shares of Signey. She did not need to know as at that time he did not ask for her advice on a share purchase.

78.10 The Second Respondent knew that having purchased the shares the First Respondent instructed Mr SN (the Contractor Project Manager) to enquire and produce a report. Mr XR assisted him as Mr XR was more experienced in the ways of solicitors' administration, specifically, in ways of assessing profitable and non-profitable areas and case management software variations. Mr SN produced a report which was submitted to the Second Respondent by Mr SN in December. However, the matters to which it related became known to both Respondents immediately after the initial meeting with Signey Management, which the Second Respondent believed was in the morning of 30 October.

78.11 The Second Respondent recollected the First Respondent telling her that the transfer to Tandem and the rapid closure of Signey was required specifically to preserve the Axiom monies Signey had in its account for dealing with Healthcare Claims as this was one of the main purposes for which Axiom money was advanced. She also recollected hearing from Mr PM that the CEO of Signey had already been informing staff that with arrival of the First Respondent that they would all end up in Tandem. There were emails in Tandem email boxes at that time confirming that several contracts (to include those of Mr C, Miss F, and the Employment Lawyer, Mr A were found to be dated 22 October 2012, a day before the shares of the business were transferred to the First Respondent.

78.12 Signey had an on-going recruitment campaign to fill in their projected offices but not all prospective employees were issued with offers at that time. Signey was hiring people with a view of opening three new commercial offices. However, it seemed that only the Healthcare Department was viable and supported by Axiom money. 80% of Signey current claims were in Healthcare. The rest of areas necessitated heavy long term investment to allow sustained growth. Yet the projections for that growth were

totally unrealistic. The offices of the firm were expensive and unsuitable. The software was unsuitable and did not properly address clients' data protection. The issues the firm had seemed to stem from bad management. The First Respondent told the Second Respondent that he saw no other option but to merge the viable strands of work into Tandem, as Tandem had capacity to accommodate some but not all of them.

78.13 The Transfer Agreement specifically ensured that the Creditors of Signey were protected by Tandem assuming repayment of Axiom funding. "Axiom Legal Funding" was specifically referred to in the agreement in paragraph 3.1.2 as follows:

> "Subject to 3.1.3 an indemnity to the Seller, from the Buyer, in relation to the Seller's liability to repay all loans provided to it by Axiom Legal Funding ("the funders"), as per the funding agreement between Seller and the funders, and in accordance with Schedule of Total Funding to date annexed hereto and all and any other debts of the Seller incurred in the ordinary course of business other than "Excluded Liabilities".

78.14 As such Tandem ensured that all creditors' rights (to include Axiom investors' rights) were properly secured.

78.15 The Second Respondent told the First Respondent and Mr PM that this would no longer be a share sale. This would be a TUPE regulated transfer and consultation was required. She believed that Signey had thirty eight people on its books. She wanted them all transferred without any change to their contracts of employment. Their contracts contained mobility clause, which meant that the employer could transfer them from office to office within the reasonable distance and their office at Bluebell Way, Preston was just a few minutes' drive away. However, the First Respondent did not wish to transfer them all. The report referred to the staff being top-heavy and that the most experienced staff were those who were hired only a few months prior to start up Commercial Disciplines. Tandem had no plans of developing in those areas. Also, several work types were found neglected and non-viable. The decision was made that these departments would be shut down with the workforce dismissed. It was then the Second Respondent advised that the statutory consultation procedures would not apply if the firm intended to dismiss as redundant up to nineteen people. She fully explained the procedure that applied and it was agreed that they intended to dismiss nineteen people, no more.

78.16 Statutory Consultation procedures only applied where an employer proposed to dismiss twenty or more employees as redundant at one establishment within ninety days. Then the employer was obliged to consult with appropriate representatives of those employees (s.188 (1) Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA"). The consultation had to begin at least thirty days before the first of the dismissals (s.188 (1A) TULRCA). The substance of the consultation was set out in s.188 (2) TULRCA and was concerned with ways of avoiding the dismissals, reducing the numbers of employees to be dismissed and mitigating the consequences of the dismissals. An employer also had an obligation as to written provision of information to representatives in connection with the redundancy proposal: s.188 (4) TULRCA.

78.17 An employer who intended to dismiss over nineteen employees, was able to put forward "special circumstances" which showed it was not reasonably practicable to

comply with thirty days consultation, and the substance of the consultation, and disclosure of information, but the employer had to still take such steps towards compliance as were reasonably practicable: s. 188(7) and s.189 (6) TULRCA**.** There was no obligation on Tandem to consult Signey's employees post transfer. Where an employer had failed to comply with a requirement of s.188 or s.188A, an employee affected could apply to an employment tribunal for a protective award. The tribunal was able to make a declaration and a protective award: s. 189(2) TULRCA. The protective award could have ordered the employer to pay remuneration to the employee for the protected period of up to ninety days.

78.18 The Second Respondent did not wish the liability for the dismissals caused by the First Respondent's on-the-spot decision to transfer to Tandem. The amount of due-diligence made by him prior to purchasing shares of TUPE had resulted in him buying the company that was badly managed and difficult to transfer to Tandem. Tandem had just been through Ashton Fox acquisition and the transfers of files, so there was significant pressure on HR and Cashiers. So, Tandem was given an indemnity from their transfer and it was agreed that the Second Respondent would help the First Respondent and Mr PM but only as an Employment Solicitor and observer. To satisfy her on this point, Mr PM had prepared and signed a Letter of Indemnity (dated 30 October 2012) which was attached to the agreement. Paragraph 6 of that letter stated:

> "A number of Signey Law staff, are likely to be made redundant shortly or shortly will be made redundant and any claims by those members of staff will fall to be dealt with by Signey Law Limited"

78.19 The Second Respondent confirmed that on 2 November 2012 she attended Signey and observed Mr PM dismissing staff members. She prepared letters of dismissal and Mr PM printed them on Signey headed letter paper, signed them and passed them to those who were made redundant. She could not object because there were solid "Economical, Technical and Organisational" reasons for dismissals. Signey could definitely raise a defence of "special circumstances".

78.20 In the Second Respondent's mind, she saw logic behind the First Respondent's view that, if redundancies of these nineteen people were not actioned or if they continued with consultation for thirty days, by the end of those thirty days, they may all end up being made redundant for the firm's insolvency.

78.21 The Second Respondent co-signed the agreement. She had read the terms and recognised this agreement from Practical Law Company template, so she would have been aware of the interpretation of its terms.

78.22 The Second Responded confirmed that the transfer of the viable departments (Healthcare in particular) was seen by her as a way of diversification of Tandem. Healthcare claims were not only viable, they were settling, meaning that there would have been a separate stream of income into Tandem's Office account. AVH LLP has now confirmed they were viable claims.

78.23 The list of "Signey Leavers" was prepared by a paralegal in the Employment Department. The Second Respondent sent the list to the First Respondent two weeks after the transfer, so that payroll could be sorted. Not all of those defined as "Leavers"

had been dismissed at the meeting held on 2 November 2012. The Second Respondent submitted that if one took the list of Leavers but did not count those who did not start, who resigned, who actually transferred or those who were proposed to be hired but were assigned to another establishment (Cheshire office), there were nineteen leavers left. The fact that Tandem had claims did not mean that procedures were breached.

78.24 If Tandem had breached the procedures, then it would have had all nineteen people issuing proceedings claiming their uncapped ninety day pay. They were Solicitors or Paralegals, who are the most litigious employees of all. However, they only had those three claims. Based on this, the Second Respondent denied that her client (Signey) proposed to dismiss as redundant twenty or more employees at one establishment within the meaning of section 188 of TULRCA. In fact it was only proposing to make nineteen employees redundant. Moreover, she believed she had discharged her professional duties with complete integrity, probity and trustworthiness.

78.25 The Directors of the Second Respondent's client, Signey, had never made any allegation that she had not properly discharged her duties. The Second Respondent noted that Mr PM was recorded as stating that statutory consultation was breached in the FIO's notes taken from the meeting between him and the Applicant. This did not match the witness statement he made for the case of Mr L where he signed the statement of truth confirming there was no breach of consultation. Mr PM was not an Employment Solicitor and TUPE was very complex. However, the complexity of TUPE did not mean that the Applicant could be excused for bringing the proceedings against the Second Respondent with a four year delay and with lack of any complaint raised by her clients in respect of her conduct as their employment solicitor.

78.26 The Second Respondent accepted that she had seen something wrong in what had happened and was concerned that the procedure might have been breached. She wanted to resolve matters to the benefit of those who had been made redundant and for Signey as her client. She had not thought at the time of doing the exercise that the statutory procedures had been breached as she had been told that nineteen or less employees would be made redundant. In evidence the Second Respondent was unclear as to precisely how many Signey employees had been dismissed and whether it was one or two more than she thought were to be dismissed. She made reference to twenty people being dismissed because an additional person had been dismissed by mistake. This was an error and there had been no intention to breach the procedures. She stressed that she was acting as Signey's employment solicitor not as a director of Tandem when she was involved in the redundancy exercise. She could not answer the question as to whether she knew at the time that the special circumstances defence would not apply. Counsel had provided advice after the event that it would not. Signey had had about £2,000,000 in the bank and was solvent when Tandem bought it.

The Tribunal's Decision

78.27 In her interview with the FIO the Second Respondent told the FIO that she had advised the First Respondent of the need for a consultation period and he had said that the redundancy exercise needed to happen "tomorrow we literally going to dismiss them all and then bear whatever." The Second Respondent had prepared draft letters for Mr PM's use and had gone to Signey's offices. In an email dated 12 March 2013

sent by the Second Respondent to the First Respondent she said "there is no way we can wriggle out of the fact that the consultation was not done properly." She now maintained that consultation was not required because there had never been an intention to dismiss more than nineteen employees.

78.28 The Tribunal found that the Second Respondent carried out, without protest or objection, a redundancy exercise at Signey which disregarded statutory consultation requirements. The Second Respondent was a director of Tandem and was acting as Signey's employment lawyer. She was required under Principle 1 to uphold the rule of law and the proper administration of justice. She had not done so.

78.29 Applying the test for integrity, as set out in Williams, want of integrity arose when, objectively judged, a solicitor failed to meet the high professional standards expected of a solicitor. By disregarding the statutory consultation requirements and as a specialist employment solicitor the Second Respondent had failed to meet the high professional standards expected of her and had lacked integrity. Principle 2 had been breached.

78.30 By failing to comply with Principles 1 and 2 and by carrying out the redundancy exercise in the way that she did the Second Respondent had not behaved in a way that maintained the trust that the public placed in her or in the provision of legal services. Allegation 2.3 was proved beyond reasonable doubt.

79. **Allegation 2.4 - The Second Respondent failed to deal with the SRA in an open, timely and co-operative manner, and thereby breached Principles 2, 6 and 7 of the Principles as well as Outcomes 10.1, 10.8 and 10.9 of the SCC. Recklessness was alleged, although this was not a requirement for the Allegation to be proved.**

79.1 The Applicant's case in respect of this allegation was set out above in relation to Allegation 1.12 against the First Respondent. The Applicant alleged that the Second Respondent failed to deal with the Applicant in an open, timely and co-operative manner by declining and/or taking no steps whatsoever to provide the information and documents stipulated by the 27 February 2013 s.44B Notices, such that it became necessary to apply to the High Court for enforcement of the same. The Second Respondent's approach was (as evidenced by her 14 March 2013 email) to leave everything to the First Respondent. This was notwithstanding that the Second Respondent was herself an addressee of one of the s.44B Notices.

79.2 Asked at interview about non-compliance with the 27 February 2013 s.44B Notice and her 14 March 2013 email the Second Respondent stated "*what could I do, I didn't have the information ...*" She admitted she was "*concerned*" that she could not respond to her regulator. The Second Respondent took no positive steps to comply with the s.44B Notice served on her (including, as necessary, seeking out the requested information and documents); or to ensure that the First Respondent complied fully and timeously on both their behalves; or to confirm to her satisfaction that he had. In so acting, the Second Respondent:

- Failed to comply with her legal and regulatory obligations to deal with her regulators in an open, timely and co-operative manner, contrary to Principle 7 of the Principles and Outcomes 10.1, 10.8 and 10.9 of the SCC.

- Failed to behave in a way that maintains the trust the public places in her and in the provision of legal services, in breach of Principle 6 of the Principles.

- Failed to act with integrity, in breach of Principle 2 of the Principles. She acted recklessly and/or in reckless disregard of her professional responsibilities by failing to take any positive steps as outlined above in relation to the s.44B Notice of which she was personally the addressee.

79.3 In her first witness statement the FIO explained that the investigation of Tandem and the Respondents was a particularly complex investigation, both in terms of the number of issues that required consideration and the lack of co-operation received. The initial inspection took place at Tandem's office on 26 to 28 June 2012. The FIO's recollection was that the Second Respondent was present at the initial meeting which lasted most of the day. The FIO did not have any notes of a meeting with the Second Respondent and Ms JM on 12 July 2012. She denied that she had misrepresented who had attended the 12 July 2012 which had been alleged by the Second Respondent. The FIO and Ms JM had had a brief meeting on 12 July 2012 which related to queries in relation to certain transactions of the office account statements. She had recorded relevant events. The FI0 had not contacted Ms JM since Ms JM left Tandem.

79.4 The FIO did not accept that there was undue delay in the investigation of Tandem. Both Respondents were served with the initial and second s.44B Notices. The FIO had either sent or copied the majority of the emails sent during the investigation and had spoken to the Second Respondent over the phone on a number of occasions. Whilst the FIO acknowledged that most of her dealings were with the First Respondent she explained that it was not unusual to deal with one partner during an investigation – the firm concerned makes the decision as to who was primarily responsible for dealing with/responding to requests. This was not the FIO's decision. When the Second Respondent had been specifically asked to provide documents in compliance with her regulatory responsibilities she deferred to the First Respondent. It was not correct to say that the FIO excluded the Second Respondent from the investigation. She had conducted the interview with the Second Respondent, in June 2014, properly. The FIO denied that she had falsified the transcript of the interview with the Second Respondent or deleted emails as alleged by the Second Respondent.

<u>The Second Respondent's Case</u>

79.5 The Second Respondent categorically denied this allegation. It may be noted that the First Respondent had delayed the investigation. There were various reasons cited by him as an excuse for such delays. Some documents (emails) were lost due to the computer failure. The First Respondent's health had let him down. In citing these issues, the Second Respondent did not seek to justify the First Respondent's conduct, she was merely trying to show the difficulty she had in having to make due adjustments. The Applicant always had evidence of the fact that it failed to inform the Second Respondent properly, with the FIO attending Tandem and collecting documents for the total of nine days during the period from June to early December 2012. During all those visits, the FIO chose not to have a single meeting with the Second Respondent. In fact she had no meeting with her during her employment and for over a year since its termination. The FIO's contention that she

communicated with the Second Respondent could easily be rebutted, as during her investigation she ignored the Second Respondent for months. There was evidence that she only copied the Second Respondent into four emails.

79.6 In October 2012 and on 17 February 2013 the Second Respondent's husband had health issues and on 2 June 2013 she suffered a family bereavement. She was effectively dismissed from her job on 3 June 2013. Yet, she managed to comply with the s.44B notice deadline for disclosure which was on the 7 June 2013. Despite notifying the Applicant of these circumstances, no adjustments were made. Instead, her reasonable belief in the circumstances that the disclosure requests were being dealt with by the First Respondent (and Team at Tandem). Her simple response, "I believe the substantive response is being dealt with by Mr Lindsay" was taken out of context and presented as an allegation of her non co-operation with Applicant and abrogation of her responsibilities.

79.7 The Second Respondent strongly denied that she did not co-operate with the Applicant. She had submitted all documents that were in her possession and control. She searched the First Respondent's emails with assistance from two IT Managers of Tandem. She struggled to supply the documents requested. At that time the accounts of Tandem were frozen and the external accountant was on holiday. The Second Respondent met with the First Respondent on Sunday 2 June 2013 with a view of assisting him with compliance.

79.8 In addition there were several concurrent investigations, which the Applicant omitted to mention. At the same time as she was dealing with disclosure in respect of the FIO's investigation she was complying with her disclosure obligations in the investigation led by the Applicant's Miss Woods, with that disclosure deadline being 25 May 2013.

79.9 The Second Respondent reminded the Tribunal of the provision in the SRA Handbook:

> "2.1 The Principles embody the key ethical requirements on firms and individuals who are involved in the provision of legal services. You should always have regard to the Principles and use them as your starting point when faced with an ethical dilemma.
>
> 2.2 Where two or more Principles come into conflict, the Principle which takes precedence is the one which best serves the public interest in the particular circumstances, especially the public interest in the proper administration of justice."

79.10 She submitted that the allegation of non co-operation with the Applicant was an example of a situation where the Principles were in conflict and no guidance was provided by the Applicant to assist the firm. Moreover, neither the First nor Second Respondents even practised as Solicitors (with the First Respondent leaving his employment for good in 2014 due to his health). The Second Respondent had not practised since her dismissal in 2013.

79.11 In the absence of the First Respondent (who was on holiday) Ms JM and the Second Respondent had prepared for submission all the documents that the Applicant had requested in its first s.44B notice. The only problem was with Counsel Opinions, and the Second Respondent sought the Applicant's guidance. She needed to protect Tandem's client's interests. The defendants of the RTB litigation were (and are) Conveyancing Solicitors. Tandem had Counsel's Opinions confirming reasonable prospects of success. Tandem was the flagship firm in this litigation. AVH LLP had recently confirmed that the claims were viable and some of them are still ongoing.

79.12 However, a large number of those solicitors-defendants were already out of business due to the 2008 property crisis, and it was questionable whether their insurers would pay up. The SRA was the interested party in that litigation as it administered the Solicitors' Fund. To ask for assurances from the Applicant was the only proper response open to the Second Respondent in the circumstances. Apart from Counsel's Opinions, the Second Respondent ensured that the Applicant received all the requested documents.

79.13 The Second Respondent's evidence was that the FIO had failed to co-operate with her, she had not failed to co-operate with the FIO. In terms of disclosure the Second Respondent had had to choose between her obligations to her clients and her obligations to her regulator. She had felt that she needed to learn more about the financial side of the business and had left this to the First Respondent. She was reliant on what he told her and he would not always give her the information that she asked for. This meant she did not have the information to give to the Applicant. It had been a very difficult time for her. When interviewed by the FIO she had been vulnerable and her brain had been "mush".

79.14 If the FIO had wanted the Second Respondent to reply to an email she should have addressed the email to her. The Second Respondent had assumed that if an email was addressed to the First Respondent (and copied to her) that the First Respondent would deal with it. She could not tell the Tribunal what steps she had taken in July 2012 in respect of every email. She did not recall whether she had looked on her email to ascertain whether she had anything that the FIO required. She had had the Frion emails but had been sent them without an explanation of what they might mean. She had not realised that this was what was being referred to by policy documents, she did not see the relevance of what she had been sent and did not think the FIO wanted that.

79.15 The Second Respondent did not recall what steps she had taken at the time she had received the FIO's email of 31 July 2012 which was addressed to both Respondents. It had been clear that the FIO was not happy and the Second Respondent believed that the First Respondent would have sent what was required but that she would have spoken to the relevant people to ensure that the information was gathered. She did not check what had happened as she believed that the First Respondent would reply on both of their behalves. She thought the FIO was asking for documents she did not have. The Second Respondent had not been dealing with client related matters at that time.

79.16 On 21 September 2012 the FIO asked the First Respondent for written confirmation of the variation of the terms of the Litigation Funding Agreement. This email was copied to the Second Respondent. In her view the FIO should have asked the funders not the Respondents for confirmation that the terms of the litigation funding

agreement had been varied. The FIO could have obtained this information quite easily herself.

79.17 At the time of the second s.44B Notice the Second Respondent had been caring for her husband and had then been away from work unwell. She thought that the First Respondent was dealing with the response. She did not have the documents to submit to the Applicant. In any event she thought that the FIO would come to the offices on or about 8 March 2013 to look at what she wanted to see. She was the HR Director and had lacked experience. She relied on what the Managing Director told her. The First Respondent had talked to a QC who was retained by Tandem in respect of client matters, that QC was not instructed to advise Tandem on these issues. When the Applicant had issued proceedings to enforce the s.44B Notice the Second Respondent had wanted to go to court but the First Respondent had stopped her and told her it would waste a lot of money and would not be helpful for anyone and that he would pay the money for the Consent Order.

79.18 At the time the Second Respondent felt that she had co-operated sufficiently. She had been neither reckless nor uncooperative.

The Tribunal's Decision

79.19 The Second Respondent had seen a number of emails which had been copied to her. Despite the fact that it must have been obvious to her that the First Respondent was not providing the information that the Applicant required she continued to rely on him to respond. She did not respond to the FIO and tell her that she did not have the information and that even if she asked the First Respondent for it he would not provide it. She had wanted to go to Court rather than agree the Consent Order in respect of the s.44B Notice. She did not think that the s.44B Notice applied to her despite being addressed to her.

79.20 It would have been better if the FIO had addressed more of her emails directly to the Second Respondent as well as the First Respondent rather than simply copying the Second Respondent in. However, the Second Respondent was a solicitor and having received the correspondence that she did from the FIO (whether as an addressee or by way of "cc") she needed to ensure that the firm responded to that correspondence rather than relying on the First Respondent without proactively taking steps to ensure that he was in fact dealing with the requests for information. She had not complied with her regulatory obligations. She was a director of Tandem, she should have stood up to the First Respondent and if he had not co-operated with her she should have resigned.

79.21 The Tribunal found that the Second Respondent failed to deal with the SRA in an open, timely and co-operative manner. The Second Respondent's actions were clearly reckless. She had put herself in a position where she had failed to co-operate with her regulator in an open, timely and co-operative manner in breach of Principle 7. Her reliance on the First Respondent had been unfounded and increasingly misplaced as it became obvious that he was not responding on behalf of the firm and/or both directors.

79.22 A solicitor acting with integrity would ensure that she provided her regulator with all of the information requested as soon as possible. If she could not provide the information she would tell the regulator that she could not provide it and why she could not provide it. Accepting that some emails were only copied to the Second Respondent, rather than addressed directly to her, a solicitor of integrity who could see that the firm's other director was not responding to the SRA and would not simply ignore the request for information because the email was not sent to her directly she would do everything in her power to ensure the provision of that information. The Second Respondent had lacked integrity. By acting in breach of Principles 2 and 7 she had not behaved in a way that maintained the trust that the public placed in her and in the provision of legal services. Nor had she complied with Outcomes 10.1, 10.8 and 10.9 of the SCC. She had not complied with written notices, indeed she had wanted to go to Court rather than produce the Consent Order. Allegation 2.4 was proved beyond reasonable doubt.

78. **Allegation 2.5 - The Second Respondent abrogated her responsibilities as director and principal of Tandem, and thereby breached Principles 3, 6 and 8 of the Principles.**

78.1 At all material times, the Second Respondent was a director and principal of Tandem. She failed, however, to conduct herself as such, failed to exercise (or attempt to exercise) any meaningful control over Tandem and the First Respondent's activities, and in effect totally abrogated her responsibilities as director and principal. In particular there were no directors' meetings, and the Second Respondent was not provided in the ordinary course with information on the management or financial position of the firm. The Second Respondent ceded total responsibility for responding to the s.44B Notices to the First Respondent, notwithstanding that one of the said Notices was addressed to her personally.

78.2 At least from December 2011, the Second Respondent had no involvement in authorising transactions from Tandem's bank accounts. In a 6 December 2011 email exchange, the First Respondent informed the Second Respondent that he proposed to have "*sole control of accounts*", together with his personal assistant (Ms VM), and the Second Respondent agreed. This was confirmed in a 19 April 2012 instruction from the First Respondent to the Second Respondent. The Second Respondent stated at interview that she had had no access to Tandem's online banking facility and that responsibility for this was handed over to Ms VM.

78.3 The Second Respondent had no involvement at all in financial management of Tandem. She had no idea how much Axiom funding had been received by Tandem or how much money was "*in the bank*". She knew "*nothing*" about Axiom funding at the time. In consequence, she had no knowledge of matters such as the bonus of £80,000 paid to Ms VM in late 2012, or the various bonuses and other payments enumerated above which were made to or for the benefit of the First Respondent and Mr XR. The Second Respondent had no involvement at all with the manner in which Tandem was funded. She did not see the Litigation Funding Agreements prior to Tandem's administration, nor did she understand or know how those Agreements were to operate. She did not know the interest rate being charged. She accepted at interview that, in relation to these matters, she "*should have asked*".

78.4 The FIO's 21 September 2012 request for "*written confirmation of this variation [regarding use of funds] from the funders themselves*" was copied to the Second Respondent. There was no evidence that she took any steps at all upon receipt of this request, or later sought confirmation from the First Respondent that the matter had been dealt with satisfactorily, and it is to be inferred that she did not. The Second Respondent appeared instead to have placed blind faith in the First Respondent to deal with the matter. Further, the Second Respondent was not given a reason as to why the First Respondent proposed to transfer £1,700,000 to CEL/CEIM. She said: "*my opinion wouldn't have mattered so at that stage I didn't ask questions. I should have done ...*".

78.5 The Second Respondent was aware that the redundancy exercise in respect of Signey staff was unlawful (for failure to engage in the relevant 60 day consultation period), but took no steps to protest or insist on a lawful process, and instead went to Signey's offices to deliver the news to the employees that they were all immediately dismissed. The Second Respondent signed the APA whereby Tandem assumed (subject to provisions considered above) Signey's liability to the Axiom Funds and became entitled to all Signey's assets (including the more than £2,000,000 in office account). At the time she did so, she had no idea what Signey's liability might amount to. She had no basis for considering whether the APA was an appropriate arrangement for Tandem to enter into, and it is to be inferred that she took no steps whatsoever to secure the information necessary to satisfy herself on this score. When asked whether she was "*happy*" with the APA she had been asked to sign, the Second Respondent explained at interview that she "*wouldn't have had um the guts to oppose it*", and that it was in any event a "*done deal*".

78.6 The applicant acknowledged the First Respondent's tendency to autocracy and 95% shareholding in Tandem. However the Second Respondent's responsibility was either to discharge the duties of a director and principal properly, or to resign. She did neither. In consequence, the Second Respondent:

- Allowed her independence to be compromised, in breach of Principle 3 of the Principles.
- Failed to behave in a way that maintains the trust the public places in her and in the provision of legal services, in breach of Principle 6 of the Principles 2011.
- Failed to run her business or carry out her role in the business effectively and in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8 of the Principles.

<u>The Second Respondent's Case</u>

78.7 Before the 17 August 2011, the First Respondent was the sole Director and shareholder of dormant Tandem. He appointed the Second Respondent to be the HR Director. Her HR and Employment Law knowledge were sound, she had a Master's Degree in Employment Law and by then had worked for over 100 local businesses as an Employment Solicitor. Also, during her University study she completed a double module dissertation in Corporate Insolvency and, as a part of her Training Contract, had seats in Civil Litigation, Employment and Commercial Property departments.

78.8 The Second Respondent accepted that under section 174 of the Companies Act 2006, a director must exercise the care, skill and diligence, which would be exercised by a reasonably diligent person with both: (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company (the objective test) and (b) the general knowledge, skill and experience that the director actually has (the subjective test).

78.9 She believed that she displayed the knowledge, skill and experience necessary for the role of HR Director during the entirety of her post. The Applicant had alleged both that there were no Directors' Meetings between the First and Second Respondents and that Mr XR (Tandem's Marketing and Development Manager) was a Shadow Director at Tandem.

78.10 Both allegations were at odds with the documents filed to the public register at the Companies House. The first thing the Second Respondent did as a Director of Tandem was to have a Directors Meeting with the First Respondent and amend the Articles of Association in accordance with the Law Society's requirements specified in the Recognised Bodies Booklet to ensure that no person who was not a Solicitor (or Registered Foreign Lawyer, etc) was able to have beneficial interest in Tandem.

78.11 Directors Meetings were held informally, because it was becoming generally accepted that directors' meetings may be conducted informally, even by telephone or other electronic links. The Second Respondent thought this was still a diligent exercise of their duties, as in the first six out of the total of eighteen months of my Directorship, the First and Second Respondents sat in one room. She would have checked whether having informal meetings was in line with the Companies Act 2006. She believed it was. The Second Respondent had always strongly believed that the allegations by the Applicant that she abrogated her responsibilities as a Company Director were unfounded and unfair, especially in light of information that was available to them publically or provided by her.

78.12 The Second Respondent acknowledged that as principals of Tandem the Respondents had additional duties derived from SRA Handbook and under the SAR. She was fully aware of them. 2011 was the time when English legal system was undergoing radical reforms and the regulation of the profession had undergone radical changes with both "outcome-focused regulation" (SRA Handbook Version 1) and fully-revised Account Rules being introduced in September to December 2011. From what the Second Respondent recollected, even seasoned principals were unsure how all this would unfold. Numerous provisions were transitional.

78.13 By February 2012 the Second Respondent had already stopped dealing with client matters to concentrate on HR and Lexcel compliance. It was agreed with the First Respondent that, considering how much the Second Respondent still needed to learn, the Company would be better served if she kept herself informed of Tandem's affairs and financial matters at regular Management Meetings, so she could draw from the expertise of others. The Second Respondent had been proposed as the Compliance Officer for Legal Practice ("COLP") for Tandem and proposed the First Respondent as the firm's Compliance Officer for Finance and Administration ("COFA"). However, whilst she made the proposals in 2012 the appointments were delayed by the Applicant investigation until about the time of transfer of business to AVH LLP. In the meanwhile the Second Respondent did her best to act as the Toolkit

recommended a COLP should. The First Respondent had his toolkit and did provide extensive training to staff on the SAR.

78.14 The Second Respondent denied that she just left matters to the First Respondent. She designed and implemented policies and procedures in Tandem whereby people who are more experienced than her, would be fully trained and feel supported by both of the Directors. Training those experienced Solicitors allowed them to supervise the First Respondent's conduct and they had an obligation to report to her if they suspected that anything he did was improper.

78.15 Apart from numerous requests for documents that the FIO addressed to the First Respondent, she attended Tandem Preston offices on many occasions, as follows: 26 – 28 June 2012 (immediately after Mr AL's visit); 12 July 2012; 8-10 August 2012; 12-13 September 2012 and 4 December 2012 (after Signey's acquisition). The Second Respondent considered that the number of attendances and the ever growing requests for documents from the First Respondent were staggering. This was especially the case considering their requests were aggravated by lack of prompt responses by the Applicant to Tandem's requests for guidance in relation to the perceived conflicts with client interests. The purpose of them requesting the documents was unclear. The Applicant had not co-operated with the First and Second Respondents, not the other way round. Co-operation meant both parties worked together to achieve a goal. If the goal was for the Applicant to investigate Tandem properly**,** the Applicant should have provided the First Respondent with guidance when he asked for it; not just repeating their demands for documents, regardless.

78.16 When the FIO attended the Second Respondent was always there, but the FIO totally ignored her. Instead, she dealt with Mr MF, the First Respondent, Ms VM, Mr XR, and Mr AN (Accountant) all of whom reported to the Second Respondent saying they were doing everything they could to provide the Applicant with documents. This left the Second Respondent with a reasonable impression that the FIO was given all the help and documents she could be given. This also left the Second Respondent with a reasonable assumption that there were no breaches of the SAR by the firm. Tandem had the last instalment of Axiom payment in October 2012. If something was wrong with the agreement, the FIO never flagged it to the Second Respondent.

78.17 The Second Respondent could not believe that the Applicant was now saying that they did not co-operate. She asked "Have they any understanding of how damaging to our work were their frequent visits, some of which lasting several days? Do they not appreciate that the firm's clients' work stood still in preparation and during those days when the Directors, the Head of Legal and Technical Practice, the heads or departments, all IT department staff and many Solicitors were channelled to assist The FIO with her requests? She would ask for documents and would collect those during her attendances. So, we organised and endured 9 days of her visits in 6 months… she collected documents and information every time she came. How can that be seen as non-cooperation?"

78.18 The FIO did not meet the Second Respondent. So, it was only reasonable for the Second Respondent to assume, she was given full co-operation by the firm. When perusing correspondence the FIO adduced with her Witness Statement she kept stating that she wrote to both Directors asking for disclosure. This was totally

inaccurate. Since receipt by the Second Respondent of the first s.44B Notice in June 2012, despite the First Respondent's absence on holiday, she had prepared all documents with Ms JM and they were submitted to the FIO. As the Second Respondent was excluded (by the First Respondent) from the first meeting with the FIO she was not aware of any further requests for information she had made at that meeting.

78.19 The FIO's first email (addressed to both Respondents) with a request for the response and allegation that we had "failed to provide" it, was dated 31 July 2012 (at 10:40 am). By 11:01 am the First Respondent replied raising an issue of conflict of interest and stated, "any Inspection of files can only therefore take place absent of documentation regarding merits and tactics". So, for the Second Respondent it was reasonable to assume this is what she wanted. The Second Respondent had by then already written to the Applicant notifying them of the firm's position, but received no response. There was also reference to ATE Insurance policies (Alpha or Frion). The Second Respondent did not deal with client cases for six months by then, it was delegated to Mr MF who was the person with whom the FIO corresponded.

78.20 There was no further correspondence which the FIO copied to the Second Respondent up to 21 September 2012. This was despite her attendance at Tandem on 9 August 2012. She corresponded with the First Respondent, Mr XR, Mr MF and Ms VM, who were evidently working on disclosure of documents. The Second Respondent was not invited to the meeting or copied to correspondence. The meeting note showed she spoke to the First Respondent and Mr MF. The Second Respondent could reasonably assume that the FIO felt her involvement was not necessary.

78.21 On 11 and 21 September 2012, the FIO sent the First Respondent a further request for some documents but merely copied it to the Second Respondent. The subject matter of those emails explained that they related to the information provided by the First Respondent during her visit, which the Second Respondent was not invited to attend.

78.22 There was then a further gap in communication until the FIO's email on 31 January 2013 at 16:53. This could have been because in his email dated 22 November 2012 at 14:12 the First Respondent stated:

> "I am about to see the consultant at the hospital about my [redacted]. Things are a little challenging right now with my [redacted]'s problems on one hand and your demands on the other. Funding is within my remit so Marina is not up to speed".

78.23 Looking at the emails exchanged between other staff members and the FIO she had the vast majority of her requests fulfilled. The difficulty was in the malfunctioning of Peppermint which was Tandem's customer relationship management platform. Also, the First Respondent lost some emails due to server changes.

78.24 In the First Respondent's reply at 13:23 on 1 February 2013, to the FIO's email of 31 January, in relation to clause 2.2 of PLFA No. 2. (that stated that the panel firm shall apply the proceeds of each loan towards payment of "Eligible Legal Expenses"), the First Respondent referred to legal advice he took from Mr MS of external

solicitors and that this advice was that the contracts can be varied "either expressly, orally and by clear course of dealings and the funders would be estopped from denying otherwise. It is not for the Applicant to determine this issue and, with respect, legal interpretation is outside its remit. It would be for the court to determine this, if relevant."

78.25 From the Second Respondent's point of view it was reasonable to assume that the advice the First Respondent took was sound. Especially based on what she knew of the interpretation of contracts.

78.26 There was no further correspondence sent or copied to the Second Respondent before the email of 27 February 2013 with a copy s.44B Notice. Based on that, how could the FIO state that both directors did not comply with her requests? From what the Second Respondent was copied to, she saw a totally different picture. She saw how Tandem staff spent weeks complying with these requests. It was evident that a large number of the Applicant's requests were unreasonable. Had the Second Respondent been aware of them at that time, with her ability to refer to PLC and the terms of the PLFA No. 2, she would have assisted the First Respondent in stating his case regarding clause 2.2 more eloquently. However, as the Second Respondent was contacted only three times in the entire period before the issue of the second s.44B notice in 28 February 2013, this created a situation where she was unable to understand the requests or the purpose and reasonably believed that Tandem staff were co-operating to the best of their ability.

78.27 In February 2013 the Second Respondent's husband was very ill. At that time there were Statutory Consultation meetings at Tandem. On Monday, 25 February 2013, the FIO called Tandem and there was a file note she presented, in which she records them talking about redundancies. Whilst the Second Respondent explained the HR procedure we were following in detail, the FIO did not ask a single question about disclosure.

78.28 The Second Respondent relied on the First Respondent to co-operate with the Applicant during that period. Also, she had not been contacted by the FIO until, on Wednesday 27 February 2013, the s.44B notice landed in her email inbox.

78.29 The Second Respondent had returned to work by then but worked shorter hours due to her family circumstances. Had she enquired, the FIO would have been told about this, as everybody in the firm knew.

78.30 It was not that the Second Respondent relied on the First Respondent to provide disclosure because (as the Applicant alleged) she abrogated her responsibilities as the principal of Tandem. The Second Respondent had no information from the Applicant to know the reasons for their investigation. There was correspondence at the beginning of February between the FIO and the First Respondent about funding and the fund that neither of them copied to her.

78.31 The Second Respondent had by then reasonably assumed that the Applicant was not interested in her views as they accepted she had none of the documents they needed. The First Respondent assured the Second Respondent he would reply. The Second Respondent took a few days sick at that time. When the next correspondence the Second Respondent saw from the FIO (on 14 March 2013) was to imply that she

did not respond, the Second Respondent wrote back to her to express her honest belief and said:

> "I believe the substantive response to your request is being handled by Andrew Lindsay".

78.32 This was not a case of abrogation of the Second Respondent's responsibilities, this was purely a case of her not having the documents requested; not having the First Respondent to consider them with (as he was in London or at the Manchester Office or Kenya) and the Second Respondent truly believing that the First Respondent, Mr MF, Ms VM, Mr XR, Mr AN, and the rest of the staff were dealing with the Applicant's requests whilst she concentrated on getting the redundancy procedures right and responding to Miss Woods' investigation. The Second Respondent was the HR Director.

78.33 According to the Second Respondent it had been confirmed by the Applicant that this allegation related to Allegations 2.2, 2.3 and 2.4. She believed that she had responded to those allegations. If the Tribunal required a further look at the diligence with which she complied with her responsibilities as a director and principal of Tandem, it would find those (with supporting evidence) in her Witness statement.

78.34 In 2014, the Insolvency Service, following its investigation of the Directors of Tandem, closed their case as unsubstantiated. In January 2017, the Liquidator issued at Companies House a notice of release of liquidators. This happened when there were no further issues to address. It was clear that despite the above evidence available to the Applicant in relation to Tandem, due to the Applicant having in its possession a complete copy of Tandem's Computer Server from 2013, the evidence pointing to the Respondents' innocence did not find its proper place in the Investigation by the FIO and it was only as a result of that biased investigation, that the Tribunal finds the allegations brought before it. The Second Respondent submitted that the case against her was never complex. Clear evidence was available to the Applicant from the start of her lack of culpability to the allegations.

78.35 The Second Respondent had been deceived by the First Respondent. She could not have done more given her position. Mr Tabachnik asked the Second Respondent whether as a director she had to speak up if she saw something going wrong. She agreed that she did but said that she did not see anything that was wrong. She had asked Ms JM about the accounts and had received reassurance. She had not had all the relevant information. There were things that worried the Second Respondent, which she tried to follow up on, but this was not sufficient for her to take action and resign her directorship.

78.36 The Second Respondent had been told that Tandem had a close relationship with the Axiom Fund and she could see how close it was on the facts. She did not accept that she should have asked more. She thought that the funding was in the best interests of her clients. There had been trust between the principles of the firm. She was the junior HR Director and she did her best. She had not asked to see documents. She had not known about the payment to Ms VM. She had known that the First Respondent had bought himself a car. She accepted that as a director it was her responsibility to make sure she saw all the bits of the jigsaw. She had not had access to the accounts. She had not been given control of the areas she was responsible for and that the

First Respondent had not allowed her control over recruitment. She had raised this and he had given her everything she needed in this area.

78.37 The Second Respondent had authorised the transfer to CEL of £1.7m without knowing the precise details. She had emailed the First Respondent stating "I am not aware of the details of the transaction but if you give the order – I follow". She would have known something prior to authoring the transfer. However she accepted that she did not have an explanation as to why the monies were being transferred before she signed the instruction.

78.38 Ms JM's oral evidence was that the Second Respondent had read the rules and looked at governance and what was required to put in place policies and procedures and did her utmost to make it happen. The Second Respondent was not fully up to speed but was getting there. Ms JM's observation was that the First Respondent had been controlling around financial information and had bullied the Second Respondent and threatened her with her job. She estimated that she observed this type of behaviour from the First Respondent on a weekly basis whilst at the firm.

78.39 The First Respondent had prevented Ms JM having all of the financial information she needed to do her job, when she asked him for information the "shutters" were put up and after a short period (approximately two and half months) Ms JM had decided to resign. Ms JM's own situation meant she was able to walk away. She did not think that the Second Respondent's family situation enabled her to do so.

78.40 The Second Respondent and Ms JM had discussed the Second Respondent's position and had had a conversation that was not as direct as Ms JM telling the Second Respondent her duties as a director but was along similar lines namely that the Second Respondent was inexperienced, that she was getting herself into difficulties and should consider resigning.

78.41 Ms JM had seen the Second Respondent crying. Ms JM had not seen the PFLA. If she had and had seen that the funding had been provided for one purpose and was being used for another she would have asked the Respondents about it as a first step and as a second step gone to her own Institute to find out about her professional responsibilities. The Second Respondent had asked Ms JM whether she had anything to worry about and Ms JM had told her that from what she could see there was nothing wrong with the "financials" but she did not have fully visibility so could not confirm fully.

78.42 In submissions the Second Respondent said that based on what she had said in evidence she accepted that she had abrogated her responsibilities in as far as the Signey Asset Transfer Agreement was concerned. She could not believe that she had not asked to see the Litigation Funding Agreement. She should have required the First Respondent to provide it. The Second Respondent then changed her position. On the basis of one narrow mistake, which was to trust the First Respondent to do his job as a director, she considered that as HR Director she had fulfilled her responsibilities to the best possible level.

The Tribunal's Decision

78.43 The Tribunal found that the Second Respondent abrogated her responsibilities as director and principal of Tandem. She allowed her independence to be compromised in breach of Principle 3. She did what the First Respondent told her to do, whether or not she believed that to be right. That was evidenced by both the Signey redundancy exercise and the transfer to CEL where she authorised the transfer of £1,700,000 stating "I am not aware of the details of the transaction but if you give the order – I follow".

78.44 The Second Respondent may only have been a 5% shareholder in the firm but she was a director. It was irrelevant that she described herself as HR Director, she was director of the firm. As an employment lawyer she would have been fully aware of the responsibilities of a director. She was putting policies and procedure in place to ensure the effective running of the firm. However she did not carry her role in the business effectively or in accordance with proper governance and sound financial and risk management principles in breach of Principle 8.

78.45 The public would expect a director to fulfil that role effectively and efficiently. It was clear from the fact that Ms JM resigned from the role as financial controller after such a short period that the First Respondent controlled access to information. It was also clear from Ms JM's evidence that he bullied the Second Respondent and threatened her with her job. If a director was prevented from carrying out her responsibilities as a director the public would expect that director to resign and/or seek advice from her regulator as to what she should do. The Second Respondent did neither of those things. She did not behave in a way that maintained the trust that the public placed in her and in the provision of legal services in breach of Principle 6. Allegation 2.5 was proved beyond reasonable doubt.

79. **Allegation 3 - In respect of the First Respondent, it was alleged that he acted dishonestly in relation to each or all of the matters set out at paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, 1.8, 1.9, 1.10, 1.11 and 1.12. For the avoidance of doubt, if he was not dishonest (as alleged) he was reckless (and in respect of paragraph 1.1 in the further alternative, he was careless). It was also alleged that the First Respondent acted recklessly in relation to the matters set out at paragraph 1.7. In respect of the Second Respondent, it was alleged that she acted recklessly in relation to the matters set out at paragraph 2.4. The Allegations do not, however, depend on the Tribunal making a finding of dishonesty or recklessness.**

79.1 This allegation was not addressed separately during the course of the hearing. The Tribunal's findings in respect of Allegation 3 are included with each of the individual allegations where the matters set out in Allegation 3 were also pleaded.

Previous Disciplinary Matters

80. There were no previous disciplinary matters in respect of the Second Respondent.

81. There was one previous matter in respect of the First Respondent (Tribunal Case No. 9249-2005). In those proceedings allegations (a), (b) and (e) below were admitted and found substantiated and allegation (d) was denied but found substantiated. A number

of other allegations were denied found not proved. In those proceedings, the First Respondent was fined £2,500 and ordered to pay costs in the sum of £10,600.

82. The allegations found proved were:

The Solicitors Accounts Rules 1991

(a) The Respondent acted in breach of the provisions of Rules 7 and 8 in that he drew from clients account monies other than in accordance with the provisions of the said Rules and utilised the same for his own or alternatively for the benefit of other clients not entitled thereto.

The Solicitors Accounts Rules 1998

(b) The Respondent has acted in breach of:-

(i) Rules in relation to his responsibility to comply with the said Rules;

(ii) Rule 7 in breach of his duty to remedy breaches;

(iii) Rule 19 in relation to the receipt and transfer of costs;

(iv) Rule 20 in respect of mixed payment;

(v) Rule 21 treatment of payments to Legal Aid Practitioners and

(vi) Rule 32, the requirement to keep proper accounting records.

(d) The Respondent acted in breach of Practice Rule 3 of the Solicitors Practice Rules 1998 as to the treatment of introductions and referrals and as hereinafter appears.

(e) The Respondent acted in breach of Practice Rule 13 of the Solicitors Practice Rules 1990 in failing to exercise proper supervision and as hereinafter appears.

Mitigation

The First Respondent

83. The First Respondent submitted an email dated 29 November 2017 by way of mitigation. The Tribunal read the email in detail. It contained information in respect of the First Respondent's health and in relation to his family members which the Tribunal fully considered but is not repeated in this Judgment.

84. The First Respondent stated that he became a solicitor at the age of thirty two largely to assist brain injury victims. He successfully represented close to eighty brain injured clients, including approximately twenty young children/babies who were brain injured at birth whose lives, and the lives of their parents, he made a considerable difference to, which he was hugely proud of and would continue to be proud of.

85. Tandem Law was set up to achieve certain aims; mainly to become a professional negligence specialist practice but more particularly to do private law and public law brain injury and special needs work, including pro bono. The Axiom Fund represented a major opportunity to create something really worthwhile. The First Respondent had done much pro bono work in relation to many worthy causes, including Judicial Reviews in relation to special educational and health needs. In one case, the First Respondent had acted for a client for sixteen years in relation to his quest for justice arising out of the death of his ten year old son. The First Respondent said that in that case he orchestrated pro bono appeals to the ECHR, two official enquiries into questionable police conduct, petitioning the Attorney General to order an inquest many years after the death, plus many more, all pro bono. He calculated at one stage that he had done over 1000 hours of pro bono work over sixteen years on that case alone. The First Respondent submitted that he had done literally thousands of pro bono hours in his career, largely through his connections with disability and the institutions he was connected with.

86. The First Respondent stated that notwithstanding whatever findings the Tribunal made in relation to this matter, he was good and conscientious at his job and added considerable value to the lives of vulnerable and often disenfranchised members of society when it mattered. He said that he could send the Tribunal many references in relation to his work, but saw no point because it would be a waste of the Tribunal's time; it would make no difference to sanction. The First Respondent said that he would leave the profession proud and knowing he had made a difference in hugely important ways.

87. The First Respondent also stated that Tandem's workload was extremely well organised and ordered, according to excellent case systems and workflows, and he believed its clients were well served throughout by those systems and especially its talented and well trained staff. This case was not about Tandem's service to its clients per se. It was, broadly speaking, about the ramifications of a commercial funding agreement.

88. The First Respondent anticipated that the Tribunal would strike him off. That did not mean to say he accepted it and he considered that the Tribunal was wrong to ignore the clear medical evidence and the need for a stay, which he said led to an unfair trial.

89. As far as that commercial agreement was concerned, the First Respondent had maintained throughout that the original agreement was a mistake and was subsequently varied to provide for drawdowns to be paid into office account to be used for the purposes stated in Tandem's application for funding (as evidenced by its spreadsheet forecasts and as assessed and recommended by Baker Tilley, the funds due diligence accountants) given that Tandem was a new firm and had no income for a considerable period of time other than the funding. He did not resile from that position, since it was a fundamental tenet of English law that agreements may be subsequently varied and amended. He believed that the Second Respondent had drawn to the Tribunal's attention the existence of the second written funding agreement, which was designed to replace the first one, and which contained hand written amendments confirming the monies were to be paid into office account and were for general purposes (again, as per the original forecasts upon which the application for funding was made). The First Respondent said that he had been told that this agreement was not made available to the Tribunal and that it was in the

possession of the fund managers. His point was that, by way of mitigation, and possibly in support of any subsequent appeal, that there had been no attempt at investigation by the Applicant into this with the fund's managers and therefore a relevant document, setting out the variation/amendment, existed which was not before the Tribunal.

90. In his email dated 27 November 2017 the First Respondent had stated that he did not agree with a lot of what the Second Respondent had said but understood her need to say it.

The Second Respondent

91. The Second Respondent was the HR Director of Tandem and 5% shareholder. When, in August 2011, Tandem was authorised as a solicitors' firm and started trading, she was exactly 3 years post qualification as a solicitor, having qualified late in life in August 2008. The Second Respondent was originally Russian. She immigrated to the UK in 1995 to follow her English husband. English is her second language. She completed her academic stage of qualifying as a solicitor (LLB Hons, LPC, LLM (Employment)) in Preston studying full-time whilst looking after her three children in the period from 2001 to 2006. Her dream of becoming a solicitor placed significant financial burden on the family. This burden escalated in 2007 to 2009 when she was made redundant twice. Small solicitors firms in Preston area were struggling to survive. Her family was also affected by her husband's deteriorating health.

92. In 2010-2011, the Second Respondent was employed by a local firm assisting with civil litigation. The First Respondent heard she was looking for employment work and, in 2011, he instructed the firm as a Consultant to work on a complex employment case. The offer to work as an HR Director at Tandem was made as a result of the high standard of her conduct in that case. She had two job offers. One was from a mid-size solicitors' firm to market from scratch their employment department in Preston. The other, from the First Respondent to be the HR Director and 5% shareholder of a start-up firm (Tandem). She made her decision to go with his offer specifically because of references from Mr NG (her then employer) about the First Respondent as a solicitor, principal and as a person. She knew there was no adverse information about him on the Law Society website. She knew because she had duly checked it. The Second Respondent said that one of the experienced people who knew about the First Respondent's previous disciplinary matter should have told her but they did not and the first she knew of this was in these proceedings.

93. The Second Respondent addressed the Tribunal as to the matters set out in the Guidance Note on Sanctions (5th Edition-December 2016). The Tribunal was required to assess the seriousness of her misconduct and her culpability. She had relied on the First Respondent whom she thought she could trust but he had breached his position of trust towards her. She had not acted in breach of a position of trust. The Second Respondent accepted that she had had responsibility for the circumstances as a principal but she did not have any direct control over what had happened, not because of her own failings but because of the First Respondent's actions. The Tribunal was aware of her lack of experience, particularly when compared to the First Respondent's experience.

94. In terms of the harm caused it was the Second Respondent's position that even if she had done more it would not have made any difference. The First Respondent would have still done exactly the same thing. She denied that she had diminished the trust that the public placed in the profession. Although the Tribunal might be of a different view she had not departed from the standards of probity, integrity and trustworthiness expected of a solicitor. It was pretty clear that she had never intended for any harm to be caused.

95. In her view none of the aggravating factors applied. In terms of the period of time in relation to any misconduct she committed she submitted that this was limited to one or two days. One was when she had not specifically checked which account the First Respondent should pay the Axiom monies into. The other day was 30 October 2012 and the Signey allegation. These were two days five years ago. She had never taken advantage of a vulnerable person, she had never committed any wrong doing. She had not breached her material obligations to protect the public and the reputation of the profession. In fact she had been protecting her clients when she declined to give the Applicant certain documents. She did not believe that whatever she would have done would have made a difference.

96. In terms of mitigation she did not believe that there had been any loss to any person because of her as her input was negligible. She did not feel that she had committed misconduct at any time. She would never go into business with anyone as director again and most likely would never practice again. She had co-operated with the Applicant, for a five year period. In terms of personal mitigation her position was tragic. Her career had been ruined as a result of the first Respondent's actions, carelessness and lack of supervision. She had learnt her lesson, she would take a long time to come back from the position she was currently in. At the time the misconduct happened she had been affected by family circumstances, she should have not continued working for the firm and should have left. She had had no financial gain. She had been twenty five when she came to the country. She had never run a company before.

97. 2011 was the start of Outcome-focussed regulation. The profession did not know how this was going to apply. She had not been properly supervised. The First Respondent was the senior manager and he should have supervised her properly; not breached her trust.

98. The Second Respondent was deeply sorry that she had not complied with the rules and deeply regretted all that had happened. With the benefit of hindsight she should have resigned in 2012 but at the time she had no grounds for resigning. She wanted to stay working on compliance. This was the only real option available to her. She had not had enough information to know something was going on in the firm. The Applicant should have notified her and it did not.

99. In terms of sanction her culpability was low, the harm caused due to her was non-existent, there were no aggravating factors and all the mitigating factors applied. It would be disproportionate to impose a sanction. It would be unfair. She had not produced character references but referred the Tribunal to the Linkedin references within the papers and asked for Ms JM's statement to be treated as a reference.

Sanction

100. The Tribunal referred to its Guidance Note on Sanctions (5th Edition-December 2016) when considering sanction.

The First Respondent

101. In respect of the First Respondent the Tribunal decided that it would impose a sanction determined by the totality of the misconduct. In terms of the First Respondent's motivation for the misconduct he had said that he wanted to pursue professional negligence cases. Without the Axiom funding the firm would not have got off the ground. This may have been his motivation at the outset for setting up the firm and accepting the monies but things quickly spiralled into the First Respondent misdirecting himself as to the purposes of the funds and what they could be used for. He wanted to grow a successful, profitable law firm and ultimately this would have been financially beneficially to him. His actions were planned and sustained. There had been numerous drawdowns against the fund, together with the acquisition of Signey and paying away £1,700,000. He had acted in breach of a position of trust, in respect of his clients and the funders. He was a very experienced solicitor. He had entered into the Litigation Funding Agreement, he knew investors had loaned money for a particular purpose and he knew there were restrictions on how the funds could be used. He did not comply with those restrictions. He took advantage of his more junior partner. He deliberately mislead the regulator. His culpability was at the highest level

102. The firm's clients had in many cases instructed them in professional negligence claims against other solicitors. These clients were let down by two sets of solicitors which would have compounded the harm caused to the reputation of the profession as well as the impact on the individual clients concerned. The harm to the reputation of the profession in these circumstances was significant. There was harm caused to the investors in the Axiom fund who lost monies. There was harm caused to the Second Respondent. The First Respondent knew what the consequences of his actions would be. The harm appeared to have been intended but certainly might reasonably have been foreseen to be caused by the First Respondent's misconduct.

103. There were a number of aggravating factors, Dishonesty had been alleged and proved. The misconduct was deliberate, calculated and repeated. It continued over a period of time. The First Respondent had sought to conceal the wrongdoing. He had taking advantage of the Second Respondent's blind faith in him. He must have known that his conduct was in material breach of his obligations to protect the public and the reputation of the profession. He had previously appeared before the Tribunal. The extent of the impact on those affected by the misconduct could not be underestimated. There were no mitigating factors. His level of misconduct could best be described as total and utter. It was at the highest level of seriousness.

104. This was a case where dishonesty had been alleged and proved. Whilst the Tribunal started at the lowest possible sanction, namely No Order, it quickly moved through the lower level of sanctions including Reprimand, Restriction Order and Fine. A Suspension would not reflect the seriousness of the misconduct nor protect both the public and the reputation of the profession.

105. The Tribunal determined that the seriousness of the misconduct was at the highest level; such that a lesser sanction than strike-off was inappropriate. Strike-off was necessary to protect the public and the reputation of the profession. The First Respondent had not pleaded exceptional circumstances. He had put forward personal mitigation in respect of his health and his family circumstances. The Tribunal did not find any exceptional circumstances. Given the severity of the First Respondent's misconduct this was not a case where the personal mitigation made striking him off unjust. The Tribunal ordered that the First Respondent's name be stuck off the Roll of Solicitors.

The Second Respondent

106. In respect of the Second Respondent the Tribunal determined that it would impose a sanction determined by the totality of the misconduct. However, given the Second Respondent's lack of insight the Tribunal wished to set out in respect of each allegation its conclusion on culpability.

Allegation 2.1 – Culpability

107. The Second Respondent's actions were not calculated. Her misconduct arose due to her inactivity. She should have looked into what was going on with a great deal more vigour. She should have insisted on having more information. She should have wanted to know more. The situation went on for some time as the firm drew down funds from Axiom from December 2011 until October 2012. There was almost £6,000,000 of client money involved. The Second Respondent had been happy to be a director. She had been responsible for putting policies and procedures into place, she had been in effect the COLP and had been making an application for Lexcel. She should not have involved herself in something as significant as the loan from Axiom without having all of the information and ensuring the monies were handled correctly. She had acted in breach of a position of trust as she was a principal and director. She had responsibility.

108. Although the Second Respondent lacked experience of being a director and was relatively newly qualified she had thought she had sufficient experience to take on the role. The Tribunal accepted that the First Respondent would have gone ahead with the loan and use of the monies even if challenged but that was not the point. The Second Respondent had failed to do what she should have done. The Second Respondent was aware that the First Respondent had used some of the monies to buy a car. She had had enough concerns to ask Ms JM for reassurance. She had known that Ms JM had resigned after two and a half months as she was not able to do her job properly. She had gone to management meetings. She had discovered what others were being paid. She knew the money was being spent.

Allegation 2.2 – Culpability

109. The Second Respondent knew what should be done. She gave the right advice. When the First Respondent did not take this advice she failed to withdrawn from the process. Her misconduct may not have been planned but she had not done what she should have done and acted in breach of a position of trust, especially as she was acting as Signey's employment solicitor. She made the choice to go along with the

way in which the First Respondent wanted things done and to that extent had direct control of the circumstances giving rise to the misconduct.

Allegation 2.3 – Culpability

110. Tandem took on Signey's assets and increased its liability. The SRA had already commenced an inspection of the firm at the time. Ms JM had resigned and yet the Second Respondent continued to do what the First Respondent asked of her. She had acknowledged that she had not seen the Litigation Funding Agreement before she signed the Asset Transfer Agreement. She should have insisted on seeing that document. The seriousness of the situation was getting worse and worse and yet the Second Respondent did not do anything to either stand up to the First Respondent or to take some form of action that meant she was not complicit in the wrong that was being done.

Allegation 2.4 – Culpability

111. The Second Respondent had argued that she did what she did in order to protect her clients' interests. That was an untenable argument. However newly qualified the Second Respondent was she would have known that she had a duty to co-operate with her regulator. She relied on the First Respondent and the misconduct arose through her omissions rather than commission. She was a director and principal. She was in a position of trust. She made the decision to rely on the First Respondent and to continue to rely on him when she could see he was not responding as required. To that extent she had direct control of the circumstances giving rise to the misconduct. The onus was on her to co-operate with the Applicant. Even if she did not have documents she could still have co-operated with the regulator.

Allegation 2.5 – Culpability

112. The Second Respondent had a duty as a director to be robust and to speak up. She did neither. Ms JM had raised the Second Respondent's position with her. The Second Respondent was the HR director and held herself out as an expert in HR but she did not do what she should have done, again this was a breach of a position of trust. It may not have been planned misconduct but it was misconduct nonetheless. The Second Respondent had known more about what was going on than she led the Tribunal to believe. Her actions meant that it had taken longer for the First Respondent's misconduct to be discovered. Her culpability was now at the top end. She was on notice that the Applicant was investigating, she knew Ms JM had resigned, she knew the Axiom Fund was suspended in late October 2012 and she authorised the actual transfer of the £1,700,00 to CEL/CEIM in January 2013 without knowing the reason for the transfer. She did not question, she blindly followed the First Respondent.

Harm

113. In terms of harm the investors in the Axiom Fund lost money, there was harm caused to the reputation of the profession. The firm had numerous cases and clients did not have their cases progressed. Those who were already claiming against solicitors for professional negligence had their confidence in the profession dented still further. The Second Respondent had lacked integrity and fallen below the standards of integrity,

probity and trustworthiness expected of a solicitor. The harm may not have been intended but it was reasonably foreseeable. The facts underlying Allegation 2.3 demonstrated further harm to the Axiom investors. More of their monies were lost. Further Axiom funds were lost by the transfer of the £1,700,000 to CEL/CEIM as not all of these monies were repaid to Tandem.

114. In terms of Allegation 2.2 there was harm caused to those who were made redundant without the correct statutory processes being followed. Whilst this would have been unpleasant for them the harm was not particularly serious. There was also risk of harm to the reputation of the profession from an employment solicitor condoning the incorrect procedure being followed due to pressure from the First Respondent.

115. The Second Respondent's failure to co-operate with her regulator and the abrogation of her responsibilities as a director would have at the very least harmed public trust in solicitors and harmed the reputation of the profession. How could the public trust a solicitor who did not acknowledge the authority of the regulator.

Aggravating Factors

116. The misconduct in respect of Allegations 2.1, 2.4 and 2.5 had continued over a period of time and was repeated.

Mitigating Factors

117. The Second Respondent only had three years post qualification experience. She had been bullied by the First Respondent. She had had a previously unblemished career.

Overall seriousness of the misconduct

118. The Second Respondent should have done one of two things. She should have stood up to the First Respondent or she should have walked away. She did neither. She was clearly ambitious. She had no or very little insight into her actions and responsibilities. The misconduct in respect of each allegation was significantly serious. The allegations were different but it could not be said that one was less serious than the other. Cumulatively the Second Respondent's course of conduct resulted in her committing serious professional misconduct which, whilst not at the highest end of the spectrum, was still significantly serious. She had repeatedly failed to stand up to the First Respondent and exercise independent judgement.

Sanction

119. The Tribunal assessed the appropriate sanction to impose. In doing so it bore in mind that the Second Respondent had been bullied, lied to and manipulated by the First Respondent. However, it also had to consider the Second Respondent's almost complete lack of insight as to her own culpability.

120. No Order was not an appropriate sanction. The Second Respondent's culpability was not low and the seriousness of the misconduct was not low either. A Reprimand was not appropriate, a sanction above the lowest level was required and the protection of the public and the reputation of the profession required a greater sanction. The protection of the public and the reputation of the profession also meant that a Fine

was insufficient sanction. Even with the imposition of a Restriction Order the allegations found proved meant that this was not an appropriate sanction.

121. There was a need to protect the public and the reputation of the profession. Public confidence in the profession demanded a significant sanction. The Second Respondent's lack of insight was such as to call into question her continued ability to practise appropriately. Her misconduct had been serious. The Second Respondent was not currently practising as a solicitor but had she been there would have been a need for her to be removed from practice. Whilst sanction was, of course, to an extent about imposing a punishment it was also to reflect the seriousness of the misconduct. In this case the Second Respondent's continued failure to understand her own responsibility for the misconduct found proved and to blame everyone else raised significant concerns about whether or not she should be able to practise as a solicitor. She had to recognise her own failings.

122. There was compelling personal mitigation given the First Respondent's conduct towards the Second Respondent. Whilst at the relevant time her experience was significant, it was not of the most substantial. The Tribunal considered that the Second Respondent may respond to training and personal development in a business context such that she no longer represented a material risk of harm to the public or the reputation of the profession. For those reasons the appropriate sanction was one of indefinite suspension.

123. Whilst this Division of the Tribunal could not bind any future Division of the Tribunal which was tasked with considering an application to terminate the indefinite suspension this Division did wish to identify for the Second Respondent the areas that it considered that she would need to address before any such application could be successful. The Tribunal considered that the Second Respondent needed to focus on practice management; the SAR; her fiduciary duties as a principal and director; her regulatory obligations; demonstrating experience of running a business with propriety and ethics; and practical training both in respect of the law but also running a business. It may assist her to work with a business mentor/coach and to undertake some form of accreditation. The Second Respondent would be well-advised to consider the Tribunal's Guidance Note on Other Powers of the Tribunal before making any such application.

Costs

<u>The Applicant's Position</u>

124. The Applicant applied for its costs against both Respondents. The Applicant applied for its costs to be summarily assessed.

125. Its application was that the First and Second Respondents should each individually pay the costs incurred in respect of their applications for a stay. These amounted to £25,317.60 in respect of the First Respondent and to £27,730.13 in respect of the Second Respondent.

126. Both the First and Second Respondents' applications for a stay had failed. The Applicant had incurred significant costs because of the way in which the Respondents had conducted those applications. The First Respondent had raised a number of

objections to the proceedings over a considerable period of time. There were no good reasons that the profession should pay the costs incurred because of the way the First Respondent had conducted the proceedings.

127. The First Respondent had now suggested that he was of limited means. He had not complied with the Tribunal's directions in respect of producing evidence of his means. The Tribunal had found a number of allegations of dishonesty proved against the First Respondent and he had provided no documentary evidence in respect of his means. The Applicant had not had an opportunity to make enquiries in respect of what the First Respondent said because the information had been provided at such a late stage. His financial information needed to be "taken with a pinch of salt" and be disregarded. The Applicant did not consider that any costs order should not be anything other than immediately enforceable. If a costs order was made the Applicant would only seek to enforce it as far as was economical in all of the circumstances.

128. There was no good reason why the Second Respondent should not pay 100% of the assessed costs in relation to her application for a stay. That application had failed. She had made serious allegations against the FIO which had had to be addressed. This had incurred costs and considerable time. Neither Respondent had co-operated with the Applicant. The Tribunal could form a view of the reasonableness of the Second Respondent's conduct in respect of the October 2017 hearing.

129. The Second Respondent had inappropriately referred to without prejudice discussion and correspondence. She should not have done so. She was a solicitor and understood the premise of without prejudice. The Tribunal was invited to disregard the information that the Second Respondent had put before it in this regard.

130. Excluding the costs of the stay the remaining costs in respect of the proceedings totalled £99,009.65 having been reduced from £103,467.65 as set out in the costs schedule filed and served in advance of the hearing. The figure had been reduced as the hearing did not last the full eight days. The Applicant's position was that 100% of the assessed costs should be paid by the First Respondent and only if he did not pay the full amount should the Second Respondent be jointly and severally liable for broadly a third of this figure (35%). This took into account the fact that there were more allegations against the First Respondent.

131. The Applicant acknowledged that two and a half days of the hearing had related to the case against the Second Respondent. There was overlap between the allegations that the Second Respondent faced and those against the First Respondent. The majority of the allegations, including all of the allegations of dishonesty, had been made against the First Respondent. The Applicant had not had a "free ride" as suggested by the First Respondent. The Applicant was fully prepared for a contested hearing, it was not clear until the commencement of the hearing that the First Respondent was not going to attend.

132. The Second Respondent had served a schedule of means. The Applicant was familiar with dealing with respondents who stated that they did not have the funds available to pay the costs awarded. The Applicant noted that the Second Respondent had previously been able to find the funds to pay for a QC.

The First Respondent's Position

133. In his email dated 29 November 2017 the First Respondent stated that in any event, he ought not to be responsible for any costs attributable to the Second Respondent. She had defended this case in her own way outside of his control or influence. The Applicant's costs should therefore be apportioned between the parties. In view of the amount claimed he believed that they should be subject to formal assessment, as far as costs attributable to him were concerned, since they were, in his submission, grossly disproportionate in a case which, on the merits, has not been challenged at all by him. In other words the Applicant had essentially had a "free ride".

134. The First Respondent also believed it would be in the interests of the Applicant for Russell Cooke's costs to be formally assessed, to ensure they are not going to be potentially liable (in the event he could not pay) for excessive costs. By way of illustration the First Respondent referred to previous High Court proceedings brought by Russell Cooke against him in 2013 when they sought an order for disclosure of information/documents. He had very quickly agreed to an order following the issue of proceedings notwithstanding which they claimed costs well in excess of £50,000 (if he recalled correctly) which the First Respondent stated that they agreed to reduce to circa £32,000, being approximately a 45% reduction.

135. The First Respondent stated that he was in no position to pay any order for costs in a lump sum. He had made his financial position clear to the Applicant previously. The First Respondent had not worked since June 2013 and from then until his sixtieth birthday and nominated retirement date was in receipt of private health insurance at the rate of £3,000 per month. This expired when he reached his nominated retirement date. The First Respondent had cashed in a private pension policy in the net sum of £27,000 to fund living expenses in April 2017 which had now all gone. He had no other pensions. The First Respondent stated that he had no income other than monies being loaned to him monthly to make ends meet. His ex-wife had her own income and supported him to some extent.

136. The First Respondent stated that he had no capital or capital assets, save for a 5% share of property owned by his ex-wife (since 2009) which was worth circa £350,000 with an outstanding interest only mortgage of £200,000. The First Respondent currently lived at that address due to family issues but since 2009 had lived variously at different addresses. He had not inherited any money or assets nor was he likely to do so.

137. In any event, since he wished to appeal, he asked that any order relating to directions for payment of any specified sum, whether in total or by way of interim payment, be deferred for as long as his time for appealing remained open and that, in the event an appeal was lodged in time, any such order for payment be stayed pending the outcome of the appeal. If the First Respondent decided not to appeal, he wanted the opportunity to make application for payment over time, in relation to assessed costs, according to his financial circumstances which he said that he would more formally address perhaps in accordance with specific directions given by the Tribunal as to how it wished him to so address his financial position. The alternative would be bankruptcy which would not assist the Applicant, since there were no assets. The First Respondent submitted that it would, frankly, be easier for him to be made

bankrupt, but it may be more judicious to allow him the opportunity to address it in the way he had indicated.

The Second Respondent's Position – Prior to the Tribunal's findings

138. In an email dated 27 November 2017 the Second Respondent sought a costs order against the Applicant. She submitted that the proceedings were brought by the Applicant with a five year delay. If there was public interest in pursuing the First Respondent, on evidence available to the Applicant, there was no public interest whatsoever in pursuing her. The allegations should be seen by the Tribunal as they were, totally unsubstantiated. The Applicant could use the best Leading Counsel and a top regulatory firm to bolster their feeble chances of success but regardless of mounds of "evidence", one thing was obvious: it was hard to produce a viable case against the innocent Respondent.

139. The Second Respondent requested the Tribunal to make a costs order against the Applicant. This costs order would not compensate her for the years of hell living under the stigma of investigation, for weeks of prioritising the responses to the Applicant to the needs of her clients and her family. The investigation of Tandem started in June 2012 and it had been going on to the end of 2017. Both Respondents struggled with ability to finance their legal representation and largely acted as litigants-in-person.

140. The Second Respondent applied for the Tribunal to order summary assessment of costs in respect of the fees and charges and in respect of the unreasonable stance the Applicant had taken to date in response to her reasonable offers of settlement, made "without prejudice save as to costs". The Second Respondent had supplied the Tribunal with a schedule of losses, which included expenses incurred by her whilst attending the Tribunal and the cost of her advice from counsel. The sum was staggering for somebody in her dire position.

The Second Respondent's Position – After the Tribunal's Findings

141. The Second Respondent made a number of submissions as to costs in an email dated 28 November 2017 which was sent after she had been told the Tribunal's findings. Although the contents of that email are not set out in full in this Judgment the Tribunal read the email and noted all of the particular points made. These included that the fees claimed were not reasonable or proportionate; and a request that the Tribunal consider what she perceived to be the failures of the FIO and the culpability of the First Respondent for her misconduct. She asked the Tribunal to summarily assess costs.

142. The Second Respondent also made oral submissions on 29 November 2017. She stated that the First Respondent should pay 100% of the costs of the proceedings. Had it not been for his conduct there would not have been proceedings. She did not accept that she should be made liable for part of the costs. Her attendance at the Tribunal had been of benefit to the First Respondent. Without it he would not have had any ability to put forward his position. It was not reasonable in her circumstances for the Tribunal to make her responsible for any costs, no costs had been incurred directly due to her misconduct.

143. The Second Respondent's application had been in respect of delay and abuse of process, her human rights had been breached. The Tribunal had heard the FIO's evidence and seen the contradictory evidence, including from Ms JM. In the two to three weeks since 24 October 2017 further materials had been disclosed, it was the Second Respondent's position that the outcome of the October hearing had in fact assisted the conduct of the November hearing. The application she had made would not have been necessary if the First Respondent had not behaved as he did. The points that the Second Respondent had raised about the transcript of the interview were correct as had been shown by Jennifer Poole's statement. This work had not been necessary. The Applicant should have trusted what she was saying.

144. The Second Respondent had had limited legal advice, the correspondence that the Applicant objected to her making reference to was marked without prejudice save as to costs. She had had to borrow money for her legal advice from her business. The costs of the Applicant's QC were considerably more than the costs of her own QC. The Tribunal needed to consider her statement of means.

145. The Tribunal also needed to consider the question of proportionality. The Second Respondent had not been able to practise as a solicitor for five years due to the investigation and proceedings. She had not been able to find a job as a solicitor since 2013. She had started her own company and worked from home.

146. The Second Respondent did not wish to pursue a costs application against the Applicant but wanted the Tribunal to make an order that the First Respondent pay her costs because he had caused all of this.

<u>The Tribunal's Decision – Both Respondents</u>

147. The Tribunal decided that it would summarily assess the costs. It had heard the case over eight days and had read all the materials before it. The Tribunal was an expert Tribunal and routinely assessed costs. To refer the quantum of costs for detailed assessment would incur further delay and costs.

148. The Tribunal did not consider that an order that the Second Respondent be jointly and severally liable for 35% of the costs of the main proceedings if the First Respondent did not pay 100% of those costs was appropriate. The Second Respondent needed closure, she needed to know what costs she had to pay. It would not be fair to her if she had to wait and see whether the Applicant was able to obtain its costs from the First Respondent before knowing what costs she was facing.

149. The Tribunal considered that if the Second Respondent had not conducted the substantive hearing as she had it would have concluded in three days saving the Applicant approximately £10,000 (plus VAT) in refreshers and £2,500 (plus VAT) in the costs of Russell Cooke attending the hearing. In light of this the Tribunal determined that it was reasonable and just for the First Respondent to pay 85% of the costs of the proceedings as a whole and the Second Respondent to pay 15%. These costs should not be joint and several for the reasons expressed above.

150. The Tribunal considered the costs schedule overall. The way in which the hearing bundle had been paginated had not been helpful. There were several tabs all containing the same page numbers. Given this the Tribunal made a small reduction

from the costs of preparing the hearing bundle and also deducted the costs of the transcript of the October 2017 hearing. This had been included in the hearing bundle but had not been referred to by the Applicant. Given the Tribunal's detailed Memorandum the need for the transcript was unclear. The deductions totalled £1299 and reduced the overall costs claimed from £99,009.65 to £97,710.65. Of this sum the First Respondent should pay £83,054.05 and the Second Respondent £14,656.60 subject to any deduction that the Tribunal decided was appropriate due to the Respondents' means.

The Tribunal's Decision – the First Respondent

151. Having determined that the First Respondent should pay £83,054.05 of the costs of the main proceedings the Tribunal proceeded to consider the costs of the stay application and finally whether or not there should be any reduction due to the First Respondent's means.

152. The Applicant had applied for its costs of the application for a stay in the sum of £25,317.60. The application for a stay had not succeeded. These costs were entirely attributable to the First Respondent's conduct and the way in which he had "engaged" with the proceedings. The Tribunal carefully considered the schedule of costs and determined that there were no reductions required, the costs had been reasonably incurred and were assessed in the sum sought.

153. The First Respondent had not produced any documentary evidence to support his assertions as to his means. He had not complied with the Tribunal's directions in respect of the production of such evidence. It was too late at this stage for him to ask to adduce evidence of his means before any costs order was made. There was no evidence that would justify an order that the costs were not to be enforced without leave of the Tribunal.

154. Given the way in which the First Respondent had conducted the proceedings and the uncertainty as to what he may or may not do next it was not appropriate for the payment of costs to be contingent on whether or not he decided to appeal. It would be a matter for the Applicant as to how and when it enforced its order for costs if the First Respondent did not pay.

155. The Tribunal determined that the First Respondent should pay £83,054.05 and £25,317.60 in respect of these proceedings. Accordingly, the Tribunal ordered that the First Respondent should pay the Applicant's costs in the sum of £108,371.65.

The Tribunal's Decision – the Second Respondent

156. Having determined that the Second Respondent should pay £14,656.65 of the costs of the main proceedings the Tribunal proceeded to consider the costs of the stay application and finally whether or not there should be any reduction due to the Second Respondent's means.

157. The Applicant had applied for its costs of the application for a stay in the sum of £27,730.13. These costs had been incurred because of the way in which the Second Respondent conducted the application and due to the application being made. That application had failed. The Tribunal scrutinised the costs schedule and reduced

them to £27,400 to reflect a deduction for the amount of time claimed for reviewing the Second Respondent's application. It was right and proper that the Second Respondent rather than the profession bear the costs of the application.

158. The Second Respondent had adduced evidence of her means. The Tribunal considered whether or not the costs order should be reduced due to her means in accordance with Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin). The Tribunal acknowledged that the Second Respondent had a modest income. Her ability to continue her current work had not been removed. She had a car with some value and had not produced any evidence to support her assertions in respect of the family home. In light of all of the circumstances the Tribunal did not consider that there should be a reduction due to her means. Nor did it consider that an order that the costs should not be enforced without leave of the Tribunal was appropriate. The Applicant was used to dealing with respondents in the Second Respondents position and it was far better that the payment of costs was dealt with without the need for further recourse to the Tribunal and the costs that that would incur.

159. The Tribunal determined that the Second Respondent should pay £14,656.60 and £27,730.13 in respect of these proceedings. Accordingly, the Tribunal ordered that the Second Respondent should pay the Applicant's costs in the sum of £42,056.60.

Statement of Full Order

160. The Tribunal Ordered that the Respondent, ANDREW LINDSAY, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £108,371.65.

161. The Tribunal Ordered that the Respondent, MARINA FRANKEL, solicitor, be suspended from practice as a solicitor for an indefinite period and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £42,056.60.

Dated this 9th day of January 2018
On behalf of the Tribunal

J. A. Astle
Chairman