The Respondent appealed to the High Court (Administrative Court) against the Tribunal's Order dated 2 May 2018. The appeal was heard by Lord Justice Green and Mrs Justice Carr DBE on 27 November 2018 (Judgment handed down on 24 January 2019). The appeal was dismissed. Maitland-Hudson v Solicitors Regulation Authority [2019] EWHC 67 (Admin)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11581-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ALEXIS MAITLAND HUDSON Respondent

Before:

Ms A. E. Banks (in the chair)
Mr G. Sydenham
Mr P. Hurley

Dates of Hearing:
15-31 January 2018, 26 February 2018, 3, 16, 17 and 20 April 2018 and 2 May 2018

Appearances

Mark Cunningham QC, barrister of Maitland Chambers, 7 Stone Buildings, Lincoln's Inn, London WC2A 3SZ and Edward Levey, barrister of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH instructed by Johanna Davies, solicitor of Bevan Brittan LLP, 1 Queen Street, Bristol, BS2 0HQ, for the Applicant.

The Respondent appeared in person and was not represented, save for 31 January 2018, 20 April 2018 and 2 May 2018 when he did not attend and was not represented. On 26 February 2018 and 3 April 2018 he was not in attendance but was represented limited to an application to adjourn by Peter Cadman, solicitor of Russell-Cooke LLP, 8 Bedford Row, London WC1R 4BX. On 16 April 2018 the Respondent was not present but was represented limited to an application to dismiss or adjourn in the alternative by Jonathan Cohen QC, barrister of Littleton Chambers, 3 Kings Bench Walk, Temple, London EC4Y 7HR.

JUDGMENT

Allegations

1. The Allegations made by the Applicant against the Respondent in the Rule 5 Statement were as follows:

1.1 The Respondent acted where there was a conflict (or a significant risk of a conflict) between his own interests and those of his clients and/or between the interests of different clients in respect of the following transactions (or any of them):

(1) The Loan Agreement between Sungate Holdings Limited ("Sungate"), Tranfeld Holdings Limited ("Tranfeld") and Elite Partners Limited ("EPL") dated 12 April 2010 (the "First EPL Loan");

(2) The Deed of Agreement between Sungate, Tranfeld and EPL dated 17 June 2010 (the "Second EPL Loan");

(3) The Deed of Sale between Mr Stephen Cosser and EPL dated 17 June 2010 (the "Deed of Sale");

(4) The Deed of Agreement between Sungate and EPL dated 7 September 2010 (the "Third EPL Loan"); and

(5) The Loan Agreement between Mr Cosser and EPL dated 26 January 2011 (the "Fourth EPL Loan"), together with the First to Third EPL Loans, the "EPL Loans".

By so acting, he acted contrary to Rules 1.02, 1.04, 1.06 and/or 3.01 of the Solicitors Code of Conduct 2007 (the "2007 Code").

1.2 In May 2011 he sought to enforce a judgment obtained against Mr Cosser in the Tribunal de Grande Instance de Nanterre dated 8 October 2009 (the "Nanterre Judgment") for the benefit of EPL in circumstances where there was a conflict (or a significant risk of a conflict) between his own interests and those of his client and/or between the interests of different clients. By so acting, he acted contrary to Rules 1.02, 1.04, 1.06 and/or 3.01 of the 2007 Code.

1.3 He used confidential information about his former client, Mr Cosser, and/or disclosed such information to Grosvenor Law LLP, the solicitors acting for EPL, contrary to (depending on when the disclosure took place):

(1) Rules 1.02, 1.04, 1.06 and/or 4.01 of the 2007 Code; and/or

(2) Principles 2, 4 and/or 6 of the SRA Principles 2011 (the "2011 Principles") and/or Outcome 4.1 of the SRA Code of Conduct 2011 (the "2011 Code").

1.4 He sought to take advantage of Mr Cosser:

(1) By seeking to enforce the Nanterre Judgment, contrary to Rules 1.02, 1.04, 1.06 and/or 10.01 of the 2007 Code; and/or

(2) By causing or permitting Mr Cosser to enter into a Settlement Agreement dated 9 November 2011 (the "Settlement Agreement") without the knowledge of his solicitors and/or on terms which were materially disadvantageous to him, thereby acting contrary to Principles 2 and/or 6 of the 2011 Principles and/or Outcome 11.1 of the 2011 Code.

1.5 By clause 4.1(c) of the Settlement Agreement, the Respondent sought to hinder or prevent Mr Cosser from making a complaint to the SRA in respect of his conduct, contrary to Principles 2 and/or 6 of the 2011 Principles and/or Outcome 10.7 of the 2011 Code.

1.6 The Respondent misled the SRA by making the false statements referred to in Paragraph 71 of the Rule 5 Statement, contrary to Principles 2, 6 and/or 7 of the 2011 Principles and/or Outcome 10.6 of the 2011 Code.

2. The Applicant alleged that the Respondent's conduct in relation to all of the Allegations (or any of them) was dishonest. However proof of dishonesty was not an essential ingredient of any of those Allegations.

3. The Applicant made the following additional Allegations against the Respondent in the Rule 7 Statement:

3.1 Allegation 1: The Respondent sent two identical letters on behalf of KK to TS on behalf of New Media dated 17 and 19 August 2009 respectively which he knew contained false statements designed to mislead VG and New Media.

3.2 Allegation 2: The Respondent provided advice and/or assistance in relation to the improper and/or unlawful Scheme.

3.3 Allegation 3(a): Following the implementation of the Scheme, on 1 October 2009 the Respondent sent an email (whether directly or indirectly) to TS which he knew to be misleading in that it deliberately failed to refer to the fact that the Dilution had taken place.

3.4 Allegation 3(b): Following the implementation of the Scheme, the Respondent sent a letter dated 16 October 2009 to VG's New York attorneys, Covington and Burling LLP, which he knew to be misleading in that it deliberately failed to refer to the fact that Dilution had taken place; and/or

3.5 Allegation 3(c): In early October 2009, the Respondent encouraged the Partnership to demand further payments from VG and/or failed to advise the Partnership not to demand further payments from him.

4. In relation to each of the Allegations in the Rule 7 Statement, it was alleged that the Respondent acted in breach of Rules 1.02 and/or 1.06 of the 2007 Code.

5. It was further alleged that the Respondent had acted dishonestly in relation to each of the Rule 7 Statement Allegations although proof of dishonesty was not a necessary ingredient of any of the allegations of professional misconduct. The allegation of dishonesty was made on the basis that the Respondent did not act honestly by the

ordinary standards of reasonable and honest people and that he knew he was not acting honestly by those standards.

Documents

6. The Tribunal considered all the documents including witness statements, exhibits, transcripts and written submissions presented by both parties, subject to where it had not permitted material to be adduced as set out in this Judgment.

Preliminary Matters

7. Reasonable adjustments/the Respondent's health

7.1 In the lead up to the hearing the Respondent had supplied the Tribunal with a number of documents relating to his health as follows:

- Letter from Dr MacGreevy, the Respondent's GP, dated 13 December 2017. This set out details of the Respondent's health problems and confirmed that he had been referred to a consultant psychiatrist, Dr Capstick.

- Letter from Dr MacGreevy dated 2 January 2018. This addressed the issue of the Respondent's involvement in these proceedings. The letter made recommendations as to how the hearing could be managed in light of the Respondent's health issues. Dr MacGreevy wrote "I would suggest that he is not asked to speak for longer than 90 minutes without a break. He should be allowed to speak sitting down rather than standing. I would hope that the hours of Tribunal would not exceed 10am-4pm with a break for lunch. These measures should ensure that my patient is able to comfortable [sic] manage himself during the process".

- Medical Certificate (original in French and English translation) from Dr Beaunier dated 5 January 2018. This confirmed that the Respondent was under his treatment and that his medical conditions "affect both his mental and physical well-being and need to be taken into account in periods of difficulty and stress such as legal proceedings".

7.2 The Tribunal noted the contents and conclusions of these documents. At the commencement of the hearing the Chairman indicated to the Respondent that the Tribunal's usual sitting hours were broadly consistent with the hours suggested by the Dr MacGreevy and that this would be accommodated. The Chairman indicated that she would take a break in proceedings at regular intervals and would be mindful of the 90-minute limit referred to by Dr MacGreevy. In addition, the Chairman made clear to the Respondent that if he required an additional break he should indicate this and it would be accommodated. The Tribunal, of its own volition, took breaks on occasions when the Respondent appeared to be tired or distressed. As with all cases before the Tribunal, the proceedings took place with all parties seated throughout.

7.3 In the course of the hearing the Tribunal did not start before 10am on any day. The Tribunal rose at 4pm or soon thereafter on each day save for Day 10 when Mr Cosser was giving his evidence. On that occasion the Tribunal rose at 5.25pm. Mr Cosser

was himself in very poor health and was unable to attend on any other day. He had been called by the Respondent and the Tribunal did not consider it appropriate to prevent Mr Cosser from giving evidence provided that he and the Respondent felt able to continue. The Tribunal offered the Respondent as many breaks as he required and at 17.25 the Respondent informed the Tribunal that he felt unable to continue, at which point the Tribunal rose.

7.4 The issue of the Respondent's health arose during the course of the hearing in relation to a number of specific applications and the Tribunal's decision in relation to these is set out below in respect of its rulings on those matters.

8. Respondent's Applications in relation to "Disputed French Documents"

8.1 Respondent's Submissions - The Respondent made a number of applications in relation to documents that were said to be subject of client confidentiality in France (the "Disputed French Documents"). The details of the Respondent's application were set out in a document sent to the Tribunal on 9 January 2018 which the Tribunal had read in advance of the hearing. The Respondent sought an order:

- Refusing the admission into the proceedings of the Disputed French Documents;
- Requiring the Applicant to return to the Respondent the Disputed French Documents;
- Declaring and/or recognising that the Respondent was bound by (or alternatively reasonably believed that he was bound by) the French obligations of confidentiality as described in the Opinions.

8.2 The Opinions to which the Respondent referred were:

- Opinion of Arnaud de Barthes de Montfort and Francois Berthod dated 25 April 2014
- Opinion of Francois Berthod dated 2 May 2014
- Opinion of Edourd Steru dated 11 September 2014
- Opinion of Bernard Cahen dated 22 December 2017.

8.3 The background to the application was that the Respondent had practised at the Paris bar since 1988. He had practised as Cabinet Maitland Hudson ("the Paris Firm") at the material times.

8.4 Between February 2010 and July 2013 he had also been a partner in Maitland Hudson and Co LLP ("the London Firm") with PD. In 2013 the Respondent became aware that PD had "hacked" the London Firm's IT system and cloned the hard drive on the Respondent's own PC in his London office, giving him access to the Respondent's Paris email account. The data obtained by PD including material from the Paris files had then been passed to the SRA and it was those documents to the Applicant was seeking to rely on in these proceedings.

8.5 The Respondent submitted that the law in France relating to client confidentiality was that it could not be waived, was absolute and was not time-limited. In addition the disclosure of confidential information by a person entrusted to maintain that confidentiality was a criminal offence punishable by 12 months imprisonment and a fine of €15,000. The Respondent submitted that the Applicant should not be permitted to rely on such documents as to do so would be a criminal offence as an accessory after the fact. The Respondent further submitted that even by reading the documents, the Applicant and the Tribunal would similarly be committing a criminal offence under French law.

8.6 The Respondent told the Tribunal that it was because of these considerations that he was unable to rely, for the purposes of advancing his defence to the Allegations, on documents which were covered by French legal professional privilege. The Respondent submitted that he was under an obligation to take all reasonable steps to secure the return of such documents and that he could not comment upon them or deploy them as this would not only be a criminal offence in France but would also be a violation of his professional obligations. The Respondent's former solicitors had put the SRA on notice in July 2013 of the difficulty with the documents and had proposed a solution. The SRA had sought to reach an agreement with PD's solicitors and in doing so had effectively given PD a veto over how the documents were to be dealt with. The SRA had initially said that they would not look at the documents and put them to one side but following pressure applied to the SRA by PD, they had commenced an investigation into the Respondent.

8.7 The Respondent submitted that any document taken from a file from the Paris Firm would be covered by French legal professional privilege. In this case the Applicant had "cherry picked" from approximately 28,000 emails. This issue was critical to the fairness of proceedings as the Applicant was relying on documents that they were not entitled to, but the Respondent found himself in a quandary because he could not produce similar documents as he was not allowed to. The Applicant had referred to advice from Mr Marembert but the Respondent invited the Tribunal to attach no weight to that advice as he was not an independent expert due to his involvement in proceedings against the Respondent.

8.8 Applicant's Submissions - The Applicant's submissions in response were contained within the Applicant's Skeleton Argument dated 12 January 2018, which the Tribunal had read in advance of the hearing.

8.9 Mr Cunningham opposed the Respondent's application to exclude the Disputed French Documents on the grounds of delay as well as on the merits of the application. The Tribunal was taken to directions made at Case Management Hearings. While the issue had been raised in correspondence for some time, as late as December 2017 there had still been no clarity as to whether the Respondent intended to make such an application.

8.10 Mr Cunningham submitted that the definition of documents that were the subject of legal professional privilege was restricted to documents emanating from a lawyer in his capacity as a lawyer. This was confirmed by the opinions upon which the Respondent relied. Mr Cunningham told the Tribunal that the authors of the Opinions had not looked at the documents. Mr Cunningham took the Tribunal to a number of

documents, during which time the Tribunal sat in private for reasons set out below. Mr Cunningham submitted that the privilege was not as extensive as the Respondent had submitted and indeed the Respondent had acknowledged that some of the documents which were said to fall in the category of Disputed French Documents should not in fact have been placed in that category. Mr Cunningham submitted that if the Applicant had not resisted the Respondent's application, documents could potentially have been excluded which should never have been the subject of the application.

8.11 Mr Cunningham submitted that all the Disputed French Documents were admissible and that there was no breach of French law, professional or criminal, by the Applicant's reliance on such documents or the Tribunal's consideration of them.

8.12 Mr Cunningham submitted that the Tribunal did not have jurisdiction to make an order requiring the Applicant to return the Disputed French Documents to the Respondent or to make a declaration about the Respondent's obligations under French law. Mr Cunningham told the Tribunal that PD, who had allegedly removed the Disputed French Documents in the first place, had not faced action of the sort described by the Respondent. The Respondent replied to this point by stating that matters had not yet concluded in that regard.

8.13 The Tribunal's Decision - The Tribunal considered the submissions made by both parties both orally and in writing.

8.14 The first part of the Respondent's application had been for an order refusing the admission into the proceedings of the Disputed French Documents. The correct position was that the documents were already in evidence and the Tribunal therefore treated the Respondent's application as one to exclude that material.

8.15 The Tribunal did not have jurisdiction to make an order requiring the Applicant to return documents to the Respondent nor did it have jurisdiction to make a declaration or issue a recognition as to the Respondent's professional obligations under French law. The Tribunal therefore declined to make an order in respect of those matters and confined its consideration to the application to exclude the Disputed French Documents.

8.16 The Tribunal noted that there had been considerable correspondence between the parties on this issue stretching back to 2013. The Respondent had raised the matter before the Tribunal at the Case Management Hearing on 20 April 2017. At that hearing the Tribunal had directed that the parties notify it by 4 May 2017, subsequently extended until 19 May 2017, and to seek appropriate directions if issues of French law were going to arise in the proceedings. The Respondent had therefore had every opportunity to object to these documents and to make an application for their exclusion at a much earlier stage. The Tribunal noted that the Respondent had been legally represented at that time and indeed throughout the proceedings until 12 January 2018.

8.17 The Tribunal had been taken to a number of documents by the Applicant that had been in the category of Disputed French Documents. The Respondent had conceded that some of them were in fact not disputed and should not have been categorised as

such. The remaining items to which Mr Cunningham had referred did not appear to the Tribunal to be subject to legal professional privilege. The Tribunal had not been invited to review all of the Disputed French Documents however and therefore moved on to consider whether the documents should be excluded even if they were subject to French legal professional privilege.

8.18 The Tribunal determined allegations of professional misconduct in England and Wales and in doing so was required to act in the public interest. The Tribunal's hands were not tied by rules which may apply in other jurisdictions. The Tribunal had, however, considered carefully the Opinions relied on by the Respondent, which had been accepted by the Applicant as correctly stating the position. There was nothing contained in the Opinions that persuaded the Tribunal that consideration of and admission of this material amounted to a breach of French law. The advice given in the opinions was generic and had been provided without reference to the documents.

8.19 The Tribunal noted that PD did not appear to have faced sanction, professionally or otherwise, for his involvement in passing documents to the SRA.

8.20 The Tribunal regularly heard and admitted into evidence of material that was unquestionably the subject of legal professional privilege. In doing so the Tribunal took reasonable steps to protect the legal professional privilege of clients, for example by anonymisation where appropriate. The Tribunal was satisfied that if document was referred to that was the subject of legal professional privilege this could be done in this case in the same way as any other case.

8.21 The Tribunal took into consideration the Respondent's rights under Article 6. It would not be fair to the Respondent to prevent him relying on the Disputed French Documents or to restrict his ability to comment on them as part of his defence to the Allegations. In all the circumstances the Tribunal found that there was no basis to exclude this material and it would not be in the interests of justice to do so. The Respondent's application for exclusion of the Disputed French Documents was therefore refused.

9. Application by Applicant for Tribunal to consider the Disputed French Documents in order to determine admissibility

9.1 Applicant's Submissions - Before the conclusion of submissions, the Tribunal had been invited by Mr Cunningham to consider the Disputed French Documents in order to enable him to demonstrate that the privilege was not as extensive as the Respondent had submitted. Mr Cunningham submitted that the Tribunal could not test this submission without reference to the documents. In due course, if the Tribunal ruled against the Applicant on the substantive application, it could put the documents out of its mind.

9.2 Respondent's Submissions - The Respondent opposed this course of action, submitting that Mr Cunningham was inviting the Tribunal to commit a criminal offence by looking at the documents. The Respondent invited the Tribunal, in the event that it did agree to consider the documents, to sit in private when they were referred to at this stage.

9.3 The Tribunal's Decision - The Tribunal considered the submissions of both parties. The current position was that the Disputed French Documents were in evidence and it was the Respondent's application to exclude them. The Tribunal therefore had to consider whether it could fairly determine the Respondent's application without looking at the documents. As part of this exercise, the Tribunal had to ascertain whether the matters contained within the documents were in fact the subject of legal professional privilege under French law. The Tribunal noted the Respondent's submissions as to French law and the rules of professional secrecy. The Tribunal noted that PD had already been investigated and no action appeared to have been taken against him. The Opinions adduced by the Respondent were not persuasive of the suggestion that simply by looking at documents the Tribunal would be committing a criminal offence. The Tribunal had a duty to act in the public interest and to ensure a fair trial. It was right that the Respondent's application was properly determined and this included both parties having a proper opportunity to make submissions. In all the circumstances the Tribunal decided that it would allow Mr Cunningham to take it to a number of the disputed documents.

9.4 The Tribunal considered whether it should conduct this part of the hearing in private. On the basis that it had not yet seen the documents and because there was a suggestion by the Respondent that they contained material that was the subject of legal professional privilege the Tribunal agreed to sit in private, for a short time, out of an abundance of caution.

10. Respondent's Application for disclosure of advice to SRA from Simmons and Simmons

10.1 Respondent's Submissions - The Respondent had set out the basis of this application in the documents served on 9 January 2018 which the Tribunal had read. The Tribunal also had sight of the Respondent's Supplementary Note in respect of Applications dated 12 January 2018. The Respondent told the Tribunal that the Applicant had obtained two advices of its own on the question of French law. One advice came from Mr Marembert dated 24 July 2017 and the other had been obtained from Simmons and Simmons in late 2013 or early 2014. This advice had not been disclosed despite repeated requests. The Respondent submitted that the advice was not the subject of privilege but that even if it were, such privilege could not be maintained in view of the disclosure by the Applicant of the advice of Mr Marembert. The Applicant could not "cherry pick" the advice which it chose to disclose and deploy.

10.2 The Respondent submitted that Mr Cunningham had waived privilege in relation to advice as to French law during the course of the application to strike out the Rule 7 Allegations, heard on 26-27 July 2017. The Applicant had a duty to disclose the advice in the interests of transparency and also to ensure the Respondent's right to a fair trial under Article 6.

10.3 Applicant's Submissions - The Applicant had addressed this matter in the Skeleton Argument which the Tribunal had read. Mr Cunningham told the Tribunal that all of his submissions in relation to French law in response to the Respondent's applications had been derived from the Opinions provided by the Respondent. Mr Cunningham did not question conclusions of the Respondent's experts and was not relying on expert

evidence obtained by the Applicant. The material in question was the subject of legal professional privilege and there was no basis to remove that privilege.

10.4 The Tribunal's Decision - The Tribunal considered carefully the oral and written submissions made by both parties in respect of this application.

10.5 The Tribunal had regard to Practice Direction No. 2 dated 25 February 1996 (Amended 27 November 2002). This stated that:

> "Where directions are sought as to disclosure or discovery of documents, the Tribunal will adopt the view that material should be disclosed which could be seen on a sensible appraisal by the Applicant:-
>
> (i) To be relevant or possibly relevant to an issue in the case;
>
> (ii) To raise or possibly raise a new issue whose existence is not apparent from the evidence the Applicant proposes to use, and which would or might assist the Respondent in fully testing the Applicant's case or in adducing evidence in rebuttal;
>
> (iii) To hold out a real (as opposed to fanciful) prospect of providing a lead on evidence which goes to (i) or (ii)."

10.6 The conclusions of the opinions had not been disputed and therefore the relevance of the Simmons and Simmons advice to an issue of fact or law had not been demonstrated by the Respondent. The material was not relied upon and was the subject of legal professional privilege. In the absence of demonstrable relevance, the Tribunal saw no basis upon which to order the disclosure of a privileged document. The Respondent's application was therefore refused.

11. Respondent's Application to exclude replies from Grosvenor Law and the Applicant's application to adduce witness statements of Daniel Morrison and Paul Tracey

11.1 Respondent's Submissions - The Respondent's application was contained in the 9 January 2018 document and was expanded to include opposition to the Applicant's application to adduce the witness evidence of Mr Morrison and Mr Tracey. The Respondent told the Tribunal that the answers sent by Grosvenor Law had not been sent by him and that until very recently there had been no statements from Mr Morrison or Mr Tracey. The statements were now being served and the contents were disputed. The Applicant was under a duty to put its best evidence before the Tribunal and the statements were served very late despite the Applicant having spent more than half £1 million on this case. The Applicant should not be permitted to call evidence at a late stage to bolster a weak case.

11.2 Applicant's Submissions - Mr Cunningham applied to the Tribunal to adduce the witness statement of Mr Tracey dated 10 January 2018 and a witness statement of Mr Morrison dated January 2018. Their evidence was material to issues in the case. The Applicant had served a Civil Evidence Act notice on the Respondent's then legal representatives. This had been objected to and it was in response to that objection that the Applicant had obtained the witness statements that Mr Cunningham was now

seeking leave to adduce. The witnesses were available for cross-examination and Mr Cunningham submitted that it be wrong to prevent them from being called to give evidence.

11.3 The Tribunal's Decision - The Tribunal considered the oral and written submissions of both parties.

11.4 The Tribunal noted that the Civil Evidence Act notice had been served on the Respondent's former solicitors on 11 December 2017, who had taken objection to the notice by way of letter to the Applicant. The replies from Grosvenor Law were clearly relevant to the issues in the case, specifically the Allegations contained in the Rule 5 Statement.

11.5 In response to the Respondent's objection to the Civil Evidence Act notice the Applicant had, quite properly, obtained witness statements from the relevant witnesses and had made them available for cross-examination by the Respondent. There was therefore no prejudice to the Respondent as he would have the opportunity to put to them any matter on which he wished to challenge their evidence.

11.6 The Tribunal refused the Respondent's application to exclude replies from Grosvenor Law and granted the Applicant's application to adduce the witness statements of Mr Tracey and Mr Morrison. In light of the fact that the Respondent challenged their evidence, the Applicant would call them to give live evidence and be available for cross-examination.

12. Respondent's application for disclosure of instructions from the Applicant to junior counsel in relation to the Rule 7 Allegations

12.1 Respondent's Submissions - The Respondent's application was set out in the documents served on the Tribunal on 9 January 2018. The Tribunal also had sight of the Respondent's Supplementary Note in respect of Applications dated 12 January 2018. The Respondent told the Tribunal that as part of the basis of the application for a strike-out of the Rule 7 Allegations, the Applicant had faced an allegation of excessive delay in the bringing of the Rule 7 Allegations. This was part of his argument that there had been prosecutorial misconduct in this case. In the course of the strike-out application Mr Cunningham had told the Tribunal that junior counsel had been instructed prior to the witness statement of Mr Cosser being received by the SRA. The Respondent submitted that the Applicant had therefore waived privilege by referring to the timing of those instructions.

12.2 Applicant's Submissions - Mr Cunningham opposed the Respondent's application and submitted that the material he was seeking was the subject of legal professional privilege. The application for the Allegations contained in the Rule 7 Statement to be struck out had been determined by a previous division of the Tribunal in July 2017. That division had refused the application and in doing so had rejected the submission of prosecutorial misconduct. The Respondent had challenged that decision by way of an Appeal/Judicial Review, which had also been dismissed. Mr Cunningham submitted that the issue was therefore settled and the instructions to junior counsel were of no relevance to matters before the Tribunal.

12.3 The Tribunal's Decision - The Tribunal considered the oral and written submissions of both parties. The Tribunal again had in mind the test for disclosure set out in Practice Direction No. 2.

12.4 The Tribunal noted that the basis of the Respondent's application was that the date of the instructions to junior counsel was relevant to the issue of prosecutorial misconduct. That issue, together with all the issues raised as part of the strike-out application had been determined by the Tribunal over the course of a two-day hearing in July 2017. The Respondent's challenge to that decision had been unsuccessful. It would be wholly inappropriate for the Tribunal to go behind those decisions by reopening matters that had been conclusively determined.

12.5 The issues for determination by the Tribunal were limited to considering the Allegations contained in the Rule 5 and Rule 7 Statements. The Tribunal's role would be to consider whether the Applicant had proved beyond reasonable doubt that the Respondent was guilty of professional misconduct in respect of all or any of those Allegations. The Applicant's motive in bringing the Rule 7 Allegations had been fully aired as set out above. The Respondent had not made, and was not making, an abuse of process submission in respect of the Rule 5 Allegations. In the circumstances the Tribunal could see no possible relevance in the material being sought by the Respondent. There was therefore no basis to order the disclosure of a document that was the subject of legal professional privilege. The Respondent's application for disclosure was therefore refused.

13. Respondent's Application to adduce documents from the High Court proceedings

13.1 Respondent's Submissions - The Respondent's application was contained in documents served on 9 January 2018. These were documents that related to High Court proceedings between the Respondent and the SRA. The Respondent submitted that these documents were relevant as they provided details as to PD's pursuit of the Respondent which was relevant to the formulation of allegations against the Respondent and the integrity of the case against him. The documents would support the Respondent's contention that the case against him was not based on a fair assessment of the evidence pressure being brought to bear on the SRA.

13.2 Applicant's Submissions - Mr Cunningham opposed this application and reiterated the point about it being made very late. In addition, Mr Cunningham pointed out that the Respondent was seeking to have more than 200 pages of material adduced which went to the antipathy between the Respondent and PD as well as to the Respondent's assertion of prosecutorial misconduct. This was not relevant to the Allegations before the Tribunal and the only possible relevance of this material could be to costs.

13.3 The Tribunal's Decision - The Tribunal noted that this material, according to the Respondent, addressed the motivation behind the SRA's decision to bring the proceedings. It did not appear to be relevant to the substantive issues before the Tribunal at that stage. The Tribunal was not being invited to consider an abuse of process argument. The Respondent's previous application for a strike-out of the Rule 7 Allegations in this matter had already been dealt with. In the circumstances, also taking into account the fact that the application was very late, the Tribunal saw no basis to permit the Respondent to adduce evidence which was not relevant to the

issues that the Tribunal would have to determine at the conclusion of the evidence and submissions. The Tribunal was not satisfied that it would be in the interests of justice to admit this evidence and accordingly the Respondent's application was refused.

14. Respondent's Application to adduce additional documents (Day 2)

14.1 Respondent's Submissions - The Respondent applied to adduce additional documents, details of which were set out in the documentation received by the Tribunal on 9 January 2018. In addition the Respondent had produced an additional bundle which he provided on Day 2. The Respondent submitted that there was no prejudice to the Applicant in the admission of these documents as it was in the interests of justice to permit the Respondent to adduce documentation that supported his case.

14.2 Applicant's Submissions - Mr Cunningham raised no formal objection to the application but told the Tribunal that the Applicant's position was reserved in respect of two documents in the original list. Mr Cunningham submitted that none of the documents were likely to be of great assistance to the Tribunal but that there was no basis to seek to exclude them.

14.3 The Tribunal's Decision - The Tribunal was concerned at the lateness of the application given that this matter had been listed for many months and had been the subject of a number of directions hearings. The Respondent had been legally represented until the working day before the substantive hearing commenced and the documents were not recent.

14.4 The Tribunal noted that no formal objection was taken to the documents being adduced, save that the Applicant's position was reserved in respect of two of them. The relevance of the documents was not immediately apparent. However the Tribunal was mindful of the fact that the Respondent was a litigant in person and the relevance may become apparent during the course of the hearing. The Tribunal was therefore prepared to grant leave for the documents to be adduced at this stage. However the Tribunal would reserve the right to query the relevance and admissibility as and when the Respondent chose to refer to them. The Respondent's application was therefore granted.

15. Respondent's Application to adduce evidence of Andriy Porayko

15.1 Respondent's Submissions - The Respondent's application was contained in the documents served on 9 January 2018 and in supporting witness statements from the Respondent dated 8 and 11 January 2018.

15.2 The Respondent submitted that Mr Porayko would be able to give evidence concerning the Ukrainian legal issues surrounding the changes in the shareholdings of Ukrainian companies in the structure. This evidence was clearly relevant to the Rule 7 Allegations. This would support the Respondent's case that if VG had really been interested in getting his 50% share returned to him that he could have done so without difficulty. He had "an open door". However the reality was that he was not interested in TVI and his only concern was "loss of face". Mr Porayko would be able to give evidence as to what was actually taking place in Ukraine at the material time. The

Respondent accepted that the application was late and told the Tribunal this is because the evidence has come to light relatively recently.

15.3 Applicant's Submissions - Mr Cunningham opposed the application to adduce this evidence, describing it as "ridiculously and inexplicably late". The witness statement was dated 6 December 2017 and had been received on 12 January 2018. The evidence had no apparent relevance to the proceedings. The issue at the heart of the Rule 7 Allegations was whether the Respondent had been involved in misleading VG. VG's wishes were irrelevant. Mr Cunningham had no objection to the Tribunal reading the witness statement in order to determine whether the evidence should be admitted.

15.4 The Tribunal's Decision - The Tribunal noted that this was an application to adduce what was essentially expert evidence. It was being made at a very late stage. The Tribunal had made directions concerning the service of evidence at previous Case Management Hearings and it was a matter of concern that a party to the proceedings was seeking to adduce expert evidence at such a late stage. In this case the Applicant had not had the opportunity to instruct its own expert in order to challenge the evidence of this proposed witness. Furthermore the Tribunal, having read the witness statement, saw no relevance to the Allegations contained in the witness statement of Mr Porayko. In all the circumstances the Tribunal was not satisfied that it would be in the interests of justice to allow the late introduction of expert evidence and the Respondent's application was therefore refused.

16. Respondent's Application to have a member of the public excluded from the Courtroom (Day 2)

16.1 Respondent's Submissions - The first day of the hearing was a reading day and on the second and third days the Tribunal considered a number of preliminary applications, including those set out above. During the course of the second day the Respondent made an application for PD to be excluded from the court room. PD was a member of the public sitting in the public gallery. The Respondent and PD knew each other and PD had been involved in matters that were the basis of some of the Allegations faced by the Respondent. The Respondent submitted that because of the history of the matters that were the subject of the proceedings, the presence of PD in the court room was adding to his stress, particularly in circumstances where the Respondent was unrepresented.

16.2 The Tribunal noted that PD was not a party to the proceedings nor was he a witness and was therefore entitled to attend the hearing, which was being held in public, providing he did not disrupt the proceedings. This was consistent with the principle of open justice. There was no evidence that PD had been disruptive and there were no grounds for his removal and/or exclusion from the courtroom. The Tribunal refused the Respondent's application.

17. Respondent's Application to sit in private (Day 4)

17.1 Respondent's Submissions - At the commencement of the fourth day of the hearing the Respondent applied for the proceedings to be heard in private. The Respondent told the Tribunal that PD had sent an email to his (the Respondent's) former solicitor, a copy of which was handed to the Tribunal. The Respondent told the Tribunal that he

had no objection to the hearing taking place in public in principle but in view of the refusal of the Tribunal to exclude PD on the second day, the only way in which the Respondent could cope with the proceedings was for the hearing to take place in private. The Respondent told the Tribunal that PD had not approached or threatened him but that his presence in the Courtroom was nevertheless a distressing distraction.

17.2 Applicant's Submissions - Mr Cunningham submitted that it was doubtful whether the Tribunal had jurisdiction to exclude an individual and to do so would be an unusual step to take. If the Tribunal was to direct that the entirety of the proceedings were heard in private that would be a substantial step. The Tribunal was reminded of the principle of open justice as set out in SRA v Spector [2016] EWHC 37 (Admin). The circumstances where a hearing took place in private had to be exceptional and on the basis that exceptional hardship or prejudice would arise. The Tribunal was invited to be wary of self-certification by the Respondent that he could not cope as there was no medical evidence to that effect before the Tribunal. In the circumstances it was set a concerning precedent if the Tribunal was to exclude an individual or sit in private in this case.

17.3 The Tribunal's Decision - The Tribunal considered carefully the representations and submissions made by both parties. Rule 12(5) of the SDPR provided that if the grounds in Rule 12(4) were met, the Tribunal "shall conduct the hearing or part of it in private and make such order as shall appear to it to be just and proper". The grounds in Rule 12(4) were: "a) exceptional hardship; or b) exceptional prejudice to a party, a witness or any person affected by the application".

17.4 The starting point was that the Tribunal accepted the principle of open justice referred to in Spector. This included holding hearings in public which, by definition, members of the public were entitled to attend. The Tribunal did have jurisdiction to remove an individual from the Courtroom and/or the building if their behaviour was disruptive to the proceedings in any way. In this case the Respondent had confirmed that he had not been approached or threatened by any member of the public and there had been no disruption to the proceedings. The position had therefore not changed since Day 2 and there was no basis to exclude PD or anyone else from the public gallery.

17.5 The medical evidence before the Tribunal did not support the Respondent's submission that he would be unable to present his case unless the hearing took place in private. The Tribunal did not find that any exceptional hardship and prejudice would arise on continuing to hear the matter in public. The Respondent's application to sit in private was refused.

18. Events of Day 5

18.1 On the morning of the fifth day, the Respondent became distressed and the Tribunal rose to give him time to compose himself. The Respondent indicated that he was awaiting a further letter from Dr MacGreevy concerning his health. The Tribunal did not resume sitting until the letter was received. The letter from Dr MacGreevy, dated 19 January 2018, confirmed that he had seen the Respondent the previous day. He felt that his mental state was poor and that this was "negatively affecting his ability to perform in Court". He made reference to the "person behind the complaint" – presumably PD – sitting in the public gallery. Dr MacGreevy described this as "both

upsetting and a disturbing distraction". He concluded that "In an effort to help him make his best efforts to perform efficiently in his defence which I believe to be in the best interests of the court he has asked to have the proceedings carried out in private. As his Doctor I would support this request".

18.2 The Tribunal noted that the letter did not say that the Respondent was unfit to participate in proceedings, in private or otherwise.

18.3 The Tribunal resumed sitting, having read and considered the contents of the letter. PD had not returned to the Courtroom and indeed did not do so for the remainder of the proceedings.

18.4 The Respondent told the Tribunal that he did not want the case hanging over him and he would "have to soldier on". He told the Tribunal that he could continue with the hearing, which at this stage was occupied with Mr Cunningham's opening speech. He told the Tribunal that he would attempt to cross-examine Mr Baker when that point was reached. If PD returned to the Courtroom he would renew his application to have him excluded.

19. Applicant's Application to adduce evidence of DA (Day 6)

19.1 Applicant's Submissions - Mr Cunningham applied to adduce a witness statement dated 22 January 2018 from DA. This was in response to the Respondent having appeared to challenge the authenticity of an attendance note written by DA during the course of his cross-examination of Mr Baker. The Respondent's former legal representatives had not taken issue with the part of the Civil Evidence Act notice to which the attendance note had related. DA was available for cross-examination if required.

19.2 Respondent's Submissions - The Respondent told the Tribunal that he was not disputing the note had been written by DA and he was not disputing that DA wrote the note believing it to be true. The Respondent was disputing that what was said in the note was in fact correct. The Respondent did not object to the admission of the witness statement providing that a paragraph was removed. Mr Cunningham agreed to remove this paragraph.

19.3 The Tribunal's Decision - The Tribunal, while noting the lateness of the application, considered that in view of the Respondent having not objected to the contents of the statement, subject to agreed edits, he was not prejudiced by its admission. The Tribunal granted the Applicant's application.

20. Article 6 Submissions made at conclusion of Applicant's case (Day 8)

20.1 Respondent's Submissions - The Respondent submitted that the hearing should be discontinued in respect of both the Rule 5 Allegations and the Rule 7 Allegations. The submissions were contained in a written document provided to the Tribunal on 24 January 2018. The application was made on two grounds.

20.2 Ground 1 - Ill-health

20.02.1 The Respondent referred the Tribunal to Dr MacGreevy's letter dated 19 January 2018 and to an email from Dr Capstick, a psychiatrist dated 23 January 2018. The background to this email was that the previous day (Day 7) the Respondent had told the Tribunal that he was not feeling well and was not sure if he could complete a full day. He had secured an appointment to see Dr Capstick that afternoon and the Tribunal rose early to enable the Respondent to attend. It was following that appointment that Dr Capstick had written an email which the Respondent had forwarded to the Tribunal.

20.2.2 Dr Capstick set out her observations and made recommendations as to medication. She further stated "I suggested he might wish to consider in patient treatment – which he has declined".

20.2.3 The Respondent told the Tribunal that Dr Capstick had concluded that his ability to function properly was "materially impaired" and this was aggravated by the fact that the Respondent was a litigant in person and therefore seeking to conduct his own defence. The Respondent submitted that "any continuation of the trial would in and of itself be unfair on me" and invited the Tribunal to dismiss the case against him. This ground of application was relevant to both the Rule 5 and Rule 7 Allegations.

20.3 Ground 2 - Inability to rely on privileged documents

20.3.1 This submission was confined to the Rule 5 Allegations. The Respondent submitted that owing to the strict laws on client confidentiality, which had been the subject of discussion in relation to the Disputed French Documents, he was prevented from discussing his French clients' affairs in his evidence and was also prohibited from relying on documents from the Paris Firm in order to meet the Applicant's case. The Respondent would have wished to refer to a number of documents from unrelated clients with similar wealth management structures as those that were the subject of this hearing. This would have demonstrated that the Respondent had no beneficial interest or management role in their structures. The Respondent told the Tribunal that his role was the equivalent of a "19th-century man of affairs" who was tasked with ensuring that client's wishes were observed and carried out. The Respondent submitted that by only referring to a few documents and thereby "cherry picking" this created a misleading impression of the Respondent's role. The Respondent told the Tribunal that PD had accessed about 28,000 emails and attachments from his computer and that without access to this "mass of anodyne communications" the case was "rigged" against him. The Respondent referred the Tribunal to the Opinions which had been part of his application to exclude documents as set out above. The conclusion of those Opinions was that the Respondent was not permitted to refer to the documents or rely on them as to do so would breach professional privilege even if he was doing so as part of his defence to allegations of professional misconduct.

20.4 Applicant's Submissions - Mr Cunningham reminded the Tribunal that were the Respondent's submissions to succeed this would have the effect of terminating the proceedings at this stage. The Allegations were very serious and had been brought in the public interest for the protection of the profession and the public.

20.5 Mr Cunningham submitted that the medical reports did not come close to concluding that the Respondent was unfit to attend the Tribunal or participate in the proceedings. There was a distinction between impairment and unfitness and many Respondents before the Tribunal found proceedings to be extremely stressful.

20.6 In relation to the submissions made by the Respondent about the documents from the Paris Firm, Mr Cunningham submitted that French law did not have the effect of prohibiting the Respondent from relying on them. The Respondent had not told the Tribunal what the documents were and how they would have assisted him. The Respondent, in his Skeleton Argument, had invited the Tribunal to take account of the position in relation to the documents. Mr Cunningham submitted that this was the appropriate approach rather than the discontinuance of the proceedings.

20.7 Mr Cunningham referred the Tribunal to a previous Tribunal decision in the case of Tiplady [Case No 10026-2008]. In that case there had been difficulties in relation to the Respondent's health and with availability of documents. The Tribunal in that case had not discontinued proceedings and indeed the hearing had concluded with Mr Tiplady being struck off. Mr Cunningham invited the Tribunal to dismiss the Respondent's applications and to proceed with the hearing with or without the Respondent's engagement.

20.8 The Respondent responded by pointing out that Tiplady bore no relation to this case. The Respondent was not seeking to make excuses and had not lost his files. His submission was based on four legal Opinions and, unlike Mr Tiplady, he had fully engaged.

20.9 The Tribunal's Decision - The Tribunal considered the submissions of both parties and the material referred to therein.

20.10 Article 6 stated that:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

20.11 Ground 1

20.11.1 The Tribunal considered firstly the submissions made in respect of the Respondent's health. This was not a new issue as the Tribunal had already considered the question of reasonable adjustments. The Tribunal reminded itself of the documentation provided before the start of the hearing and the letter from Dr MacGreevy dated 19 January 2018. It also read carefully the email from Dr Capstick. She was aware that the Respondent was in the middle of legal proceedings and had concluded that the Respondent's health resulted in symptoms that "impact his performance". Her email did not state that the Respondent was unable to attend the Tribunal or that he was unable to present his own case or participate in the proceedings. Dr Capstick had suggested that the Respondent might wish to consider in-patient treatment. She had not said that this was required or even strongly encouraged. It would have been open to her to admit the Respondent to hospital if she felt it necessary, irrespective of his wishes.

20.11.2 The Respondent's GP had written on 19 January 2018 that the Respondent's health was "negatively affecting his ability to perform in Court". Again, the report had not stated that he was unfit to participate in proceedings. The GP's previous letter of 2 January 2018 had suggested ways in which the proceedings could be adapted to improve the Respondent's ability to participate and "should ensure" that he could manage the process. The Tribunal had implemented those suggestions.

20.11.3 The Tribunal noted that the Respondent had made coherent and detailed submissions on complex areas of law both in writing and orally, including this one. He had made a number of applications to adduce/exclude

evidence. He had cross-examined Mr Baker at some length and had also cross-examined Mr Morrison and Mr Tracey. There was nothing in the medical evidence produced by the Respondent to suggest that he was unable to follow proceedings, represent himself or put his case forward in cross-examination, providing the appropriate measures remained in place. The Tribunal had put such measures in place based on the guidance provided by the Respondent's doctor.

20.11.4 The Respondent had not sought an adjournment but the Tribunal nevertheless considered whether an adjournment was justified in light of the health issues to which he had referred. There was no basis for this on the medical evidence presented at this stage. The Tribunal would keep the matter under review and would revisit the issue were fresh medical evidence to be submitted. The Tribunal recognised that the proceedings were stressful for the Respondent, particularly as he was a litigant in person. However this was not uncommon and there was a public interest in matters such as these being heard and the Tribunal had put measures in place based on the recommendations of the Respondent's GP. The Tribunal was not satisfied that there were any grounds for adjourning or discontinuing the proceedings on the grounds of the Respondent's health.

20.12 Ground 2

20.12.1 The Tribunal then considered the Respondent's submissions on his inability to rely on documents from the Paris Firm in relation to the Rule 5 Allegations.

20.12.2 The Tribunal had already made a ruling on the question of whether French legal professional privilege was a bar to the admissibility of the Disputed French Documents. As set out above, the Tribunal had found that there was no such bar and had therefore permitted the Applicant to rely on them. The Respondent had made no application to adduce documents on which he sought to rely. The question of French legal professional privilege had been live in these proceedings for several months, during which time the Respondent had been legally represented. Instead of applying to adduce documentation upon which the Respondent wished to rely, the Tribunal was now being invited to strike out the Rule 5 Allegations.

20.12.3 The Tribunal had considered the contents of the Opinions relied on by the Respondent as part of consideration of the applications heard on day two and reached the conclusion that French law did not prevent the reliance on documents in these proceedings. It would be inconsistent with that decision to now strike out the proceedings on the basis that the Respondent was prevented by French law from relying on similar documents. The Tribunal would of course take into account what the Respondent said about the absence of documents but there was no basis at all to strike the matters out on these grounds.

20.12.4 Having considered each of the Respondent's grounds carefully and considered the written and oral submissions made by both parties the Tribunal was satisfied that it would not be in the interests of justice to discontinue or strike out the proceedings and accordingly the Respondent's applications were refused.

21. Submission of no case to answer

21.1 Respondent's Submissions - Following the Respondent's unsuccessful application to have the proceedings dismissed under Article 6, the Respondent made a submission of no case to answer in respect of the Rule 5 and Rule 7 Allegations.

21.2 Rule 5

21.2.1 The Respondent submitted that the Applicant's case was "remarkably lacking in evidence and really quite astonishingly so". The Respondent submitted that the investigation and the proceedings had been disproportionate and there was no evidence that the Respondent had actually benefited in any way. The Applicant had relied on very few documents. By contrast the Tribunal had seen the letter from HMRC with whom the Respondent had fully cooperated. HMRC would have had every interest in establishing that the Respondent was an alter ego, shadow director, or any of the terms used by Mr Cunningham. There was no basis upon which the Tribunal could conclude that the Respondent was EPL.

21.2.2 The Respondent referred the Tribunal to the evidence of Mr Baker, specifically in relation to the loans. He had accepted that the interest-rate was not 1300% and was in fact 100%, not increased by the passage of time until the asset was sold. The Tribunal would not therefore be able to conclude that the loans were unreasonable. The Respondent reminded the Tribunal that Mr Cosser's financial position was such that the loans were effectively unsecured.

21.2.3 The Respondent submitted that it was not reasonable for the Applicant to suggest that it was improper for the parties to litigation to meet to try to resolve their differences, in this case the Respondent and Mr Cosser. This was commonplace conduct and there was no evidence to suggest that the respective solicitors had not been in agreement that such a meeting should take place.

21.2.4 Mr Baker had accepted in cross-examination that he had not obtained the file from NK of Lewis Silkin. Had he done so he would have found notes of his telephone conversations with Mr Cosser. The SRA could have obtained evidence from Mr Cosser himself but had chosen not to. The suggestion that there had been just one instance of libel by Mr Cosser was wrong. He was a very indiscreet individual and the Respondent would be calling evidence in support of that contention. The level of damages had to be considered in the context of the costs of unsuccessfully defending a claim of libel.

21.2.5 The Respondent submitted that there was no case to answer in respect of the Rule 5 Allegations and invited the Tribunal to dismiss them.

21.3 Rule 7

21.3.1 The Respondent submitted that there was no evidence that he knew that there had been a change of control, referred to as the Dilution, prior to 1 October. The Respondent submitted that the Ramos Judgment was a "cut-and-paste job" of the claimant's submissions. He had not singled out the Respondent and had placed him in the same category as other individuals. The Applicant had called no evidence to suggest that anybody was misled. There was no statement from VG and there was no evidence that the letters that the Respondent had sent that could be regarded as misleading. There was no more evidence before this Tribunal than before the division that had considered the strike out application. The Tribunal was invited to dismiss the Rule 7 Allegations, again on the basis that the Applicant had not shown a case to answer.

21.4 Applicant's Submissions - Mr Cunningham submitted that the appropriate test to apply in determining a submission of no case to answer was that set out in R v Galbraith [1981] 1WLR 1039.

21.5 Rule 5

21.5.1 Mr Cunningham submitted that there was "masses of prima facie evidence" to warrant the Allegations relating to conflict of interest. Whether the Tribunal was, in due course, persuaded by that evidence to the required standard was another matter. Mr Cunningham had highlighted the Applicant's case in respect of the loans and the Settlement Agreement during the course of his opening. The Tribunal confirmed that it had noted the relevant paragraphs and documents referred to in Mr Cunningham's opening and did not require him to repeat those points.

21.6 Rule 7

21.6.1 Mr Cunningham submitted that the Ramos Judgment had found that KK had told GB and the Respondent that control had been transferred outside of the partnership on 1 October. It may well be that the Respondent, in the course of his evidence, persuaded the Tribunal that Judge Ramos had been wrong in his conclusions, but at present there was a prima facie case in the form of the Ramos judgment. This judgment was a document that could be relied upon as proof, albeit not conclusive proof, of the facts contained therein. In any event not all of the Allegations in the Rule 7 Statement depended on the Tribunal attaching weight to the Ramos judgment as the Respondent had on his own evidence admitted that he knew by 8 October of the Dilution. Allegation 3(b) would survive in those circumstances regardless of the Ramos judgment. As with the submissions made in respect of the Rule 5 Allegations, the Tribunal confirmed that it had noted carefully the documents referred to in Mr Cunningham's opening and did not require him to take the Tribunal to them again as it was fresh in their minds.

21.6.2 Mr Cunningham invited the Tribunal to reject the Respondent's submissions of no case to answer in their entirety.

21.7 The Tribunal's Decision - The Tribunal noted that a "case to answer" was defined in Rule 2(1) of the Solicitors Disciplinary Proceedings Rules 2007 ("SDPR") as "an arguable or prima facie case". This was applied by using the test in Galbraith. The Tribunal was therefore not assessing whether it would find Allegations proved against the Respondent, only whether, at this stage, it could find them proved.

21.8 The Tribunal was mindful of the fact that this was a submission of no case to answer and was not an application for a strike-out based on an abuse of process. The Respondent had made a strike-out application last year in respect of the Rule 7 Allegations. This had been rejected by the Tribunal and the Respondent's Appeal against that decision had been dismissed by the High Court. Therefore even if the application had been framed as an abuse of process argument the Tribunal would not have entertained it as the matter had been decided in respect of the Rule 7 Allegations. The complaints about prosecutorial behaviour in relation to the Rule 5 Allegations were also not relevant to the consideration of whether there was a case to answer.

21.9 In considering whether there was a case to answer, the Tribunal was required to limit itself to evidence called by the Applicant. It could not take into account evidence that the Respondent may choose to give or to call or evidence that the Applicant had chosen not to call.

21.10 The Applicant had called three witnesses to give live evidence, Mr Baker, Mr Morrison and Mr Tracey, each of whom had been cross-examined by the Respondent. It had also relied on a large number of documents in support of each Allegation. The provenance of those documents, save for the Disputed French Documents, had not been challenged. It was their meaning that was the battleground in this case.

21.11 Rule 5

21.11.1 The basis of Allegation 1.1 was the four EPL Loans and the Deed of Sale and the basis of Allegation 1.2 was the Nanterre Judgment. The fact that the loans had occurred was not in dispute. The question, for the purposes of this application, was whether the Applicant had demonstrated a prima facie case to the effect that there was a conflict of interest or a significant risk of a conflict of interest. The Respondent had accepted that he was a director of EPL at the time of the first loan and that he was protector of the Regroup Trust. There was a considerable amount of documentation and it would be for the Tribunal to determine at the end of hearing all the evidence, whether it was satisfied beyond reasonable doubt that this material demonstrated the involvement in EPL that the Applicant alleged. There was clearly a case to answer both in terms of own interest conflict and client conflict.

21.11.2 There was no dispute that the Nanterre Judgment existed and there was prima facie evidence, predominantly in the form of emails that the Respondent had some involvement in its enforcement. There was also prima facie evidence to suggest that the Respondent had disclosed

confidential information about Mr Cosser in the course of that, which was the basis of Allegation 1.3. It was also not in dispute that the Respondent had acted for Mr Cosser, though the exact dates were the subject of dispute.

21.11.3 The Settlement Agreement that was, along with the Nanterre Judgment, the basis of Allegation 1.4, was again a document that unquestionably existed and therefore it was the implications of that document that would determine the outcome of the Allegation. The sums of money contained in the Settlement Agreement were not insignificant. Whether they were onerous or amounted to taking advantage of Mr Cosser was a matter for the Tribunal to determine after hearing all of the evidence. Similarly, whether they amounted to an attempt to prevent Mr Cosser from making a complaint to the SRA, as alleged in Allegation 1.5, would depend on the Tribunal's findings in relation to the Settlement Agreement as a whole. The terms of the agreement appeared to place some restrictions on Mr Cosser but the Tribunal would consider whether they had the effect alleged after hearing the entirety of the evidence. The Tribunal was not satisfied that there was no case to answer.

21.11.4 Allegation 1.6 related to statements made to the SRA which were said to be false. The Tribunal would not be in a position to make a finding on whether it was satisfied beyond reasonable doubt that the statements were false until it had made findings in respect of Allegations 1.1-1.5. The Tribunal had found that there was a prima facie case in respect of those matters and therefore it followed that there was a case to answer in respect of Allegation 1.6.

21.11.5 The Respondent was alleged to have acted dishonestly in respect of each of the Allegations. Again, the Tribunal could not make a determination on this question until it had made findings in respect of each Allegation. The Tribunal had found there was a prima facie case in respect of those Allegations and it therefore followed that there was a case to answer in respect of dishonesty.

21.11.6 The Tribunal found that there was a case to answer in respect of all the Rule 5 Allegations.

21.12 <u>Rule 7</u>

21.12.1 The case against the Respondent in respect of the Rule 7 Allegations was based on emails, letters and the Ramos Judgment. The Ramos Judgment was admissible as proof, albeit not conclusive proof, of the matters contained therein. The Respondent had made clear that he strongly disagreed with the conclusions of Judge Ramos and would submit in due course that the Tribunal should attach no weight to the Judgment. The question of how much weight to attach it to it was a matter for the Tribunal to determine at the conclusion of all the evidence and submissions. The question for determination at this stage was whether there was a case to answer. The Ramos Judgment had made findings adverse to the Respondent

and the Tribunal was satisfied that this was prima facie evidence in support of the Allegations to which it related.

21.12.2 There was no dispute about the fact that the Dilution took place or that the relevant letters and emails had been sent – the question was when the Respondent had become aware of the Dilution and therefore whether his actions in sending the letters (Allegations 1 and 3) had been misleading. That was a question for the Tribunal having heard all the evidence.

21.12.3 Allegation 2 concerned the Respondent's role in the Dilution by way of advice and assistance. This was one of the areas where the Ramos Judgment had made findings that were adverse to the Respondent. The Tribunal's approach to this was the same as set out above.

21.12.4 The Tribunal found that there was a case to Answer in respect of Allegations 1, 2 and 3.

21.12.5 The Respondent was alleged to have acted dishonestly in respect of each of the Allegations. As with the Rule 5 Allegations, the Tribunal could not make a determination on the Allegation of dishonesty until it had made findings in respect of each substantive Allegation. The Tribunal had found there was a prima facie case in respect of those Allegations and it therefore followed that there was a case to answer in respect of dishonesty.

21.12.6 The Tribunal found that there was a case to answer in respect of all the Rule 7 Allegations.

21.12.7 The Respondent's submission of no case to answer was therefore rejected.

22. Respondent's Application to adduce letters of 15.10.14 and correspondence from HMRC (Day 8)

22.1 Respondent's Submissions - The Respondent applied to adduce a letter dated 15 October 2014 from Bevan Brittan to Lewis Silkin and Lewis Silkin's reply. The Respondent submitted that this letter was an important part of his case and that it should be admitted into evidence.

22.2 The Respondent also applied to adduce correspondence from HMRC which confirmed that the investigation into his affairs had been concluded without penalty or additional liability.

22.3 Applicant's Submissions - Mr Cunningham told the Tribunal that the Applicant did not seek to oppose this application.

22.4 The Tribunal's Decision - The Tribunal noted the lateness of the application but in view of the fact that the Applicant did not oppose it being admitted the Tribunal concluded that there would be no prejudice to the Applicant in granting the application and the Respondent was permitted to adduce these letters into evidence.

23. Respondent's Application to adduce letters of 22.1.18 (Day 8)

23.1 Respondent's Submissions - The Respondent applied to adduce a letter dated 22 January 2018 from EPL into evidence. The Respondent submitted that this was an important document in his defence that it was in the interests of justice to permit it to be adduced. The Respondent referred to a previous letter which had dealt with payments out but had not addressed the issue of payments in. This was relevant to the question as to whether they had received £70,000 from the Respondent. The Respondent apologised to the Tribunal for the lateness of the application, stating that he had had been busy and unwell and it had been an oversight.

23.2 Applicant's Submissions - Mr Cunningham opposed this application. The author of the letter could not be cross-examined and the document was, in any case, of marginal significance. The Respondent's application was "yet another attempt to make up gaps in the evidence". Mr Cunningham invited the Tribunal to draw a line under the admission of further evidence.

23.3 The Tribunal's Decision - The Tribunal noted that the letter did not state the time period to which it related. It was not a statement and the letter did not contain a statement of truth. The identity of the author of the signature was unclear. The Tribunal also noted this application was made very late despite the fact that this issue had been known about prior to the Respondent's solicitors ceasing to act. The Applicant had closed its case and the Respondent had not demonstrated the relevance of this document. In all the circumstances the Tribunal decided that it would not be in the interests of justice to allow this document to be admitted and accordingly the Respondent's application was refused.

24. Respondent's Application to adduce HMRC correspondence (Day 9)

24.1 Respondent's Submissions - At the commencement of Day 9 the Respondent applied to adduce a letter that had been received overnight from HMRC. This document set out the exact terms of the offer made by HMRC, setting out exactly what tax had been paid and why nothing came of the investigation. It was only the previous day that the Respondent had believed there to be a challenge based on the earlier letter being incomplete. The Respondent submitted that it was absolutely critical to his evidence that this document was adduced. It confirmed that the HMRC enquiry was at an end and that the Respondent's offer been accepted.

24.2 Applicant's Submissions - Mr Cunningham told the Tribunal that he had not taken issue with the conclusions of the HMRC investigation as presented by the Respondent. He described this application as "another distraction".

24.3 The Tribunal's Decision - It was not in dispute that there had been a full and very thorough investigation by HMRC into the Respondent's affairs. It was also not in dispute that the Respondent had not been required to pay any additional taxes as a result of that investigation. In view of the fact that there was no dispute between the parties on this matter the Tribunal could not see the relevance of his evidence. The Applicant had closed its case and in the absence of any apparent relevance to a matter in issue, the Tribunal was not satisfied that it was in the interests of justice to allow

the Respondent to adduce this document. The Respondent's application was therefore refused.

25. Respondent's Application to adduce correspondence between Mr Cosser and Mr Archer (Day 11)

25.1 Respondent's Submissions - At the commencement of Day 11 the Respondent applied to adduce emails between Mr Cosser and Mr Archer, a solicitor instructed by Mr Cosser concerning the preparation of his witness statements. This material was critical as it explained the mechanism by which Mr Cosser had worked on his witness statements and amended them following discussion with Mr Archer. This was relevant because it demonstrated that the Respondent had been very keen throughout the entire process that Mr Cosser had the full opportunity of taking legal advice from Mr Archer and had not put anything in his witness statement that he did not wish to be there. Mr Cunningham's cross examination of Mr Cosser, on Day 10, had suggested the opposite.

25.2 Applicant's Submissions - Mr Cunningham opposed the application, principally, on the basis that he would not be able to cross-examine Mr Cosser about the contents of the material.

25.3 The Tribunal's Decision - The Tribunal noted that this material, were it to be admitted, would amount to new evidence being adduced in relation to a witness who had already given evidence. Mr Cunningham's cross-examination of Mr Cosser was complete and there was no realistic prospect of Mr Cosser being recalled. It would therefore be unfair for evidence to go before the Tribunal which the Applicant was not in a position to challenge through cross-examination. The Tribunal was not satisfied that it was in the interests of justice to permit this evidence to be adduced and accordingly the Respondent's application was refused. The Respondent renewed this application on the same grounds on Day 12 and the Tribunal refused it again for the same reasons.

26. Respondent's Application for leave to call Mr Archer (Day 12)

26.1 Respondent's Submissions - At the conclusion of his evidence on Day 12, the Respondent applied for leave to call Mr Archer to give evidence. The Respondent submitted that the Applicant had sought to impugn the propriety of the witness statements given by Mr Cosser and that because Mr Archer had advised Mr Cosser in relation to them then calling him would assist the Tribunal in getting to the truth. This would enable the Respondent to call evidence to support his submission and his evidence that he had "bent over backwards" to make certain that Mr Cosser was happy with everything in his witness statements. The Respondent told the Tribunal that Mr Archer could be cross-examined on this proposition and the Tribunal was invited to permit the Respondent to call this evidence as it was "absolutely crucial" to his defence to the Rule 5 Allegations.

26.2 Applicant's Submissions - Mr Cunningham opposed this application. He reminded the Tribunal that the usual procedure would have been for an application to be made for permission to adduce a witness statement. This had not happened in this instance and accordingly the Applicant did not know what Mr Archer was likely to say were he to

give evidence. Mr Cunningham reminded the Tribunal that he had not challenged Mr Cosser's evidence that he had received independent advice from Mr Archer. There was therefore no need for Mr Archer to come to the Tribunal to give evidence on a point that was not in dispute. Mr Cunningham urged the Tribunal to be "wary of the danger of allowing evidence to be produced at this stage to undermine a witness who did not come up to expected proof".

26.3 The Tribunal's Decision - The Tribunal noted that the Respondent had taken three witness statements from Mr Cosser at a time when he (the Respondent) was legally represented. This was a very late application and the Tribunal noted that it was not supported by a witness statement from Mr Archer. The Applicant had not disputed Mr Archer's role in advising Mr Cosser. Mr Cosser had given evidence to the fact that he had had ample opportunity to discuss with and receive advice from Mr Archer in respect of the three witness statements. That had not been challenged by Mr Cunningham in cross-examination and therefore there was no live issue between the parties to which Mr Archer could speak. Mr Archer was not in a position to comment on the truth or otherwise of the contents of the witness statements that Mr Cosser had signed.

26.4 The Tribunal was mindful of the fact that were Mr Archer to be called to give evidence this would raise the possibility of Mr Cosser having to be recalled, which was impractical, as well as the Respondent. In the absence of any prospect that Mr Archer could give relevant evidence it would not be appropriate to derail the timetable of the hearing to accommodate it.

26.5 The Tribunal was not satisfied that calling Mr Archer would assist it in determining whether or not the Allegations brought against the Respondent by the Applicant were proved to the required standard. In those circumstances it was not in the interests of justice to allow the Respondent to call additional evidence and his application was therefore refused.

27. Respondent's Application for leave to call Alice Mahon (Day 12)

27.1 Respondent's Submissions - The witness statement of Ms Mahon was contained within the papers before the Tribunal. Mr Cunningham had confirmed earlier in the hearing that the Applicant did not require Ms Mahon to be available for cross-examination as her evidence was not challenged. The Respondent applied to the Tribunal for leave to call her to give live evidence notwithstanding Mr Cunningham's position on this point. She had unique knowledge of Mr Cosser and may be able to give additional support to the Respondent's case. Her evidence could confirm Mr Cosser's evidence to the Tribunal.

27.2 Applicant's Submissions - Mr Cunningham opposed this application and noted that the Respondent appeared to be seeking to call supplementary evidence deep into the proceedings. Mr Cunningham noted that no additional witness statement had been served and the Applicant therefore did not know what additional evidence Ms Mahon was likely to give.

27.3 The Tribunal's Decision – The Tribunal noted that Ms Mahon was a witness relied upon by the Respondent. Mr Cunningham had confirmed that her evidence was not challenged and the Tribunal was therefore entitled to rely on her evidence on that basis. No further statement had been adduced from Ms Mahon and the Respondent's stated purpose in calling her was simply to make her available for cross-examination. However such cross-examination was not going to be forthcoming as confirmed by Mr Cunningham. The purpose of calling her would be purely speculative and this was not a proper basis for calling a witness. If the Respondent had intended to adduce fresh evidence through this witness this would also have been inappropriate at such a late stage in the case in the absence of any clear explanation as to how such evidence may be relevant. The Tribunal could not see any proper basis or purpose in Ms Mahon being called to give evidence.

27.4 The Tribunal was therefore not satisfied that it was in the interests of justice to permit the Respondent to call her either to give fresh evidence or submit to be cross-examined on evidence which the Applicant had already confirmed was not subject of challenge. The Respondent's application was therefore refused.

28. Respondent's Application for leave to call Jeremy Davidson (Day 12)

28.1 Respondent's Submissions - The position in respect of Mr Davidson was the same as that of Ms Mahon, namely that his witness statement was in the papers before the Tribunal and Mr Cunningham had confirmed that he did not seek to challenge Mr Davidson's evidence and therefore would not be cross-examining him. The Respondent applied for leave to call Mr Davidson for the same reasons as he had sought to call Ms Mahon.

28.2 Applicant's Submissions - Mr Cunningham's position in respect of Mr Davidson was the same as Ms Mahon.

28.3 The Tribunal's Decision - The Tribunal considered the Respondent's application. The circumstances were no different to that of Mr Davidson and the same considerations applied. The Tribunal had refused the application to call Ms Mahon. There was no material difference in respect of this application and the Tribunal was therefore again not satisfied that it was in the interests of justice for Mr Davidson to be called when it did not appear to be necessary or relevant. The Respondent's application was therefore refused.

29. The Respondent's absence on Day 13 (31 January 2018)

29.1 On the morning of Day 13 the Respondent did not attend the Tribunal. A number of emails were received by the Tribunal's office to inform it that he had been admitted to hospital. Although the Tribunal had no medical evidence confirming this, the emails had been provided by two firms of solicitors who were not acting for the Respondent in these proceedings, namely Russell-Cooke and Rylatt Chubb but were nevertheless under a duty not to mislead the Tribunal. Rylatt Chubb had emailed the Applicant requesting they apply for an adjournment.

29.2 Applicant's Submissions - Mr Cunningham told the Tribunal that the Applicant was not applying to continue in the Respondent's absence. The Respondent did not appear to have voluntarily absented himself and in those circumstances Mr Cunningham submitted that the appropriate way forward was to relist the matter at the first available opportunity so that the case did not lose momentum.

29.3 The Tribunal's Decision - The Tribunal considered whether it was appropriate to proceed in the Respondent's absence.

29.4 The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which stated:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
>
> (ii) …;
>
> (iii) the likely length of such an adjournment;
>
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
>
> (v) …;
>
> (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
>
> (vii) …;
>
> (viii) …;
>
> (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
>
> (x) the effect of delay on the memories of witnesses;
>
> (xi) …;"

29.5 In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

> "…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 with 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".

29.6 Leveson P went on to state at [23] that discretion must 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".

29.7 The Tribunal noted that the Respondent had attended every previous day of the hearing and had participated fully in proceedings. He had expressly told the Tribunal earlier in the case that he did not wish an adjournment and that he wanted the matter to be resolved as soon as possible. Although no medical evidence had been presented to the Tribunal, there was a clear indication that the Respondent's absence was not voluntary and in those circumstances the criteria for proceeding in absence was not met.

29.8 The Tribunal agreed with the submission of Mr Cunningham that momentum should not be lost. The Tribunal noted that the case was of some age and as referred to above, the Respondent himself wished the matter dealt with sooner rather than later. There was also a public interest in the matter being resolved in a timely manner. The Tribunal therefore decided to adjourn the matter part-heard and to relist it at the first available opportunity, which was 26 February 2018.

29.9 The Tribunal directed that if either party intended to rely on medical evidence this should be served seven days before the resumption of the hearing.

30. The Respondent's absence on Day 14 (26 February 2018)

30.1 The Respondent did not attend when the matter was listed to resume on 26 February. Mr Cadman appeared on his behalf and told the Tribunal that he was instructed on a pro bono basis solely for the purposes of applying for an adjournment.

30.2. Application to sit in private

30.2.1 Respondent's Submissions - Mr Cadman applied under SDPR Rule 12(4) and (6) for the part of the application to adjourn that dealt with medical evidence to be heard in private. He submitted that the reports into the Respondent's health were detailed and it was difficult to present the medical details to the Tribunal if the hearing was in public. It would be almost impossible to refer to the contents of the reports by code. Mr Cadman recognised that the presumption was that the hearing should take place in public and only wished

the parts of the hearing dealing with medical evidence to be heard in private, not the entirety of the hearing.

30.2.2 Applicant's Submissions - Mr Levey opposed the application to sit in private. He told the Tribunal that the application had been made late and there had been previous applications to sit in private for different reasons. The Respondent's health problems were already in the public domain. It was in the interests of justice that the hearing should be heard in public as the public had a right to know what submissions were made in support of, and in opposition to, an adjournment. Mr Levey told the Tribunal that it was not necessary to read out the medical evidence – submissions could be made by reference to paragraphs so as to protect the Respondent's privacy. Mr Levey submitted that if any of the application was to be heard in private it should be as limited as possible.

30.2.3 The Tribunal's Decision - The Tribunal had heard two previous applications to sit in private and adopted the same approach in respect of this application, namely SDPR Rule 12(4) and the principles set out in Spector.

30.2.4 The Tribunal's starting point was that the entirety of proceedings should be heard in public, in accordance with the principle of open justice. Any departure from that had to be exceptional, as made clear in the SDPR. The application for an adjournment was based almost exclusively on the state of the Respondent's health. The basis of that application would therefore be heavily reliant on the medical reports before the Tribunal. The Tribunal had read the reports and noted that they gave detailed background as to the Respondent's health and the prognosis based on the opinions of the authors. This went significantly beyond what was already in the public domain. This was sensitive, personal information about the Respondent and airing it in public have the potential to cause him exceptional hardship.

30.2.5 The Tribunal therefore directed that the parts of the hearing dealing with submissions on medical evidence should be heard in private. All other parts of the hearing were to be heard in public.

30.3 Application to adjourn

30.3.1 Respondent's Submissions - Mr Cadman submitted that the hearing should be adjourned and re-listed for a Case Management Hearing to review matters in light of the Respondent's medical condition. Mr Cadman referred to the letters from Dr Bourke dated 14 February 2018 and 23 February 2018. The letter of 14 February 2018 concluded that the Respondent was fit to instruct Counsel but he did not have the ability to represent himself as a litigant in person. Dr Bourke had concluded that the Tribunal should not proceed at this stage and he was unable to provide a timeframe as to when it might be possible to do so.

30.3.2 The letter of 23 February 2018 reiterated those conclusions and further concluded that he was not fit to attend on 26 February 2018.

30.3.3 Mr Cadman submitted that the Tribunal could not fairly proceed at this point. The Respondent had a right to participate in the proceedings. The Respondent had attended the expert instructed by the Applicant, Dr Oyebode, on 23 February 2018 and this had resulted in a report dated 26 February 2018. That report had also concluded that the Respondent was not fit to represent himself and that he was fit to instruct Counsel. Dr Oyebode's conclusions differed from Dr Bourke in that he concluded that the Respondent was fit to attend. Dr Oyebode had concluded that the Respondent could make written closing submissions but not without assistance.

30.3.4 The Respondent did not have the ability to pay for representation. He owed money to lawyers already and although he had made reference during the course of the hearing to instructing Counsel, this was not an option.

30.3.5 In view of the Respondent's health and his inability to participate as a litigant in person, Mr Cadman submitted that it would be a breach of his Article 6 rights to proceed and that a fair hearing would be impossible.

30.3.6 Applicant's Submissions - Mr Levey opposed the application for an adjournment, particularly one that was open-ended as that would have the effect of halting the proceedings. There was a strong public interest in continuing without delay. The Applicant had invested significant funds in pursing this case and the Tribunal had spent considerable time hearing it so far. The Respondent had tried everything he could to try to have the proceedings dismissed. He faced serious allegations and while Mr Levey recognised that this cut both ways, the reputation of the profession required the Tribunal to take a cautious and robust approach to this application for an adjournment.

30.3.7 The Respondent was still practising, or hoping to practise, in France and if matters were found proved and if he was struck off that would have an impact on his ability to do so.

30.3.8 Mr Levey told the Tribunal that the Applicant did not accept that the Respondent was unable to afford to instruct lawyers. He told the Tribunal that the case had been "heavily lawyered" by the Respondent and he listed the various Counsel and firms of solicitors that had been instructed in the course of the investigation and proceedings. Mr Levey submitted that the Respondent would not have told the Tribunal that he hoped to instruct Counsel unless he held a realistic belief that he could pay them. Mr Levey told the Tribunal that the Respondent's wife had significant assets and that his son was working at a law firm.

30.3.9 Mr Levey told the Tribunal that notwithstanding the Applicant's position it did not accept that the Respondent could not afford to instruct lawyers, the Applicant was, without prejudice to that position, prepared to pay up to £7,500 + VAT to any Counsel instructed by the Respondent to finish the hearing. This could include preparing written submissions and/or appearing at the Tribunal.

30.3.10 Mr Levey turned to the medical issues and told the Tribunal that the Applicant did not diminish the significance or importance of mental health issues. By its nature it had a subjective element rather than physical ailments which could be objectively viewed.

30.3.11 The Tribunal was invited to treat the medical evidence before it with care. The Respondent had made submissions, presented his case, cross-examined and been cross-examined over the course of the hearing. Dr Bourke had not seen the transcripts of the hearing, which Dr Oyebode had. The Respondent, for the majority of the hearing, had been lucid, robust and coherent. He had presented his case better than many Respondents did. Mr Levey acknowledged that the Respondent had broken down on occasions and there had been instances when he had been clearly unable to cope. On each occasion, after short breaks, the Respondent had recovered and continued. He had told the Tribunal that he wished to get the case concluded. Dr Bourke's report did not give a precise diagnosis and was written in general terms.

30.3.12 Mr Levey invited the Tribunal to draw an adverse inference from the Respondent's non-attendance. He further invited the Tribunal to be "creative" so as to find a solution to this issue so as to enable the proceedings to conclude, which would likely be in the Respondent's interests medically.

30.3.13 Mr Levey told the Tribunal that the Applicant's position, at present, was that it would not seek to challenge the evidence of Mr Young. That position would not necessarily remain so in the event of an adjournment.

30.3.14 Mr Levey also told the Tribunal that he would not oppose the hearing proceeding in private and the Respondent being told this in order to provide reassurance to him. The critical stage that had to be dealt with was closing submissions. These could be done in writing, enabling the Respondent to draft them at home or at his office.

30.3.15 <u>The Tribunal's Decision</u> - The Tribunal noted that the letter from Dr Bourke of 23 February 2018 contained two factual errors. The first was a reference to the Respondent having received emails from the Tribunal since 14 February 2018, which it was said were responsible for a deterioration in the Respondent's health. The Tribunal had not sent any emails to the Respondent directly since 2 February 2018 but had been communicating with Mr Cadman. The Tribunal was concerned that Dr Bourke's letter contained such an error, and consequent implication. It therefore corrected this matter in open Court.

30.3.16 The second error referred to the Respondent's attendance being "insisted upon". This was simply not the case. The Applicant had, in correspondence, sought a direction requiring the Respondent's attendance. The Tribunal had declined to make such a direction on the basis that the Tribunal did not generally make directions requiring or excusing Respondents' attendance and there had been no reason to depart from that in this case. The Tribunal again corrected the error contained in Dr Bourke's letter in open Court.

30.3.17 The Tribunal considered all the material before it and listened to the submissions made by Mr Cadman and Mr Levey.

30.3.18 The Tribunal again kept in mind the principles set out in Jones and Adeogba.

30.3.19 Dr Bourke and Dr Oyebode had reached different conclusions as to whether the Respondent was fit to attend the hearing of the application for the adjournment. Dr Bourke, in his letters of 14 and 23 February was emphatic that he was not fit. Dr Oyebode had concluded that he was.

30.3.20 The reports both reached the conclusion that the Respondent was not fit to represent himself but was fit to instruct Counsel.

30.3.21 The Tribunal was not critical of the Respondent for not attending on 26 February 2018 in light of the conclusion of Dr Bourke. The Tribunal was not, however, satisfied that the Respondent was unfit to attend. The Tribunal noted that Dr Bourke had not been furnished with the transcripts of the hearing and it was unclear if he had been aware of the stage reached in the proceedings. He had not held himself out as an independent expert, whereas Dr Oyebode had signed a declaration confirming that his overriding duty was to the Court.

30.3.22 Dr Oyebode had seen the Respondent more recently than Dr Bourke and he appeared to be more familiar with the proceedings having seen the transcripts and been told of the stage reached in proceedings.

30.3.23 The Tribunal noted that the Respondent was not fit to represent himself at this stage but was fit to instruct Counsel. The stage reached in proceedings was that one witness was to be called (which may not be necessary if the Applicant chose not to challenge his evidence) and closing submissions had to be made. Thereafter the Tribunal would deliberate and make its findings. Depending on those findings there may be mitigation and in any event there would be the question of costs.

30.3.24 In the circumstances the Tribunal decided that it would not be in the interest of justice to proceed with the hearing immediately. The question was the length of an adjournment and its purpose.

30.3.25 The Tribunal's Policy/Practice Note on Adjournments (4 October 2002) made clear that inability to secure representation would not generally be regarded as justification for an adjournment. In this case the Respondent was not presently fit to represent himself but was fit to instruct Counsel, and it was therefore appropriate to depart from the general position to a degree on this occasion. The Tribunal decided that it was appropriate to give the Respondent a reasonable opportunity to secure representation if he wished to do so. The case could not be allowed to drift indefinitely. This was in the Respondent's interests as much as the Applicant's. The Tribunal decided that four weeks was an ample period of time to enable the Respondent to instruct lawyers. The matter would therefore be adjourned part-heard and re-listed for 3, 4, 16 and 17 April 2018.

30.3.26 The Tribunal further directed that if the Respondent wished his closing submissions to be made in writing, it would permit this and would attach the same weight to any written submissions as it would to oral submissions.

31. The Respondent's absence on Day 15 (3 April 2018)

31.1 On 3 April 2018 the Respondent did not attend. He was again represented by Mr Cadman on a pro bono basis. Mr Cadman's instructions were limited to the making of an application to adjourn/stay the proceedings.

31.2 Application to adjourn/stay proceedings

31.2.1 Respondent's Submissions - Mr Cadman had, since the last hearing, sent to the Tribunal a further report of Dr Bourke dated 28 March 2018 and a report from Dr Symeon dated 31 March 2018. Mr Cadman explained that this had been served later than anticipated due to illness on the part of Dr Symeon. He had also sent inter-parties correspondence primarily relating to the Respondent's means and two witness statements from the Respondent on those points.

31.2.2 Mr Cadman applied for the proceedings to be adjourned or stayed to enable the Respondent's health to improve and/or to allow him to obtain funding to instruct Counsel for the remainder of the proceedings. He invited the Applicant to increase its offer of funding of £7,500 + VAT as this was an insufficient sum based on the quotes received from the only chambers that had any previous knowledge of the case. Even if junior counsel alone was instructed this would cost £20,000 for the brief fee plus 4 days of refreshers at £2,500.

31.2.3 Mr Cadman told the Tribunal that the Respondent had been awarded £74,000 in costs against the SRA in separate civil proceedings but that the SRA had secured a stay on the enforcement of those costs due to costs that it was anticipated would be owed in the other direction in these proceedings. If the SRA agreed to pay those costs then this would resolve the problem.

31.2.4 The position in relation to the Respondent's health was that he remained unfit to act as a litigant in person and this included preparing his own written closing submissions. This was the common position among the three psychiatrists who had now examined him. He was fit to instruct lawyers and the main point of difference was whether he was fit to attend.

31.2.5 In light of the Respondent's unfitness to act as a litigant in person, his finances became particularly relevant as this impacted his ability to instruct Counsel. He had no money to pay for Counsel and already owed around £62,000 to lawyers. An adjournment would enable him to earn the money required to instruct Counsel to complete the case.

31.2.6 Mr Cadman told the Tribunal that the Respondent wished to participate in the proceedings and had done so for the first 13 days of the substantive hearing. If the Tribunal was not minded to adjourn generally or to stay the proceedings, Mr Cadman invited it to list the matter for a Case Management Hearing on

16 April 2018 when the matters could be fully aired and a way forward could be considered.

31.2.7 Applicant's Submissions - Mr Levey told the Tribunal that the Respondent's application was opposed.

31.2.8 The Applicant's offer of £7,500 + VAT had been "extremely generous" and would not be increased.

31.2.9 The £74,000 referred to by Mr Cadman was the subject of a stay in the civil proceedings for good reasons, namely that the Respondent already owed the Applicant significant sums of money. The costs of the strike out application had been summarily assessed at £57,000 and the Tribunal had directed that the Respondent pay costs in that sum. This would form part of the Tribunal's order at the conclusion of the proceedings. If the Applicant was successful at the outcome of the substantive hearing, the amount owed by the Respondent would be even higher. It was therefore not a matter of simply lifting the stay and indeed it would be illogical to do so.

31.2.10 The offer of £7,500 + VAT had been made without prejudice to the Applicant's position that the Respondent could pay for representation. Mr Levey reiterated many of the submissions he had made on 26 February 2018, namely that the Respondent's family could provide the funds and/or the Respondent himself could access significant funds. The Respondent was still represented by Rylatt Chubb in the civil proceedings and he would not have told the Tribunal during the hearing that he hoped to instruct Counsel unless he had a realistic prospect of doing so.

31.2.11 Mr Levey submitted that the Respondent had clearly shown that he was willing to lie to the Tribunal during the course of his evidence and he told the Tribunal that it would be unfair for it to say that this was an issue that had not been decided yet. The Tribunal was invited to have this in mind when considering the application.

31.2.12 In relation to the health issues, Mr Levey told the Tribunal that he had received Dr Symeon's report 1-2 days before the hearing. This meant that he had been unable to discuss the contents with Dr Oyebode and Dr Symeon was not available for cross-examination. Mr Levey would have wished to cross-examine him on a number of matters including how his conclusions were consistent with the Respondent's ability to prepare a witness statement which was detailed, well-argued and a forensic statement that addressed points raised in a letter from the Applicant. Mr Cadman confirmed that the prime source of the statement was the Respondent himself, with some minor corrections and amendments made with the assistance of Mr Cadman. Mr Levey noted that the reports did not contain a statement of truth or the usual expert's declaration.

31.2.13 The effect of granting Mr Cadman's application would be to leave matters in abeyance indefinitely. It could not be in the interests of justice, the profession or the public to proceed in this way. Mr Levey did not invite the Tribunal to proceed to deliberate immediately, but to indicate that it would do so on

16 April. This would give the Respondent the opportunity to present closing submissions if he wished to. If he chose not to then the Tribunal should then deliberate. Mr Levey confirmed that in those circumstances he would not seek to challenge the evidence of Mr Young, who had been due to give evidence on Day 13.

31.2.14 The Tribunal's Decision - The Tribunal considered carefully the submissions of both parties, the report of Dr Bourke dated 28 March 2018 and the report from Dr Symeon dated 31 March 2018. The Tribunal, as previously, had in mind Jones and Adeogba when considering whether to proceed in absence or grant an adjournment.

31.2.15 The position remained largely unaltered from 26 February 2018. The Respondent remained fit to instruct Counsel but unfit to represent himself. Dr Symeon stated that the Respondent "should not attend the hearing on Tuesday 3rd April 2018" and Dr Bourke remained of the view he had previously expressed that the Respondent was not fit to attend.

31.2.16 The Tribunal also considered the witness statement of the Respondent dated 27 March 2018. In that document he had stated "I do try to continue I practice in Paris as a French avocat and this should not come as any surprise, since I am resident there and no longer practice as a Solicitor". He had continued "Since Christmas, I have been unable to do anything like the number of chargeable hours and since my hospitalisation, I am working less than half the hours that I was previously able to manage". The Respondent had served an additional witness statement which dealt primarily with his financial position and confirmed that he still wished to be a part of the proceedings before the Tribunal.

31.2.17 The Tribunal noted from the Respondent's witness statement of 27 March and from Mr Cadman's submissions that the Respondent was still working and practising as an avocat in Paris. It was not apparent that Dr Bourke or Dr Symeon had been aware of this when preparing their reports. The Tribunal further noted that neither of these psychiatrists had been made available for cross-examination, despite Mr Levey having made clear on 26 February that he would have wanted to cross-examine Dr Bourke.

31.2.18 It was clear from the material before the Tribunal that the Respondent appeared to be well enough to make written submissions and to continue to practise, indeed it had been submitted that one basis upon which the Tribunal should adjourn was to allow the Respondent time to earn the money he argued he would need to fund representation. He was therefore well enough to instruct Counsel for the purpose of making oral and/or written closing submissions.

31.2.19 The Tribunal did not deem it appropriate to carry out an assessment of the Respondent's means or investigate how he may choose to fund Counsel. It further deemed it to be completely inappropriate to make a finding on the question of honesty at this stage. The Respondent was fully entitled to the presumption of innocence and the time for considering the evidence had not yet been reached.

31.2.20 The Tribunal was satisfied that, in terms of his health, the Respondent had the capacity to instruct Counsel and it noted that he was currently represented in separate civil proceedings. The Tribunal had given the Respondent five weeks in order to instruct Counsel if he wished to do so. He had not taken this opportunity and the Tribunal concluded that he had chosen not to make closing submissions. The Tribunal noted that the Respondent had made a detailed opening speech and had given extensive evidence. The Tribunal did not feel that the Respondent was unduly prejudiced by the absence of closing submissions in circumstances where he had chosen not to make any. The Tribunal would consider all of his evidence given both orally and in writing.

31.2.21 There was a public interest in the matters concluding and indeed it appeared to be in the Respondent's best interest for this to be achieved. Dr Symeon had stated "I envisage that true significant improvement in his mental state will only occur after his case concludes".

31.2.22 The suggestion by Mr Cadman that the Tribunal adjourn to a Case Management Hearing would not achieve any clear purpose as the Tribunal would most likely find itself in a similar positon on the next occasion.

31.2.23 The Tribunal was satisfied that it was in the interests of justice to proceed with the matter and Mr Cadman's application was refused. The Tribunal seriously considered proceeding immediately. However out of an abundance of fairness to the Respondent the Tribunal agreed to adjourn the matter until 16 April 2018 as had been suggested by Mr Levey. This would afford the Respondent one final opportunity to put closing submissions before the Tribunal, either orally or in writing.

31.2.24 The Tribunal decided that it would proceed with the matter on 16 April 2018, with or without closing submissions.

32. <u>The Respondent's absence on Day 16 (16 April 2018)</u>

32.1 On 16 April 2018 the Respondent did not attend. On this occasion he was represented by Mr Cohen QC. He was instructed for the sole purpose of making three applications. The first application was for the Tribunal to dismiss the case against the Respondent on the basis that the proceedings to date had breached his Article 6 and common law rights. If that application failed then the second application was to adjourn generally and if those applications failed then the third application was to adjourn to allow the Respondent the opportunity to seek a Judicial Review of the Tribunal's decisions.

32.2 The Tribunal heard submissions specifically related to the detail of the Respondent's medical condition in private by agreement of both parties.

32.3 <u>Application to dismiss for abuse of process</u>

32.3.1 <u>Respondent's Submissions</u> - Mr Cohen had prepared a written document 'Respondent's Submissions for 16 April 2018' which was served on the morning of Day 16. He developed his points in oral submissions. Mr Cohen

told the Tribunal that this application looked backwards not forwards. The Tribunal should be looking at what had taken place and asking whether it could conclude that the hearing had been unfair. Mr Cohen told the Tribunal that this application involved identifying the matters giving rise to the question of whether the Respondent had had a fair trial after they have happened and not before. There was no prospect of adjustments now being made that could remedy what had already taken place. In criminal proceedings in the Crown Court the major adjustment that could be made was access to skilled solicitors and counsel. Mr Cohen stated that he made no criticism of the Tribunal.

32.3.2 Mr Cohen referred to the Equal Treatment Bench Book (February 2018). There were some signs that the Respondent had been suffering during the giving of his evidence. The Tribunal was invited to leave behind any impressions gained during the course of the Respondent's performance during the January hearing days and look at matters afresh now. The Applicant had acknowledged that the Respondent could not continue in person, indeed their own expert had said as much. There was a consistency of medical evidence on both sides. Mr Cohen submitted that the Applicant's offer of funds for the Respondent to instruct counsel was a concession they recognised that difficulty. If there could not be a fair trial going forward with the Respondent acting in person then it followed "as night follows day" that there could not have been a fair trial to date. Where there was a determination that there had been no fair trial, only way forward was to dismiss the prosecution. This did not preclude a future prosecution. Mr Cohen referred the Tribunal to Arrow Nominees Inc and Anr v Blackledge and Ors [2000] C.P Rep.59. at para [54]. Abuse of process dismissals were not about punishment. The fairness rights were absolute and could not be abrogated as a matter of discretion. If no fair trial was possible, on balance of probabilities, based on what has happened in past then the Tribunal must dismiss the case against the Respondent.

32.3.3 Mr Cohen took the Tribunal to Varma v GMC [2008] EWHC 753 (Admin). This was an application in advance of the hearing. The Panel had been entitled to prefer the evidence of one expert over another. Here, the Respondent was not fit and the experts agreed on this.

32.3.4 Mr Cohen invited the Tribunal to consider what was meant by "able to effectively participate in proceedings". The Respondent had attended, engaged in some cross-examination and given evidence. However, effective participation meant more than that. R v Marcantonio [2016] EWCA Crim 14 related to fitness to plead, which was closely related to this application and set out the Pritchard test. At [7] it stated

> "It seems to us, however, that in applying the Pritchard criteria the court is required to undertake an assessment of the defendant's capabilities in the context of the particular proceedings. An assessment of whether a defendant has the capacity to participate effectively in legal proceedings should require the court to have regard to what the legal process will involve and what demands it will make on the

defendant. It should be addressed not in the abstract but in the context of the particular case".

32.3.5 Mr Cohen submitted that nature and complexity of these proceedings was relevant. The Allegations were historic, suggested that the Respondent had been the 'alter ego' of trusts, and had concerned litigation in New York that took place 9-10 years ago. This required a very high level of functioning.

32.3.6 Mr Cohen took the Tribunal through the medical evidence and made submissions on the contents of the various letters and reports that the Tribunal had been presented with. The details of those submissions are not recorded here for reasons of confidentiality but the Tribunal had regard to them in their entirety. In summary, Mr Cohen submitted that the Respondent had been unwell throughout and this had deteriorated during the course of his evidence. Dr Capstick had suggested that the Respondent be treated as an in-patient and Mr Cohen submitted that she would not have made that suggestion if she did not feel it was necessary.

32.3.7 Mr Cohen submitted that it would be a "dangerous assumption" to form a view based on the Respondent's ability to apparently perform well.

32.3.8 He referred the Tribunal to Solanki v Intercity Telecom [2018] 1 Costs LR 103, which cited Teinaz v London Borough of Wandsworth [2002] IRLR 721 and the principles concerning ill-health and adjournments. In Solanki the Court held that the judge's personal assessment of the litigant in person's health had caused "particularly severe" consequences. The Tribunal should not substitute its own views over properly procured medical evidence.

32.3.9 The prejudice caused by the Respondent's ill-health was aggravated by the inequality of arms. Mr Cohen did not suggest that inequality of arms alone gave rise to a breach of Article 6, but it was a significantly aggravating factor due to substantial health impairment as the absence of legal representation had prevented adjustment. Mr Cohen referred the Tribunal to Steel and Morris v United Kingdom [2005] 41 EHRR 22. Even when the litigant in person was resourceful and articulate there could be a breach of Article 6 due to inequality of arms.

32.3.10 In all the circumstances of this case, Mr Cohen invited the Tribunal to dismiss the case against the Respondent.

32.4 Application to adjourn (generally)

32.4.1 Respondent's Submissions - Mr Cohen told the Tribunal that he was not asking it to consider again what it had already considered. However it was not clear whether, in the previous application, the Tribunal had been referred to the relevant authorities. Therefore Mr Cohen proposed to renew that application.

32.4.2 Mr Cohen referred the Tribunal to Anastasi v Police Appeal Tribunal [2015] EWHC 4156 (Admin), which summarised the authorities in this area including Brabazon-Drenning v United Kingdom General Council for Nursing and Midwifery and Health Visiting [2001] HRLR 6, R v Hayward, Jones and Purvis [2001] QB 862, CA (including the House of Lords decision that removed the seriousness of the offence from the checklist), Tait v Royal College of Vetinary Surgeons, McDaid v NMC and Levy v Ellis-Carr and Ors [2012] EWHC 63 (Ch). The Tribunal was invited to consider afresh whether an adjournment was necessary on the grounds of ill-health and his inability to engage with the case. The Respondent could not afford to pay for representation – the Respondent's wife had paid for Mr Cohen to make these applications. The Applicant's offer of £7,500 was not adequate as there was "not the slightest prospect at all that counsel can be found for anything like that sum, given the days of preparation that would be required to make closing submissions in this prosecution". The matter should therefore be adjourned until such time as the Respondent's health recovered or he was able to obtain sufficient funds to instruct Counsel.

32.5 Application to adjourn for Judicial Review

32.5.1 Respondent's Submissions - Mr Cohen submitted that if the Tribunal was not with him on either of those points, the Respondent would wish to seek a Judicial Review of those decisions. The continuance of the proceedings was having a continuing effect on his heath and represented an ongoing breach of Article 6. He was not in practice and there was no disadvantage in adjourning.

32.6 Application to Dismiss for Abuse of Process

32.6.1 Applicant's Submissions - Mr Levey described this application as latest "in long line of attempts to derail these proceedings". The Respondent was currently practising as a solicitor in France and dismissal of these proceedings would enable this to continue.

32.6.2 Mr Levey submitted that this application could have been made on 26 February, or on 3 April. Instead what had happened was that Mr Cadman applied to adjourn generally. The Applicant had decided there was a short answer, based on the fact that the medical evidence was that he could instruct counsel and therefore £7,500 +VAT was offered. On 3 April it had been said that this was not enough. In his Witness Statement he had stated that he did not have the means to pay the £12,500 difference between the £7,500 and the £20,000 needed. The Applicant rejected that suggestion.

32.6.3 Mr Levey went through the medical evidence. Again, the submissions are not summarised here but the Tribunal had full regard to them. Mr Levey submitted that none of the evidence suggested that the Respondent had been unfit to participate in the proceedings.

32.6.4 Mr Levey submitted that it could not be right that the Tribunal disregarded all that had happened during the hearing. It was right to be circumspect about weight attached to the Respondent's evidence. However the Respondent had

been lucid, articulate, intelligent, persuasive and fully engaged. There were times when he had found it difficult to find documents and others when he had become stressed, including crying. However he fully engaged. He gave complete answers both orally and in writing. His opening speech was long but detailed and not rambling. When challenged by Mr Cunningham he had come back "quick as a flash". The Respondent had been more accomplished than many litigants in person. This was not a case where the Tribunal had carried on regardless. It had made every allowance for the Respondent, who had not wanted an adjournment. Dr Bourke had not been present and had not seen the allowances made and what actually occurred. The starting point was that by the nature of his evidence, he was looking backwards. In assessing the weight to attach to Dr Bourke's letters Mr Levey invited the Tribunal to note that he was not put forward as an independent expert and had not signed a statement of truth. He had not been made available for cross-examination despite the Applicant expressly asking for this. The Applicant had been told that he was unavailable and did not wish to be put forward as an expert. This was not a technical point. Dr Bourke appeared not to have seen any transcripts of the hearing or listened to the recordings. This may have been a fruitful line of cross-examination. His letters were based solely on what the Respondent had told him.

32.6.5 Dr Oyebode had not been asked to address this issue. Dr Symeon barely touched on the issue at all. He too had not seen the transcript, and so did not know what had happened at trial.

32.6.6 Mr Levey submitted that the Tribunal could be satisfied that the Respondent had had a fair trial to date.

32.7 Adjournment (general)

32.7.1 Applicant's Submission - Mr Levey submitted that the civil courts did not entertain repeated applications again and it would be surprising if it was any different here. There had been no material change of circumstances and it would set a very dangerous precedent to allow Mr Cohen to make the same application because he could possibly make it more persuasively than Mr Cadman. The application was not on notice. The Respondent was fully able to fund a closing speech. He had chosen not to and that was a matter for him, but the proceedings should now achieve finality. He had decided not to make a closing but decided to make a different application through Mr Cohen.

32.7.2 The Applicant's position was that the issue of the Respondent's fitness to represent himself did not arise due to the stage of proceedings reached.

32.8 Adjournment (Judicial Review)

32.8.1 Applicant's Submissions - Mr Levey submitted that if the Tribunal thought it right to proceed then it ought to proceed. The appropriate route for the Respondent was his statutory right to appeal, not a Judicial Review. If the matter was adjourned this would cause months of delay. This was an

interlocutory matter and Squire v GMC stated that this was the appropriate remedy.

32.8.2 The Tribunal's Decision - The Tribunal considered carefully the oral and written submissions presented to it and it had regard to the authorities referred to and to the Equal Treatment Bench Book ("ETB"). In considering this application the Tribunal reviewed all the medical evidence presented to it to date.

32.8.3 The Tribunal had been directed to the ETB, specifically the section dealing with Mental Disability and the subheading "What if the individual has not/does not raise the subject". The possible examples of indicators that, in this case, a Tribunal should be alert to included "the person lacks energy; is fidgety; is very emotional, often incongruously; appears uninterested and avoids eye contract…; unclear speech, inappropriate interruptions; inappropriate dress".

32.8.4 The Tribunal noted that the Respondent had become emotional on occasions during the January hearing. However he had been fully engaged, had spoken eloquently, behaved entirely appropriately at all times and was appropriately dressed. He had attended on time every day and been ready to proceed at the appointed time.

32.8.5 This was not a case where the Respondent had not raised the issue. It had been raised, in relatively general terms, before the start of the hearing. The Tribunal had kept the matter under review throughout the hearing and had made adjustments accordingly.

32.8.6 The Tribunal, in considering this application, reviewed the medical evidence. Mr Cohen had invited the Tribunal to consider whether, knowing all it did at this point, the proceedings to date had been fair. Mr Cohen had relied primarily on the evidence of Dr Bourke and the Tribunal considered his evidence. However it was right that the Tribunal carry out its assessment of the fairness of proceedings to date by reference to the totality of the medical evidence that was now before it.

32.8.7 Dr MacGreevy – 13 December 2017 - This was a letter from the Respondent's GP in London. This letter did not make reference to the Tribunal proceedings and did not say that he was unfit to participate in such proceedings. It appeared that as at 13 December 2017 the Respondent had not seen a psychiatrist since July 2014.

32.8.8 Dr MacGreevy – 2 January 2018 - This document was a letter from Dr MacGreevy to Mr Cadman who was representing the Respondent at that time. This letter specifically referenced the Respondent's forthcoming involvement in Tribunal proceedings. This followed a discussion between himself and the Respondent on this topic. Dr MacGreevy made a number of recommendations, which the Tribunal considered at the start of the hearing and are set out above. Dr MacGreevy stated that "These measures should ensure that my patient is able to comfortable [sic] manage himself during the

process". The letter did not suggest that he was unfit to participate and indeed suggested the opposite; if the measures that he had recommended were followed then the Respondent could manage comfortably. The Tribunal had duly followed those recommendations.

32.8.9 Dr Beaunier – 5 January 2018 - Dr Beaunier had issued a medical certificate confirming that the Respondent was under his supervision for "chronic conditions requiring long term treatment…". He stated that these conditions affected both his mental and physical well-being and should be "taken into account in periods of difficulty and stress, such as legal proceedings". He had not suggested that the Respondent was not fit to participate in Tribunal proceedings.

32.8.10 The Skeleton Argument dated 12 January 2018 had addressed the issue of the Respondent's health at paragraph 49 onwards. This made reference to the three letters discussed above. At paragraph 51 the document read "Having discussed matters with his doctor, R is hopeful that he will be able to deal with trial with a minimum of interference with the Tribunal's usual arrangements". There then followed a number of requests which can be summarised as follows:

- Sitting hours not exceeding 10am-4pm with a break of one hour for lunch and further short breaks every 90 minutes. There may be additional breaks required on occasion;

- Allowance of ample time to read a document before the Respondent was questioned about it;

- Permission to take a notebook into the witness stand to make notes during cross-examination and time after cross-examination to identify relevant pages for re-examination.

32.8.11 The Tribunal had accommodated each of these requests, save for late sitting on Day 10 for reasons set out above.

32.8.12 The Skeleton Argument had not suggested that the Respondent was not fit to participate or that to proceed with the matter would amount to a breach of his rights to a fair trial.

32.8.13 Dr MacGreevy – 19 January 2018 - This letter was produced once the hearing had commenced, on Day 5. The Tribunal had risen during the morning in order to await receipt of this letter. Dr MacGreevy had seen the Respondent on 18 January 2018 and "felt that his mental state was poor and I am sure negatively affecting his ability to perform in Court". He was aware that the Respondent was unrepresented. Dr MacGreevy wrote that he supported the Respondent's request to have a member of the public removed from the Courtroom. He did not state that the Respondent was or would be unfit to continue.

32.8.14 Dr Capstick – 23 January 2018 - This followed the Respondent's first consultation with Dr Capstick since July 2014. He had attended by way of emergency appointment and informed her that he was in the middle of a court case. Dr Capstick stated that "His symptoms…impact his performance". She stated "I suggested that he might wish to consider in patient treatment – which he has declined".

32.8.15 Dr Capstick wrote this in the knowledge that the Respondent was currently engaged in the proceedings. She did not suggest that in-patient treatment was necessary and she did not arrange for his admission to hospital. She did not suggest that the Respondent was unable or unfit to continue with the proceedings. She did state that his performance would be impacted but she did not suggest that this was to such an extent that the hearing should be halted.

32.8.16 The Tribunal considered it important to be very precise as to what Dr Capstick had, and had not, said. In Dr Bourke's letter to Mr Cadman of 14 February 2018 he had quoted the questions he had been asked by Mr Cadman before responding to them. Question 3 was quoted as having been*;* "On 23/01/2018, Mr Maitland Hudson produced the Tribunal a letter indicating that the medical diagnosis at that stage was that he should have been admitted as an inpatient but he refused. I have concerns about the validity of the trial to date and would ask your input". The Tribunal took the letter referred to be the email from Dr Capstick. Dr Bourke had proceeded to answer the question and began by stating that he was "aware of this advice". He did not say that he had seen it and indeed, had he done so he would have seen that Dr Capstick had not stated that the Respondent "should be" admitted to hospital. She had stated that it was something he may wish to consider, which was significantly different.

32.8.17 Dr Bourke – 6 February 2018 - This letter addressed the issue of fitness to instruct Counsel. Dr Bourke stated that at the time of his initial assessment he had not been fit to instruct Counsel but that he did not anticipate this being an issue, though a further assessment was awaited. This letter did not address the question of the Respondent's fitness during the course of the hearing.

32.8.18 Dr Bourke – 14 February 2018 (first letter) - This letter again dealt primarily with the issue of fitness to instruct Mr Cadman. Dr Bourke confirmed that he was now fit to provide instructions. This letter did not address the Respondent's fitness during the course of the hearing to date.

32.8.19 Dr Bourke – 14 February 2018 (second letter) - This was the first letter that addressed, retrospectively, the question of the Respondent's fitness during the proceedings to that point. Dr Bourke's view was set out in response to Question 3, quoted above. He had stated that the fact that the Respondent had chosen to proceed was "a reflection of the fact that he was not well placed to ascertain what was and was not in his best interests at the time". He stated that he would have had concerns about the Respondent's ability to represent a client or himself. Dr Bourke noted that "In terms of the validity of the trial to date, it is difficult for me to comment in terms of its direct impact upon the proceedings". He goes on to report that at the time of his initial assessment "he

was in no fit state to be representing any client and I had difficulty in seeing how he could represent himself appropriately and to the best of his ability". The relevant section of the letter concludes that "Concentration and attention are routinely affected as are short-term memory, word finding and a general sense of absentmindedness often ensues. I would consider all of these to be faculties necessary in the representation of another in Court and in suffering from a disorder that deprives him of these, I would have difficulty envisaging how he could have executed his role in the proceedings competently. While this is in retrospect, Dr Capstick's assertion that he should be treated in hospital provides adequate insight from my perspective as to the level of function to which he was likely to have been performing at the start of the trial". The Tribunal had already noted that the question that appeared to have been asked of Dr Bourke had mischaracterised Dr Capstick's opinion. The effect of this was that some of Dr Bourke's conclusions on this question may have been reached based on an incorrect understanding of Dr Capstick's advice.

32.8.20 The Tribunal further noted that the Respondent's presentation to Dr Bourke was significantly different to his presentation in Court. The Respondent had been eloquent, coherent and engaged throughout. He had been cross-examined for more than three days by experienced Counsel and had robustly maintained his position, often pushing back forcefully but appropriately, to the allegations put to him. The Tribunal in no way sought to substitute Dr Bourke's assessment with its own views. However it was relevant that Dr Bourke did not appear to have been in possession of all the material facts when reaching his conclusions. The Respondent's submissions and evidence had been transcribed, yet these transcripts had not been provided to Dr Bourke. The entirety of the proceedings had been recorded on audio disc and again, there was no evidence that these discs had been provided to, or listened to by, Dr Bourke.

32.8.21 There was no evidence that Dr Bourke had been made aware of the breaks that the Tribunal had taken in order to assist the Respondent or any of the other measures put in place to assist him.

32.8.22 There was no evidence that Dr Bourke had been made aware that the Respondent had been continuing to work, including practising as an Avocat in Paris, or if he had been made aware, none of his letters had addressed the point. This was of particular relevance to Dr Bourke's conclusion that the Respondent may lack the capacity to conduct litigation or represent a client. In short, while no criticism was made of Dr Bourke, it was clear that he was not in possession of the full picture when he wrote his letters. This had an effect on the weight that the Tribunal could attach to them.

32.8.23 It was relevant to note at the outset that Dr Bourke was not being put forward as an independent expert witness. This had been confirmed in an email from Mr Cadman dated 19 February 2018. He had not been made available for cross-examination despite the Applicant making clear on 26 February and 3 April that they would have wished to cross-examine him. The Tribunal

found this letter to be unpersuasive to the submission that the Respondent had not been fit to participate in the proceedings in January.

32.8.24 Dr Oyebode – 26 February 2018 - This was the expert instructed by the Applicant. Unlike Dr Bourke he was being put forward as an independent expert and had signed the appropriate declaration and statement of truth.

32.8.25 Dr Oyebode had the advantage of extracts of the transcripts including the Respondent's Opening and his cross-examination. However he had not been asked to consider the issue of the Respondent's fitness in the proceedings in January and did not offer an opinion on that question.

32.8.26 Dr Bourke – 23 February 2018 - This short letter to Mr Cadman did not deal with the question of the Respondent's fitness during the January proceedings.

32.8.27 Dr Bourke – 28 March 2018 - This letter, among other matters, addressed some of the conclusions of Dr Oyebode. Dr Bourke wrote "I do not doubt that he came across well but this is the wrong bench mark by which to measure his ability and I sincerely question whether he is likely to have performed as well as he might have done premorbidly". He further stated that "Similarly, that he otherwise seemed capable of representing himself, as Dr Oyebode opines, is a reflection of an articulate and educated man having the ability to present himself in such a manner. But this assumes that the apparently articulate manner that was witnessed is up to scratch".

32.8.28 Dr Bourke was still not in possession of the transcripts or audio discs and many of the limitations on his second letter of 14 February 2018 persisted in this letter. He did address the question of breaks but did not appear to have had the full picture in respect of that as he referred only to breaks of 10-15 minutes "in which to compose himself" rather than the regular breaks that in fact took place even when the Respondent had not been overtly distressed. The question of whether the Respondent had been "up to scratch" was not the issue. The Tribunal was being asked to conclude, on the balance of probabilities that the Respondent had been unfit to participate, which was not the same as being 'up to scratch'.

32.8.29 Dr Symeon – 3 April 2018 (as updated at 11 April 2018) - Dr Symeon was not asked to specifically address this issue. The only reference in the report to the question the Tribunal was being asked to consider for the purposes of this application was "…it is likely that Mr Maitland Hudson's performance as his own advocate and witness thus far would have been adversely affected by his mental state. The cognitive processes most likely affected would include sustained focussed attention and working memory". Dr Symeon did not say that the Respondent had been unfit to participate in proceedings. As with Dr Bourke, Dr Symeon did not appear to have seen the transcripts, heard the audio recordings, been aware of the measures put in place during the hearing or the fact that the Respondent was still working.

32.8.30 The Tribunal concluded, having reviewed the medical evidence provided before, during and after the January proceedings, that there was no persuasive evidence that the Respondent had not been fit to participate in the proceedings.

32.8.31 The Tribunal considered whether the fact that he was unrepresented, allied with the health difficulties that had been established, meant that the proceedings had been unfair. Mr Cohen had conceded that equality of arms alone was not sufficient in this case to meet that test.

32.8.32 The Respondent had representation in these proceedings until the working day before the hearing commenced. His case preparation had therefore been undertaken with the assistance of solicitors. At previous hearings in the case he had been represented by Counsel.

32.8.33 The Tribunal noted that once the hearing began the Respondent had made a number of applications and submissions, in some cases on complex legal points. He had done so effectively. This Tribunal was experienced in dealing with unrepresented Respondents. It had therefore given the Respondent time and had generally made allowances throughout for his lack of representation. It had assisted him by explaining procedures to him. The Tribunal did not find that the Respondent had been prejudiced by his lack of representation, even when allied with his health difficulties.

32.8.34 The Tribunal found that the Respondent had not demonstrated, on the balance of probabilities, that he had been unfit to participate in the proceedings or that there had been procedural unfairness to the Respondent. The Tribunal was satisfied that the Respondent had had a fair hearing to date. There had been no abuse of process and the application to dismiss the case against the Respondent was refused.

32.9 Application to adjourn (general)

32.9.1 The Tribunal listened carefully to the submissions.

32.9.2 This application had been made late and without notice to the Tribunal or the Applicant. The Tribunal did not consider this to be acceptable. Furthermore, this was a repeat of two previous applications to adjourn generally, both of which had been considered and determined.

32.9.3 Mr Cohen had submitted that there was nothing specific in the SDPR 2007 that prevented the same application being made again. This was correct but that did not mean that parties were free to make the same applications repeatedly. Practice Direction 6 made clear that it was the duty of every party to actively assist the Tribunal and its administrative staff in fulfilling the overriding objective. One aspect of the overriding objective was that cases should be dealt with efficiently and expeditiously. The logical conclusion of Mr Cohen's submission would be that the Tribunal could, on any case, be constantly detained by having to repeatedly decide the same application. This could not possibly be in the interest of justice.

32.9.4 It was, of course, right that where there was a significant or material change of circumstances, or where there was significant further information, the Tribunal should hear a renewed application. The application on 3 April 2018 had been based on medical evidence, some of which had not been before the Tribunal on 26 February 2018.

32.9.5 The medical evidence before the Tribunal on 16 April 2018 did not differ materially from that that was before it on 3 April. The only addition was a very modest update to the report of Dr Symeon. It was not based on a further assessment of the Respondent and the sources of information did not appear to be different.

32.9.6 Mr Cohen had submitted that where a serious error had occurred, the Tribunal could reconsider its previous decision. This would, in effect, involve the Tribunal sitting as an Appeal Tribunal reviewing (in this case) its own decisions. In any event the Tribunal had properly applied the relevant authorities when making its earlier decisions.

32.9.7 The Tribunal always considered whether it was appropriate to proceed in absence when a Respondent did not attend and it had that in mind on this occasion. However in the absence of any significant change in circumstances since the Tribunal's last determination of this question on 3 April, there was no basis to consider a further application for an adjournment on the grounds advanced by Mr Cohen. The Tribunal therefore declined to consider this application.

32.10 Application to adjourn for Judicial Review.

32.10.1 The Tribunal considered the submissions of both parties and had regard to the relevant authorities.

32.10.2 Any party before the Tribunal had a statutory right of Appeal pursuant to Section 49(1) of the Solicitors Act 1974 as amended by the Legal Services Act 2007. It was clear from the judgment of Ousley J in the Respondent's own application for Judicial Review of these proceedings that it would be "exceptional" for the Administrative Court to interfere with decisions taken by the Tribunal that were "within its sphere of decision-making in the first place". This was consistent with the general principle set out in Squire that challenges to decisions of a Tribunal should await the conclusion of the hearing. The question of whether to adjourn was clearly a matter within the Tribunal's discretion and as such it was open to the Respondent to raise his complaint with the Tribunal's decision by way of an appeal, which he was entitled to lodge at the conclusion of the case. The prospect of the Respondent obtaining permission for a Judicial Review in these circumstances were therefore low. If the Tribunal adjourned for that application to be heard then the matter would most likely remain part-heard for many months.

32.10.3 The Tribunal had determined on 3 April that it was in the interests of justice for the matter to proceed. Having refused the application to strike-out the proceedings and having refused to consider a second application to adjourn

generally, this remained the Tribunal's view. The corollary of that was that it would not be in the interests of justice to delay matters, particularly for so long and for a purpose that appeared highly unlikely to succeed.

32.10.4 The Tribunal, having determined that the matter should proceed, refused the application to adjourn and directed that the matter would proceed. The Tribunal duly retired to deliberate on the Allegations.

Factual Background

33. The Respondent was born in September 1948 and admitted as a solicitor in England and Wales in 1975 and to the Paris Bar in 1988. At the time of the hearing his name remained on the Roll. At all material times he practised in London as a senior partner at the London Firm and in Paris as a sole practitioner at the Paris Firm.

34. On 27 August 2014 a duly authorised officer of the SRA commenced an investigation into the Respondent's conduct. This led to the production of a Forensic Investigation Report dated 21 December 2015 ("the FIR").

Rule 5 Allegations

Allegation 1.1

35. EPL was incorporated in the British Virgin Islands on 30 June 2006 and formed part of a structure of offshore companies. It was a wholly owned subsidiary of Reconsult Limited, which was in turn beneficially owned by the Regroup Trust. The structure was managed by a Cypriot offshore service provider, Stratus Associates Limited ("Stratus").

36. The Respondent was a director of EPL from 9 January 2007 to 1 June 2010. He had also described himself as the 'Protector' of the Regroup Trust, with certain limited powers in relation to the administration of the trust. It was the Applicant's case that, at all material times, the Respondent had (a) some form of ultimate beneficial interest in EPL and/or (b) an active role in the management of EPL. The Respondent denied this. Steven Cosser had been a longstanding client of the Respondent, and had been a client of the London Firm at the times when the EPL Loans and the Deed of Sale were concluded.

37. Sungate and Tranfeld were two companies incorporated in the BVI and set up and beneficially owned by Mr Cosser until his interest was sold to EPL pursuant to the Deed of Sale. They were the holding companies of two properties owned by Mr Cosser in London. Mr Cosser was the beneficial owner of these companies.

38. The First EPL Loan dated 12 April 2010 contained the following material terms:

- Sungate and Tranfeld borrowed £150,000 from EPL, repayable six months after the date of drawdown or the date of sale of properties in London or Paris. A Repayment Fee of £150,000 was payable, in addition to an Arrangement Fee of £10,000.

- Interest at 26% per annum was payable if an Event of Default occurred, or if the advance and the Repayment Fee were not repaid on time.

- The following security was provided by Sungate and Tranfeld to EPL: (i) an assignment of the benefit of the Nanterre Judgment which had been obtained by Sungate against Mr Cosser; and (ii) an equitable mortgage over 115 Eaton Square and 115 Eccleston Mews.

39. The borrower's Solicitors and the borrower's conveyancer were defined as the London Firm.

40. The Second EPL Loan dated 17 June 2010 contained the following material terms:

- Sungate and Tranfeld borrowed £50,000 from EPL, repayable 1 month after the date of drawdown or the date of sale of properties in London or Paris.

- A Repayment Fee of £50,000 was payable, in addition to an Arrangement Fee of £2,000.

41. The Deed of Sale was concluded on the same day as the Second EPL Loan, and contained the following material terms:

- In consideration for EPL making the loan advance under the Second EPL Loan available to Sungate, and an additional sum of £5,000, Mr Cosser sold to EPL "the Interests set out in the Schedule to this Agreement ("the Interests") with full title guarantee where appropriate".

- The Interests in the Schedule were as follows:

    - Mr Cosser's interests in the shares of AISL, a company in Sierra Leone;

    - Shares held by Mr Cosser or AISL in the Bagla Mining Company;

    - The beneficial interest in 115 Eaton Square and 115 Eccleston Mews; and

    - Mr Cosser's equitable interest in Sungate and Tranfeld.

42. The First and Second EPL Loans were subsequently repaid from the proceeds of the sale of the property at Rue Darcel in France on or around 7 September 2010. On the same day EPL and Sungate entered into the Third EPL Loan in similar terms to the First and Second EPL Loans. The borrower's Solicitors and borrower's conveyancer were again defined as the London Firm. The Third EPL Loan contained the following material terms:

- Sungate borrowed £200,000 from EPL, repayable 6 months after the date of drawdown or the date of sale of 115 Eaton Square or 115 Eccleston Mews.

- A Repayment Fee of £200,000 was payable.

43. On 26 January 2011, EPL and Mr Cosser, in his personal capacity, entered into the Fourth EPL Loan. This contained the following material terms:

- EPL agreed to lend Mr Cosser €50,000, repayable 2 months after the date of drawdown or the date on which the proceeds of an ongoing insurance claim by Mr Cosser were received by Mr Cosser's loss assessors.

- A repayment fee of €5,000 was payable.

- As security for the loan advance, Mr Cosser assigned to EPL his interest in the proceeds of the Insurance Claim.

Allegation 1.2

44. By a Promissory Note dated 16 September 2008, Sungate purportedly agreed to lend €2,740,400 to Mr Cosser with interest at 3% per annum repayable on 30 June 2009. Mr Cosser did not repay this loan, and consequently on 8 October 2009 the Nanterre Judgment was entered against him in favour of Sungate. Both Sungate and Mr Cosser were clients of the Respondent during this period. The Applicant's case was that the Nanterre Judgment was a sham device which was not intended to create any genuine rights or obligations as between Sungate and Mr Cosser.

45. The relationship between Mr Cosser and the Respondent had broken down in May 2011 over a disagreement relating to the payment of the proceeds of the Insurance Claim. Mr Cosser agreed to settle the Insurance Claim for £450,000, and by a payment mandate dated 11 April 2011 he directed that the proceeds be divided as follows: (i) £27,000 to Harris Balcombe in settlement of their fees; and (ii) the remaining £423,000 to the client account of the London Firm. However, on 3 May 2011, Mr Cosser signed a further payment mandate instructing Harris Balcombe to transfer the balance of £423,000 to a personal account in his name. Harris Balcombe complied with this second payment mandate, and transferred the funds to Mr Cosser's personal account.

46. In separate and unrelated proceedings, LOGOS Legal Services ("LOGOS") had obtained a judgment on 11 November 2009 in Iceland against Mr Cosser for unpaid fees of over €122,000 (with costs of over £5,000). On 19 April 2011, the Respondent wrote to LOGOS stating that the Insurance Claim had been settled and that the London Firm intended to pay the judgment sum (plus costs) out of the proceeds of that claim.

47. The Applicant's case was that on 7 May 2011, the Respondent instructed Grosvenor Law to take steps to enforce the Nanterre Judgment on behalf of EPL. On 10 May 2011 the Respondent wrote to Mr Cosser, stating that "you appear to now be separately advised, so we will now cease any activity on your behalf and refer all enquiries in relation to your personal affairs directly to you". The Respondent had stated in his interview with the SRA and through solicitors acting on his behalf that the attempts to enforce the Nanterre Judgment were on the instructions and for the benefit of Mr Cosser, to prevent his assets being seized by other creditors such as LOGOS (and that there was never any intention that the bailiffs were to attend at 115 Eaton Square). The Applicant's case was that this explanation was not true.

Allegation 1.3

48. The Applicant's case was that at a meeting on 1 November 2011 between the Respondent and Mr Tracey of the London Firm, and DA of Grosvenor Law, the Respondent had disclosed a number of pieces of confidential information about Mr Cosser without his consent.

Allegation 1.4

49. The first element of this Allegation related to the Nanterre Judgment, the facts of which are set out above in relation to Allegation 1.2.

50. The second element related to the Settlement Agreement. On 9 November 2011, Mr Cosser entered into the Settlement Agreement with the Respondent, the London Firm, EPL, Sungate and Tranfeld. The Applicant relied on the following clauses as parts of its case:

- Mr Cosser undertook to EPL, Sungate and Tranfeld to vacate the two properties before the date of completion of the sale and not to challenge the validity of the sale.

- Mr Cosser acknowledged that EPL was the beneficial owner of the Eaton Square and Eccleston Mews properties.

- Mr Cosser undertook to the London Firm and the Paris Firm to pay £250,000 plus VAT in satisfaction of the claims of the London Firm and the Paris Firm for costs, fees and disbursements; to pay the London Firm agreed damages in the sum of £50,000 "to compensate it for the time, cost and expense… incurred by it in dealing with the allegations made by [Mr Cosser]"; and to pay the Firm the sum of €55,000 in satisfaction of fees owed to Stratus.

- Mr Cosser acknowledged that his allegations against the Firm, the Paris Firm and the Respondent were "without truth or foundation", and waived all claims against them.

- Mr Cosser also undertook "to pay [the Respondent] the sum of £500,000 as agreed damages" in satisfaction of "any and all rights of action of [the Respondent] against [Mr Cosser] for defamation".

- The sums referred to above, in addition to the fees incurred by EPL, Sungate and Tranfeld by instructing Grosvenor Law, were to be deducted from the proceeds of sale of the two properties, subject to an overall cap of £1.2 million.

- Mr Cosser was liable to pay £100,000 in "liquidated and agreed damages" if he made certain allegations or remarks against EPL, Sungate, Tranfeld, the London Firm, the Paris Firm or the Respondent personally.

Allegation 1.5

51. Under clause 4.1(c) of the Settlement Mr Cosser undertook "not to make any allegations of unlawful or improper conduct and/or constituting defamatory remarks whatsoever" against the London Firm, the Respondent and the Paris Firm, "their past and present members and employees and their families, in whatever capacity they may have acted", failing which £100,000 was payable "by way of liquidated and agreed damages". The Applicant's case was that this clause sought to prevent Mr Cosser from making a complaint about his conduct to the SRA. The Respondent denied this was the case.

Allegation 1.6

52. The Applicant's case was that the Respondent had misled the SRA during the course of its investigation into his conduct. The Respondent denied doing so.

Chronology – Rule 5 Allegations

30.6.06	EPL incorporated
9.1.07	Respondent appointed director of EPL
16.9.08	Loan from Sungate to Mr Cosser in sum of 2,740 EUR
8.10.09	Nanterre Judgment against Mr Cosser in favour of Sungate
12.4.10	First EPL loan
17.6.10	Second EPL loan
	Deed of sale
7.9.10	Third EPL loan
26.1.11	Fourth EPL loan
11.4.11	London Firm gives undertaking to LOGOS in respect of proceeds of insurance claim
7.5.11	Grosvenor Law instructed to enforce the Nanterre Judgment
20.6.11	Grosvenor Law instructed to organise a bailiff to take walking possession of the contents of 115 Eaton Square
29.6.11	Grosvenor Law instructs bailiffs on behalf of EPL
13.7.11	Enforcement officer attends 115 Eaton Square
13.7.11	Telephone call between Respondent and JC of Lewis Silkin
14.7.11	Without prejudice meeting
9.11.11	Settlement Agreement
8.12.11	Distribution of funds following sale of Mr Cosser's properties

Rule 7 Allegations

53. The matters giving rise to these Allegations were the subject of substantial litigation between KK and VG in the Supreme Court of the State of New York (Commercial Division). The Respondent gave evidence by way of deposition under oath. The Honourable Charles Edward Ramos, Justice of the Supreme Court, handed down his Judgment on 10 August 2012 ("the Ramos Judgment"). The Applicant relied on the Judgment as evidence of the proof of its contents. Judge Ramos made a number of findings of serious impropriety on the part of KK. In summary, he found that KK had improperly and in breach of his fiduciary and contractual obligations

implemented the Dilution and the Trademarks Transfer. As a result of the Scheme, Judge Ramos ordered KK to pay VG/his corporate entities damages in the sum of $50 million.

54. Judge Ramos also found that the Respondent had participated in and assisted with the Scheme by helping to plan and cause the Dilution and the Trademarks Transfer and assisted in the attempts to conceal the Scheme from VG.

55. In April 2008, KK and VG had formed the Partnership with a view to establishing a Ukrainian television network. KK had participated in the Partnership via his corporate vehicle, Iota LP ("Iota") and VG participated via his corporate vehicle, New Media Holding ("New Media").

56. The Partnership owned TVI through a series of intermediate subsidiary companies organised in Ukraine and Cyprus. Separately, a company owned by VG, New Media Distribution Company Limited ("NMDC") licensed programming content to TVI pursuant to various License Agreement.

57. KK and VG each owned 50 per cent of the Partnership. Under the Partnership Agreement, GB, an accountant at Capita, which managed KK's trusts and entities, was named as the Manager of the Partnership. KK contributed $11.59 million and VG contributed $12.05 million. By the Spring of 2009, KK and VG began to have serious disagreements over TVI's operations. In the summer of 2009, KK invited KY to his home. They agreed that if VG refused to step down from TVI's management voluntarily, KK would oust VG from TVI.

58. The Dilution was carried out between 22 and 24 September 2009 and its effect was to reduce the Partnership's interest in TVI from 100 per cent to less than 1 per cent. The remaining 99 per cent was transferred to companies owned and controlled by KK.

59. On 1 October 2009, the Respondent had joined GB and KK for lunch at KK's home in London. On 8 October 2009, KK sent the Respondent documents which confirmed the Dilution.

Allegation 1

60. On 17 August 2009, the Respondent wrote a letter to New Media which stated that KK's nominee, Petal, was "very pleased with the way that the two companies have been able to collaborate in the TVI project in the Ukraine" and that "New Media has been able to sell a large variety of TV series to that station and up to this point Petal has been happy with those aspects".

61. On 19 August 2009 a substantively identical letter was sent by the Respondent on behalf of Iota.

62. Judge Ramos had found that those letters were an attempt by KK to mislead VG and New Media.

Allegation 2

63. Judge Ramos had found that the Respondent helped plan and cause the Dilution and the Trademarks Transfer. He found that the Respondent actively participated in the Scheme by preparing a corporate reorganisation under which ownership of TVI would be transferred to the Beta Trust.

Allegation 3(a)

64. The Applicant's case was that the Respondent had been informed that the Dilution had been implemented on 1 October 2009. It was alleged that he had participated in the attempt to conceal the truth from VG by sending an email to NMDC's counsel later that day warning NMDC that the "failure to provide the content needed to maintain the broadcasts of programs in the Ukraine would cause irreparable damage to the major investment of [the Partnership]". The Applicant's case was that the email to NMDC was misleading by virtue of what it did not say, namely, that the Partnership had already lost 99 per cent of its "major investment". Judge Ramos had found that the email of 1 October 2009 was sent as part of a deliberate attempt to mislead VG into believing that the Partnership still owned 100 per cent of TVI.

Allegation 3(b)

65. On 16 October 2009 the Respondent sent a letter dated to VG's lawyers stating that "[the Partnership has a single potential asset … namely its indirect shareholding in TRS, which runs the TVI station in the Ukraine" and describing the partners as "equal participant[s] in the TVI business". Judge Ramos had found this was another example of the attempts to mislead VG and to conceal the Dilution from him.

Allegation 3(c)

66. GB continued to request that VG and New Media provide what the Applicant alleged was additional funding for TVI's operations. The Respondent denied that this is what was being sought. GB had checked with the Respondent to see whether it was appropriate to do so. The Respondent, by an email dated 6 October 2009 stated that he "saw no reason not to call for payment".

Chronology – Rule 7 Allegations

17/19.8.09	Respondent sends letters that are the basis of Allegation 1
22-24.9.09	Dilution takes place
1.10.09	Respondent present at lunch at KK's home
	Respondent's email that is the basis of Allegation 3(a)
6.10.09	Respondent's email that is the basis of Allegation 3(c)
14.10.09	Trademark Transfer
9-10.10.09	Respondent travels to Ukraine
16.10.09	Respondent's letter that is the basis of Allegation 3(b)
10.8.12	Judgment of Judge Ramos in Supreme Court of New York

67. The Respondent denied all the Rule 5 and Rule 7 Allegations.

Applicant's Witnesses

68. **Oliver Baker – Forensic Investigation Officer**

68.1 Mr Baker confirmed that his witness statement and FIR were true to the best of his knowledge and belief.

68.2 In cross-examination Mr Baker confirmed that he had not identified any accounts rules breaches in the course of his investigation. He further agreed with the Respondent that he had asked for a large amount of material and had been provided with all of it in a relatively short space of time.

68.3 Mr Baker was asked which files he had obtained from Lewis Silkin and he told the Tribunal that he had requested the files relating to Mr Cosser which had previously belonged to the Respondent and had subsequently been passed to Lewis Silkin. Mr Baker agreed that he had not requested any other files from Lewis Silkin. He further agreed that the Respondent had told him that Lewis Silkin had been helping Mr Cosser for months.

68.4 Mr Baker confirmed that he had not interviewed DA. The Respondent asked whether this was because he had not thought it would be useful. Mr Baker stated he was not saying that but explained that this had been a very complex investigation which had taken a lot of time. In view of the complexity Mr Baker had been mindful of the issue of proportionality. Mr Baker was asked whether he had dealt with cases in the past involving a solicitor dealing with high net worth individuals. He confirmed that he had, but accepted that this particular case was very unusual.

68.5 Mr Baker was asked in cross-examination why he had not spoken to Mr Cosser as part of his investigation. Mr Baker again explained that consideration had been given to speaking to him but that this had been a complicated and lengthy investigation. It was put to Mr Baker that he had taken Lewis Silkin's word in relation to these matters. Mr Baker responded that his role was not to take sides. He agreed that speaking to Mr Cosser had been an option and was discussed.

68.6 Mr Baker told the Tribunal that he had not met with JC, of Lewis Silkin, or PD. The Respondent put to Mr Baker that the SRA had made up his mind and that this was reflected in the fact that the Allegations before the Tribunal mirrored the FIR. Mr Baker responded that his report did not reach conclusions.

68.7 Mr Baker agreed that the third loan was, on the face of it, to Sungate although it was to Mr Cosser's benefit. Mr Baker was taken to the participation agreement and confirmed that EPL was the smallest contributor to that loan. Mr Baker confirmed that only the fourth loan was made personally to Mr Cosser. At the time of the first and second loans Mr Cosser was the beneficial owner of Sungate and Tranfeld. The third loan was to Sungate which was, at that point, owned by EPL. It had been transferred to EPL as part of the second loan.

68.8 The Respondent put to Mr Baker that the first loan was not disadvantageous particularly when compared to an earlier loan ("the Pedley loan"). The Pedley loan had contained an interest rate of 247% whereas the First EPL loan had an interest rate

of 100%. Mr Baker stated that he was not able to answer the question of whether the respective loans were more or less advantageous.

68.9 The Respondent asked Mr Baker why he had implied that he (the Respondent) had been dealing exclusively with Mr Cosser's case. Mr Baker told the Tribunal that he had not said that but that it was very clear that Mr Cosser was a client of the Paris Firm and that he also had a relationship with the Respondent that went back many years and was also a client of the London Firm.

68.10 Mr Baker accepted that there was an error in his report in that he had described the Respondent as 'sole director' instead of just 'director' of EPL.

68.11 Mr Baker was asked whether he had been informed by a definition of what a client was in concluding that EPL was a client of the London Firm. He replied that there was a retainer letter with the London Firm.

69. **Daniel Morrison – Grosvenor Law**

69.1 Mr Morrison confirmed that his witness statement was true to the best of his knowledge and belief.

69.2 In cross examination Mr Morrison was taken to an email dated 7 May 2011 sent from the Respondent to Mr Morrison and others. The email read as follows:

> "Dan,
> Is there any possibility that your guys could turn the judgment obtained by Sungate Holdings Ltd against Steve Cosser in the Nanterre High Court (France) about two years ago into an English judgment, with a view to instructing a Bailiff to take walking possession of the contents of 115 Eaton Square before the end of next week? Alternatively do you know a friendly Bailiff who would do that in reliance on the French judgment. This would protect them against other creditors. Tall order, but a real challenge. If you can do something [W] in London and/or [R] in Paris will forward you the docs on Monday. You would be acting for Elite Partners Limited of 20 Solonos St Limassol Cyprus, who are the absolute assignees of the judgment debt. We hold full KYC on Elite and Sungate too for that matter.
> Thanks and Krgds
> Alex"

69.3 Mr Morrison told the Tribunal that he did not recall the details but believed he had passed the matter on to DA. The Respondent asked Mr Morrison if he had done anything by the end of that week. Mr Morrison told the Tribunal that they had obtained a European Enforcement Order ("EEO") but he could not recall the dates.

70. **Paul Tracey – Grosvenor Law**

70.1 Mr Tracey confirmed that his witness statement was true to the best of his knowledge and belief.

70.2 In cross-examination Mr Tracey confirmed that he had prepared the draft instructions to Counsel referred to in the response to the Section 44B notice on the basis that Grosvenor Law was acting for EPL. They were not being submitted on behalf of the London Firm.

70.3 The Respondent asked Mr Tracey how he had acquired the knowledge having only joined the Firm three weeks previously. Mr Tracey told the Tribunal that there had been a file of papers prepared by a partner at another firm. The instructions were going to be sent by Grosvenor Law to counsel. Mr Tracey told the Tribunal that he had sent the draft instructions to the Respondent who had told him that they should state that the London Firm acted for EPL as well as Mr Cosser and he had therefore added a sentence to that effect.

70.4 The Respondent asked Mr Tracey if the purpose of instructions had been that counsel should assume that the London Firm was acting for both. Mr Tracey confirmed this was correct at time of the instructions.

Respondent's Witnesses

71. **Steven Cosser**

71.1 Mr Cosser's evidence was interposed during the Respondent's evidence due to health issues which meant that he would not be able to attend on any other day during the hearing. The Tribunal took this exceptional step in order to ensure that the Respondent was able to call his witness, whose evidence had not been agreed by the Applicant.

71.2 Mr Cosser confirmed that he agreed with the contents of his three witness statements and adopted them as his evidence. In response to questions from the Respondent Mr Cosser confirmed that he had received the drafts of the statements from the Respondent and had the opportunity to make amendments. The witness statements were also received by Mr Archer who went through the statements page by page with Mr Cosser. There were some corrections made following these discussions and Mr Cosser confirmed that he would not have signed the witness statements unless he was happy with the content.

71.3 In cross-examination, Mr Cunningham took Mr Cosser to a number of "disobliging" comments made about him by the Respondent. These included the Respondent having stated in proceedings against PD that Mr Cosser was "untruthful". Mr Cosser told the Tribunal that this was not a fair description of him but he was not surprised that the Respondent had used such a term at the time and he would probably have said the same about the Respondent at the time. The Respondent had instructed a QC to make written representations at the outset of these proceedings and those representations had described Mr Cosser's actions as "deceitful" and had referred to his "dishonesty". Mr Cosser told the Tribunal that this was not a fair accusation but he could understand it in the circumstances of a "very heated battle".

71.4 Mr Cunningham asked Mr Cosser who he believed EPL to be. Mr Cosser told the Tribunal that he could not identify the directors and officers or the solicitors and bankers to EPL. The details had not been disclosed to him, he believed, to avoid "personal embarrassment" to him.

71.5 Mr Cunningham took Mr Cosser to the section of his witness statement in which he had stated that he did not believe that the Respondent had acted in any way dishonestly. Mr Cosser confirmed that this was his position. It was put to him that the Respondent had accepted telling a lie at the without prejudice meeting in July 2011 when he had said that he had loaned £70,000 to EPL. Mr Cosser stated that he did not know this was a lie. Mr Cosser was asked who he believed was acting for EPL at that meeting, to which he replied that he had assumed it to be the Respondent.

71.6 Mr Cunningham put to Mr Cosser that the words and language in his witness statements had been drafted by the Respondent for his (the Respondent's) advantage. Mr Cosser responded that he would never have allowed anything to go into the document that he did not think was correct at the time.

71.7 Mr Cunningham took Mr Cosser to the section of his witness statement in which he described bailiffs attending his home. He had stated that "I can see that what happened had nothing to do with AMH". Mr Cosser was taken to a number of documents including the email of 7 May 2011 from the Respondent to Mr Morrison (as set out above in relation to Mr Morrison's evidence). Mr Cosser had not seen this email before and agreed that this showed that the Respondent had been "doing something" in relation to events against Mr Cosser. He recognised the inconsistency between what he had been told by the Respondent and this email. However he remained of the view that the Respondent had not instructed the bailiffs to attend his property. He had never known the Respondent to be personally vindictive or cruel and no sensible person would have done such a thing as there was nothing to be gained by it.

71.8 Mr Cosser was cross-examined on the timing of the termination of the retainer between himself and the Respondent. Mr Cosser agreed that on the face of it he had been told on 10 May 2011. It was put to him that the Respondent's case was that it had ended prior to that and prior to the 7 May 2011 email. Mr Cosser replied that the first time this had been said to him was at the meeting in July 2011.

71.9 Mr Cunningham asked Mr Cosser if he would have preferred that his former solicitor (the Respondent) had not given his mobile telephone number to the solicitors who were arranging bailiffs to take possession of his property. Mr Cosser replied that clearly he would not have wanted him to do this.

71.10 Mr Cosser was asked about the Settlement Agreement and in particular the £500,000 for libel/defamation. Mr Cosser told the Tribunal that he did not believe he had defamed anyone. He accepted that he may have made comments which could be interpreted as defamatory but he did not believe they were. The £500,000 was arrived at on the basis that he and the Respondent had "come up with a number" in respect of the overall settlement and it was then split into categories, including the £500,000 for libel. Mr Cosser was not aware at the time of the going rate for libel damages although he was now, but he did not think it would have made any difference to the

overall figure. Mr Cosser agreed that the Settlement Agreement was signed by himself and the Respondent without the knowledge of JC of Lewis Silkin.

72. **The Respondent**

72.1 The Respondent confirmed that he wished to adopt the following as part of his evidence on the basis that they were true to the best of his knowledge and belief at the time that he made them:

- Respondent's Answer to the Rule 5 Statement dated 19 January 2017
- Respondent's Amended Answer to the Rule 5 Statement dated 7 June 2017
- Respondent's Answer to Further and Better Particulars dated 7 June 2017
- Respondent's Answer to the Rule 7 Statement dated 7 June 2017
- Witness Statement of the Respondent dated 28 April 2014
- Witness Statement of the Respondent dated 24 September 2014
- Witness Statement of the Respondent dated 1 December 2017
- Witness Statement of the Respondent dated 11 January 2018 (superseding one dated 8 January 2018)
- Respondent's initial response to Allegations dated 1 July 2016
- Respondent's further response to Allegations dated 4 July 2016
- Respondent's further response to Allegations dated 6 July 2016
- Deposition of the Respondent in the Supreme Court of the State of New York, USA, 24 February 2011
- Affidavit of Respondent in the Supreme Court of the State of New York, USA dated 28 January 2010
- Affidavit of Respondent in the Supreme Court of the State of New York, USA dated 8 October 2010

72.2 The Respondent also confirmed that he wished to adopt his opening speech, which was also true to the best of his knowledge and belief. The Respondent told the Tribunal that he was honest and honourable and that he had acted with integrity and in the best interests of his clients. He was aware that he had a professional duty of confidentiality to both existing and former clients.

<u>Allegations 1.1 and 1.2 – Conflict of Interest</u>

72.3 The Respondent confirmed he was aware that there was a prohibition, with very limited exceptions, on professional conflicts of interest. He was also aware that there was an absolute prohibition on personal conflicts.

72.4 Mr Cunningham asked the Respondent about the meeting on 14 July 2011 and his statement in that meeting that he had lent EPL £70,000. The Respondent told the Tribunal that "in the course of negotiation people overstate their case". The Respondent, when asked if what he had said was false, agreed that it was "not true". The Respondent told the Tribunal that a better way to describe it may be "disinformation". It was put to the Respondent that he had planted a lie. The Respondent did not characterise it in this way. He told the Tribunal that "it is not impermissible to take a negotiating position which may not actually be true in a without prejudice meeting" and that it was commonplace. The Respondent denied that

he was saying that it was permissible for a solicitor to lie. Mr Cunningham asked the Respondent if he regarded planting an untruth to be dishonest, to which the Respondent replied that he did not. The Respondent told the Tribunal that he believed that the profession would be "horrified" to learn that they had to warrant that everything said in a negotiation meeting had to be absolutely accurate. Mr Cunningham put to the Respondent that in fact he had been telling the truth when he had said that he had loaned £70,000 to EPL as he was EPL and wanted to make profit out of that. The Respondent firmly rejected that proposition. Mr Cunningham put to the Respondent that at that meeting he had been representing EPL. The Respondent described this suggestion as "total nonsense".

72.5 Mr Cunningham asked the Respondent when he had come to the view that Mr Cosser was a truthful and reliable person. The Respondent acknowledged that he had described Mr Cosser as dishonest in the past. He told the Tribunal that there were times when Mr Cosser told the truth and times when he did not. He was a "man with two faces" and the Tribunal would have to decide, on hearing his evidence, whether he was telling the truth or not. Mr Cunningham took the Respondent to an email of 17 July 2011 in the course of which he had stated; "This is not what we would all like to do, since we want to nail the bastard…" This was a reference to Mr Cosser, with whom the London Firm was in dispute at the time. The Respondent explained that he was expressing a collective view at the time and that the remainder of the email made clear that his view had been that the sensible course of action was to resolve the dispute. Mr Cunningham took the Respondent to documents in which Mr Cosser's honesty had been challenged by the Respondent. It was put to him that he had used this attack on Mr Cosser's credibility as part of his defence in these proceedings. The Respondent told the Tribunal that he did not resile from that but he was confident that Mr Cosser would tell the truth when he gave evidence. On 6 December 2016, while in Paris, the Respondent had received a telephone call from Mr Cosser. He had told the Respondent that he had disassociated himself from PD and JC. Following this conversation the Respondent had interviewed Mr Cosser for seven hours. This resulted in the three witness statements. During the course of the drafting, the Respondent had interfaced with Mr Archer, who discussed them with Mr Cosser. The statements were amended following those discussions so that the words used were the ones that Mr Cosser wanted to use. Mr Cunningham put to the Respondent that the witness statements had been drafted by him in order to maximise the assistance that Mr Cosser could give to his case. The Respondent accepted they had been drafted to be helpful but pointed out that at least one part of the statements were unhelpful. The Respondent described the suggestion that he was seeking to use Mr Cosser as a "mouthpiece" for his defence as a gross exaggeration. He had told Mr Cosser not to sign the documents unless he was absolutely satisfied with what they said.

72.6 The Respondent told the Tribunal that he had always accepted that at the time of the first loan he was still a director of EPL and there was therefore a client conflict in relation to that loan. He had stated in his Skeleton Argument for these proceedings that he was not aware at the time of the loan that he was still a director. Mr Cunningham put to the Respondent that this was an "utterly incredible plea of ignorance". The Respondent denied this and stated that his normal practice was not to be a director of any companies save for family matters.

72.7 Mr Cunningham asked the Respondent if it was his case that because EPL was a client of the Paris Firm, this mitigated the conflict position. The Respondent stated that if someone was a client of a firm they could not cease to have been a client and this was the case with EPL. The fact that someone has been a client in the past does mitigate the conflict. Mr Cunningham asked the Respondent how he would deal with a situation in which, while wearing his 'English hat' he discovered something about Mr Cosser's creditworthiness at a time when he (the Respondent) had an obligation to his French client (EPL) to tell them about it. The Respondent explained that if he knew something about Mr Cosser in the London Firm that affected his creditworthiness he would have an obligation to tell EPL. However the problem did not arise in those terms because Mr Cosser had authorised him to share that information with any possible lender. Mr Cunningham put to the Respondent that this proved the Applicant's case as he would not be acting in Mr Cosser's best interests by disclosing the information to EPL. The Respondent said that it would be in Mr Cosser's interests not to contract a loan on a false premise. This was because the lending transaction could be set aside if it transpired that material information had been withheld. In addition the Respondent would also be doing something that he considered improper, which he would not do. The Respondent told the Tribunal that his undivided loyalty was to Mr Cosser and that EPL was separately advised and dealt with it on their own. EPL was not intended to actually lend any money at all and such money as it did lend was in a minority, the decisions relating to the lending being taken by the majority for whom the Respondent had never acted.

72.8 Mr Cunningham put to the Respondent that it would have been preferable simply not to get into the position in the first place. The Respondent told the Tribunal that he made his living out of problem-solving and he wanted to go the extra mile to solve his client's problems. His clients came to him with problems which were often complex and involved a multiplicity of jurisdictions. In hindsight the Respondent stated that he should have told Mr Cosser that he could not assist him and let him "go bust".

72.9 The Respondent told the Tribunal that he did not believe that EPL was ever a client of the London Firm. The Respondent told the Tribunal that the London Firm had four, and at one time five, partners and 12 staff. The Respondent spent most of his time in Paris and that whilst he did some work in London he should not be conflated with being the London Firm. Mr Cunningham took the Respondent to a retainer letter between the London Firm and EPL dated 26 November 2010. The letter described itself as setting out "the basis upon which we will be acting for you". The subject heading had been EPL and the retainer letter had continued "you have engaged us to provide advice and/or services in respect of UK tax and English legal matters". The Respondent agreed that this was a relatively wide retainer and that he had been described as the relationship partner and primary contact. It was put to the Respondent that this reflected the relationship between EPL and the London Firm. The Respondent denied this. He told the Tribunal that he had not drafted this retainer letter nor had he signed it and he only saw it when it had been returned. The Respondent told the Tribunal that he thought that in hindsight this was a "poison pill" that PD had inserted. The Respondent asked rhetorically how PD could have thought "for a nanosecond" that the London Firm could act for EPL while acting for Mr Cosser. The Respondent told the Tribunal that neither the Paris Firm nor the London Firm did any work for EPL.

72.10 Mr Cunningham took the Respondent to the draft instructions to counsel described by Mr Tracey. Paragraph 4 of those draft instructions had stated "these instructions are provided on behalf of Elite Partners Ltd". The Respondent denied that Mr Tracey had drafted the document on behalf of EPL. Mr Cunningham asked the Respondent on more than one occasion who the client had been. The Respondent stated that he imagined it was the London Firm. The instructions were not being drafted for EPL, they had been drafted for Grosvenor Law to send to EPL. Mr Cunningham put to the Respondent that the instructions had stated that both Mr Cosser and EPL were clients of the London Firm and that this was contrary to the Respondent's case. The Respondent stated that the reason that that was in there was that it had been agreed that they would put it to counsel on the basis that they had both been clients in order to receive advice on a worst-case basis. It did not reflect the reality of the situation. Mr Cunningham put to the Respondent that the reason that this statement was contained in the instructions was because it was in fact the truth. The Respondent denied this. The Respondent referred to Mr Tracey's evidence in which he had confirmed that counsel's advice was being sought on a worst-case scenario basis.

72.11 Mr Tracey had sent the instructions to the Respondent, stating "herewith draft instructions to counsel on behalf of Elite". Mr Cunningham put to the Respondent that this was further evidence that he was acting for EPL. The Respondent denied this. The Respondent was asked why he had not corrected Mr Tracey to which he replied that they were interested to see what counsel's advice would be if indeed such an allegation was made. Mr Cunningham put to the Respondent that all of this would make sense if in fact he was EPL. The Respondent denied this.

72.12 The Respondent denied that EPL had lent him money directly, but they had lent it to Glenealy Limited of whom the Respondent was the beneficial owner. Mr Cunningham put to him that EPL had denied lending the Respondent money. The Respondent described this as an "unfortunate formulation" and that the only money lent was to Glenealy.

72.13 Mr Cunningham put to the Respondent that he was EPL and had lent them £70,000, thereby resulting in a profit of £70,000 as the return was 100%. The Respondent denied this was what had occurred.

72.14 The Respondent told the Tribunal that he had been protector of the Regroup Trust and that he was a legal advisor to it from its creation. The position did not involve playing a part in the day to day running of the companies. His role as a legal advisor was separate from his role as protector. Mr Cunningham referred the Respondent to his witness statement in which he had stated that he was closely involved in most of its major investment decisions. The Respondent told the Tribunal that this was in his role as legal advisor and not protector.

72.15 Mr Cunningham asked the Respondent about the structure chart that had been produced. The Respondent did not know who had produced it but he confirmed that it was a true document. He accepted that it was "labyrinthine" and that it did not help gain an understanding of the Regroup Trust to any great extent. This was because the various entities involved were outside the UK and had nominee shareholders and directors. The Respondent gave a detailed explanation of the way in which the

Regroup Trust was structured. The Respondent denied that its purpose was opacity. It gave a snapshot of the Regroup Trust at that point in time.

72.16 Mr Cunningham put to the Respondent that he had not been sufficiently helpful in assisting the SRA on the question of who was responsible for making decisions on behalf of EPL. The Respondent denied this, telling the Tribunal that he had given as much detail as he thought was necessary for the SRA to understand the position. He had been full and frank with Mr Baker and if he had requested further detail he would have provided it. Mr Cunningham asked who the beneficiaries of EPL were but the Respondent could not recall. Mr Cunningham put to the Respondent emails from Mr Cosser that, it was said, indicated that Mr Cosser was seeking to find out who EPL was and suggested to him that he knew the identity of those behind EPL but was withholding it from Mr Cosser. The Respondent denied this. EPL was a syndicate manager and behind it were two companies and behind those companies were the "beating hearts". The Respondent had told Mr Cosser, between the third and fourth loan, that he was unable to release the identity of those behind the loan until he was authorised to do so. Mr Cunningham put to the Respondent that he had been withholding details of EPL but the Respondent told the Tribunal that he was referring to the funding parties to the loan.

72.17 Mr Cunningham asked the Respondent to assist in identifying those behind EPL. The Respondent told the Tribunal that Reconsulting Ltd, a trust, owned EPL and that trust had purely charitable beneficiaries. Stratus provided nominee shareholders and a nominee director for EPL. Pefcos was one of those shareholders. The Respondent agreed that there had been two directors of EPL, himself and Cirano Limited. The directors of Cirano were a plurality of Stratus employees. The Respondent had been the legal adviser to Reconsulting Limited since 1992, before the Regroup Trust existed. Mr Cunningham asked the Respondent why Re-consulting Limited had sent him the accounts and asked him for his comments regarding the contents of the financial statement. The Respondent told the Tribunal that this was an example of the unfairness that he faced in this case as he was unable to produce identical letters from other company managers that has asked him to look at the accounts before they were filed. The Respondent regularly received such requests but was unable to produce them before the Tribunal. Mr Cunningham put to the Respondent that the reason the documents were being sent to him was because he was the administrator of Re-consulting Limited. The Respondent denied this and stated that they had been asking how to best address the problem of a shortage of funds in the company. The Respondent reminded the Tribunal that every single movement of his accounts since 1988 had been considered by the French and UK tax authorities. The Respondent had not paid an outstanding invoice of £385 referred to by Mr Cunningham. Had he done so this payment would have come to light during the tax investigations.

72.18 Mr Cunningham asked the Respondent about the financial connections between himself and the Regroup Trust within which EPL sat. In his response to the further and better particulars of the Rule 5 Statement dated 7 June 2017, the Respondent had set out the extent of the loans and/or payments between himself and the Regroup Trust and other entities in the Regroup Trust structure:

- 500,000 EUR was loaned to the Respondent by the Trust pursuant to a written loan agreement dated 31 December 2008.

- £100,000 loaned to the Respondent by the Trust on or around 5 August 2009. The Respondent told the Tribunal that there was a written agreement at the time.

- 50,000 EUR loaned to the Respondent by Reconsulting Limited pursuant to a written loan agreement dated 5 March 2009 and repaid on 28 June 2010.

- 60,000 EUR loaned to the Respondent by Reconsulting Limited pursuant to a written loan agreement dated 25 January 2010 and repaid on 4 August 2010.

72.19 The Respondent agreed that these represented large sums of money that had been made available to him by the Regroup Trust and those within it. Mr Cunningham put to the Respondent that, contrary to his evidence, there had not always been a written agreement in place at the time and that as such his evidence had been false. The Respondent denied this. The Respondent told the Tribunal that there was a problem with missing documents in the history of the trust. Mr Cunningham referred the Respondent to an email sent on behalf the Regroup Trust on 24 October 2012 in which the Respondent was told that it appeared that a loan agreement was not in place at the time of the loan of £100,000 on 5 August 2009. The Respondent had replied to that email the same day and asked for such a document to be prepared. This had duly been done and was dated 5 August 2009. The Respondent denied that he had given false evidence as there had been a contemporaneous loan agreement but it had gone missing. Mr Cunningham asked the Respondent why he had not corrected the author of the email. The Respondent explained that he was trying to deal with the problem. Mr Cunningham asked how a document could be dated 2009 when it had been produced in 2012 and put it to the Respondent that it was a false document. The Respondent denied this as it was simply re-issuing an existing document that had been lost.

72.20 Mr Cunningham put to the Respondent that the relationship between himself and the Regroup Trust was such that Regroup was prepared to lend money to him without security, terms or specifications as to interest and that when a problem arose it would do his bidding for him. The Respondent described this as a "total misrepresentation of the position". There had been a missing document and the email exchanges to which Mr Cunningham had referred were dealing with that. Mr Cunningham put to the Respondent that the Regroup Trust and Reconsulting Limited were him and that he was able to tell them what to do and use them as a "piggy bank". The Respondent denied this.

72.21 The Respondent confirmed that EPL had loaned Glenealy, of which the Respondent was sole beneficial owner, £800,000 in 2007. Mr Cunningham asked the Respondent why EPL had not obtained security for this loan. The Respondent told the Tribunal that this was because EPL knew him well and trusted him to repay them. Mr Cunningham put to the Respondent that the real reason was that he was EPL. The Respondent emphatically denied this. He told the Tribunal that the same people that managed Glenealy also managed EPL and so they had control over the company. Although the Respondent owned Glenealy he did not manage it. The management was done off-shore and EPL therefore had "de facto security" through its management of the company.

72.22 Mr Cunningham asked the Respondent about the legal work undertaken in relation to the Third EPL loan on 7 September 2010. The Respondent told the Tribunal that the legal work for EPL was done in-house. Mr Cunningham referred the Respondent to an email he had sent on 7 September 2010 in which he had stated "I will be sorting the Elite Loan documentation…". The Respondent told the Tribunal that this was not to be read literally. He was responsible for getting things done but that did not mean that he personally did the work.

72.23 Mr Cunningham put to the Respondent that there was no evidence of anyone other than himself having conducted the negotiations leading to the numerous agreements between himself and Mr Cosser on behalf of EPL. The Respondent told the Tribunal that he had been asked by Mr Cosser to try and raise a loan for him and he had taken it upon himself to do this. He spoke with a number of people and a package was put together. Mr Cosser was happy with the package and the Respondent described the Applicant's case as being one in which the alleged victim did not consider themselves to be a victim and did not consider that they had been disadvantaged in any way. The Respondent told the Tribunal that he had been asked to negotiate and it could not be held against him that he was the person that did negotiate. Mr Cunningham put to the Respondent that there was no evidence of anybody independent of the Respondent acting on behalf of EPL in negotiating any of the agreements. The Respondent explained that this was because the majority of negotiations were conducted on the telephone and had therefore not left a trace on the file.

72.24 Mr Cunningham asked the Respondent about the terms of the loans. He put to the Respondent that in an advice from a QC, the words "penal" and "Draconian" had been used to describe the terms of the earlier loan. The EPL loans had been described by the QC as being "on similar terms to the earlier ones". The Respondent stated that they were similar but materially different and that the words had to be interpreted in context. The terms of the loan could be described as draconian or penal because the borrower was in serious negative equity and was trying to borrow unsecured money. In that context the terms were not unreasonable and were in fact better than the Pedley loan.

72.25 The Respondent told the Tribunal that he learned of the diversion of the insurance funds by Mr Cosser by 7 May 2011. Mr Cunningham put to the Respondent that at that point Mr Cosser was still his client and indeed he remained so until 10 May. The Respondent did not agree with this and told the Tribunal that he had informed Mr Cosser that they were parting company on 6 May. Mr Cunningham took the Respondent to the email of 10 May referred to above. The Respondent was asked what he meant by the word "now". The Respondent told the Tribunal that he had agreed with Mr Cosser that they would part company the separation would not be brutal. The Respondent had already ceased to act for him but was "keeping things warm" until he instructed new lawyers. Mr Cunningham put to the Respondent that he was attempting to cover-up the fact that when he sent the email to Mr Morrison on 7 May 2011 he was doing so in order to take action against a continuing and existing client. The Respondent did not accept this and told the Tribunal that things were more complicated than that. The Respondent had genuinely believed that he had ceased acting on 6 May. Furthermore the email of 7 May was not asking anybody to do anything as Grosvenor Law did not open the file until 11 May and did not send that the retainer agreement until 12 May.

72.26 Mr Cunningham put to the Respondent that asking Grosvenor Law to take hostile action against an existing client represented "the most appalling conflict of interest". The Respondent did not believe that it was a hostile action at all. He had been asking Grosvenor Law what could be done on behalf of Mr Cosser. It was not contrary to the interests of Mr Cosser to have his furniture protected from LOGOS. Mr Cosser had thought this was a gesture that would give EPL comfort as they would have additional security but it also assisted Mr Cosser as it meant that he could continue to live at his home, which he would not have been able to do if the furniture was removed by LOGOS. Mr Cunningham asked the Respondent why, if that was the case, he had not told Mr Cosser what he was doing. The Respondent told the Tribunal that there had been a number of telephone conversations around this time and Mr Cosser had known exactly what was going on. The Respondent denied that he had taken steps behind Mr Cosser's back even though he was still a client. Mr Cunningham cross-examined the Respondent at length about the circumstances surrounding the bailiffs attending Mr Cosser's address. The Respondent continued to maintain that he had not acted in a hostile manner towards Mr Cosser and certainly not at a time when he was still acting for him.

72.27 Mr Cunningham put it to the Respondent that by giving Mr Cosser's telephone number to DA he was assisting in the enforcement by EPL against Mr Cosser. The Respondent denied this and explained that it was assisting the enforcement officer to take walking possession and protect those goods against any future attempts to enforce and it had had that effect. Mr Cunningham asked the Respondent on what basis the bailiffs were called off. The Respondent told the Tribunal that it was because EPL had been trying to assist the debtor because they were "soft lenders". Mr Cunningham put to the Respondent that his actions in relation to the Nanterre Judgment took unfair advantage of Mr Cosser. The Respondent denied this.

72.28 Mr Cunningham put to the Respondent that his evidence in relation to the allegation of conflict, taking account of the nature of the transactions, the onerous and one-sided terms of the loans revealed him to be a thoroughly dishonest solicitor. The Respondent denied this. He reiterated that the loans were on no worse terms than other loans that ranked in priority to them. They could not, on any view, be considered onerous or one-sided in that context. They were onerous but they were not more so than previous loans that had not involved the Respondent. They were "absurdly generous" to somebody who was in very serious financial difficulty and who, without them, would have lost everything.

72.29 In relation to the Nanterre Judgment, Mr Cunningham put to the Respondent that he had been seeking to enforce a judgment that was in fact a sham. In so doing he had been dishonest. The Respondent denied this and denied that he had been dishonest in any way.

Allegation 1.3 – Confidential Information

72.30 Mr Cunningham put to the Respondent that there were six items of information which were confidential. Of those six, the Respondent had stated that five were broadly accurate. The Respondent accepted that he had shared this information with Grosvenor Law. The Respondent told the Tribunal that he had been advised consistently, and it was his own understanding, that when dealing with the plurality of

persons who were threatened with litigation they may share information between themselves to enable them to defend the allegations made against them more effectively. In response to a question from Mr Cunningham as to who those individuals were, the Respondent stated that the London Firm, the Paris Firm, EPL, Sungate and Tranfeld had all been threatened with litigation by Lewis Silkin.

Allegation 1.4 – Taking unfair advantage

72.31 The element of the Allegation that dealt with the Nanterre Judgment had been covered in the course of cross-examination in relation to Allegation 1.2.

72.32 In relation to the Settlement Agreement, the Respondent confirmed that as at 8 November 2011 Lewis Silkin, in particular JC, was acting for Mr Cosser. JC had written a letter to the Respondent with some specific questions, one of which was a request for the appropriate particulars in relation to the £500,000 libel damages that the Respondent was seeking Mr Cosser's agreement to. Mr Cunningham asked the Respondent whether he had believed it was appropriate to visit Mr Cosser on his own the same day, having not answered the questions in the letter from JC. The Respondent told the Tribunal that this was at Mr Cosser's request. He had asked Mr Cosser, when he saw him the previous day, when he was going to get advice from Lewis Silkin about the terms of the Settlement Agreement. When the Respondent had gone to see him he had done so on the basis that he (Mr Cosser) had received legal advice from Lewis Silkin, specifically from NK. He preferred to receive advice from NK rather than from JC. Therefore whilst it was correct to say that JC's queries were not answered, NK's queries had been and incorporated when the Settlement Agreement was signed. Mr Cunningham put to the Respondent that Lewis Silkin had never approved the figure of £500,000. The Respondent told the Tribunal that the discussion that he had had with Mr Cosser was such that the £500,000 figure was not the headline number for the damages but reflected the fact that he was avoiding a defamation suit and that the most significant numbers in that type of action were often the costs rather than the amount of the award. In that context £500,000 was not huge. The Respondent's position was that NK had approved this figure.

72.33 The Respondent accepted that the figure of £500,000 was a very large sum. He had discussed it with him and they had agreed that amount, taking into account the material factors, most notably the cost that he would have had to pay for an unsuccessful defence of a libel action. Mr Cunningham put to the Respondent that the figure was "grotesque". The reason for this proposition was that the libel, if indeed there was one, was at the bottom end of the scale. The Respondent told the Tribunal that that was not the full extent of the libel. Mr Cosser had repeated allegations to a number of people on more than one occasion. Mr Cunningham put to the Respondent that Mr Cosser, in his evidence, had not been sure whether he had even defamed the Respondent at all. The Respondent told the Tribunal that Mr Cosser had not been himself during his evidence and it was not indicative of what he had thought of the time. Mr Cunningham put to the Respondent that Mr Cosser "had no idea this was ridiculously, grotesquely over the odds" in terms of the amount of money being agreed to. The Respondent denied this and told the Tribunal that Mr Cosser had experience, having been in the media business for 30 years at that point. He had sued for defamation himself and he knew how much it cost because when he had instructed the Respondent to sue on his behalf he had told him. Mr Cunningham put to the

Respondent that this was "thoroughly dishonest and absolutely disgraceful conduct from a solicitor". The Respondent stated that this was "utterly incorrect". There was no dishonesty at all and Mr Cosser was well aware from his years in the media business how much it would cost him to defend a libel action.

72.34 The Respondent told the Tribunal that Mr Morrison of Grosvenor Law had been acting for EPL in the negotiation and conclusion of the Settlement Agreement. He stated that he did not have any personal role but it was sensible to ensure that this was a final agreement and that there was not going to be a way round it by attempting to pursue the Respondent as a private individual.

72.35 One of the terms of the Settlement Agreement required Mr Cosser to pay the London Firm the sum of £250,000 plus VAT in respect of costs, fees and disbursements. Mr Cunningham took the Respondent to a letter dated 3 August 2011 which indicated that the sum due was £110,957.89 to the London Firm with a further 44,887.05 EUR owed to the Paris Firm. The Respondent stated that the figure was produced "slightly under pressure" and it was produced by PD in respect of the figure owed to the Paris Firm. At that time the Respondent and PD wanted to get the negotiations underway for a settlement and this figure did not include a significant amount of work in progress, mostly in Paris. Mr Cunningham asked the Respondent how the figure went from approximately £150,000 in August to £250,000 by the time of the Settlement Agreement with no further work having been done. The Respondent stated that it involved looking at the work which had been undertaken but not charged. In light of the fact that Mr Cosser had no money at the time there had been no point in putting in figures for work in progress as this would simply incur potential VAT liability. In addition Mr Cosser had not paid a bill since September 2010 and the final figure was a fair compromise taking account the amount of legal work that had been done for Mr Cosser since he last paid a bill. Mr Cunningham put to the Respondent that the figure of £250,000 was not the subject of clearly broken down fee notes. The Respondent denied this and told the Tribunal that fee notes been delivered for 100% of the amount of the bills.

72.36 Mr Cunningham put to the Respondent that the clause in the Settlement Agreement requiring Mr Cosser to undertake not to make any allegations of unlawful or improper conduct was designed to impose a "gag" protected by penalty. The Respondent denied this and stated that it was designed to prevent defamation. There would not be a penalty if there was no defamation. Mr Cunningham asked the Respondent how, prior to a defamation, anybody could agree the correct figure would be in the event of that defamation. The Respondent stated that where the sort of allegations that had been made in the past were of the same nature, the figure of £100,000 was "not completely off the wall". Furthermore if the court considered this to be a penalty that it would not be enforceable. Mr Cunningham put to the Respondent that this was an "unfair thing to do to a non-lawyer". The Respondent told the Tribunal that his firm belief was that Mr Cosser had taken advice about it and had agreed to it. The Respondent told the Tribunal that his position on this was not going to change. Mr Cunningham put to the Respondent that this prohibition would inhibit people from reporting misconduct to the SRA. The Respondent stated that it had nothing to do with that. By the time the Settlement Agreement was signed there were already three reports before the SRA and it would therefore serve no purpose to try to insert such a clause. Mr Cunningham

put to the Respondent that he was attempting to protect his position by pre-emptively trying to gag his former client. The Respondent firmly rejected this suggestion.

Allegation 1.6

72.37 A number of the particulars of this Allegation had been covered in cross-examination in relation to other Allegations above.

72.38 Mr Cunningham put to the Respondent that he had made a false statement to the SRA when he had told them in his response to the s44B notice that neither the London nor the Paris Firm had acted for Sungate. The Respondent did not think that this was misleading as the answer was given in the context of discussing retainer agreements and the way in which matters were organised between the two Firms, in that when dealing with a Paris client in London, the London Firm would bill the Paris Firm and the Paris Firm billed the final client. The Respondent did not think that he had misled Mr Baker and the intention was not to mislead the SRA. The fact of the matter in relation to Sungate was that it was a client, for billing purposes, of the Paris Firm. The work undertaken by the London Firm was not done directly for Sungate but for the Paris Firm. The Respondent accepted that the formulation could be taken as misleading but he did not believe that it was misleading. There was a technical distinction between who the client was and they had been talking about retainer agreements.

72.39 The Respondent was asked whether his statement to Mr Baker that he was 100% certain that Mr Cosser had obtained independent legal advice in relation to the EPL loans was truthful. The Respondent stated it was truthful to Mr Baker because Mr Cosser had told him that.

Rule 7 Allegations

72.40 The Respondent told the Tribunal that the majority of the work he did for KK was dealing with his market investments and with problems relating to the two villas that he owned. The Respondent was not the only legal adviser and there were a number to whom KK would turn for advice. Mr Cunningham put to the Respondent that he was the person who got things done. The Respondent agreed that this was by and large correct. Mr Cunningham put to the Respondent that as a 'trusted legal adviser' to KK it followed that KK had to keep the Respondent fully informed of developments so as to enable him to get things done for him. The Respondent told the Tribunal that KK was somebody who controlled information and was difficult to work for. The majority of the work that the Respondent did for KK did not require him to tell him very much. The Respondent was given enough information to carry out the work that he did but KK was someone who tended not to confide solely in one person.

72.41 Mr Cunningham asked the Respondent if he had been aware that by spring 2009 KK and VG had begun to have disagreements over TVI's operations, suggesting that as his trusted legal adviser he would have been broadly aware of the difficulties. The Respondent denied this. He told the Tribunal that all he was aware of that there was a report from GB as to how much money was being ploughed into the project and nobody "seemed to have a very good handle on when this was actually going to be producing a return". Therefore all the Respondent was aware of was that the project

was loss-making. It was not until he was told to come and see KK at his address in London that he became aware of his unhappiness. The Respondent had no knowledge of anything other "than some sort of inchoate grief about the project". The Respondent denied being aware of "serious disagreements".

Allegation 1

72.42 Mr Cunningham put to the Respondent that he must have had some form of instruction from KK in relation to what should be included in the two letters that formed the basis of the Allegation. The Respondent stated that he had had a conversation with KK out of the blue and he had not picked up that Petal had been substituted by Iota. This was a reflection of the Respondent being distracted with the project. It was put to the Respondent that as part of his role as a trusted legal adviser he should have made it his business to find out why he had been asked to write these letters and what the purpose of the letters was. The Respondent stated that the purpose of the letter was "crystal-clear" from the letter itself. Up until this point there had been satisfaction and he knew this because KK had told him this. The Respondent stated that Mr Cunningham was conflating KK's state of knowledge with his own. Mr Cunningham suggested to the Respondent that the consequence of his evidence was that KK had been misleading the Respondent. The Respondent stated that KK "was a great one for dosing information". When asked why KK would have misled his trusted legal adviser the Respondent stated that he had no idea but that "very rich people often do very weird things". He did not interact socially with KK and although Mr Cunningham may have described him as his trusted legal adviser, he was no more trusted than anyone else that KK took advice from. Mr Cunningham asked the Respondent about the amendment to the letter. He suggested that it was "totally incredible" that KK did not explain why he wanted the amendment and that the Respondent had not insisted on knowing why the letter was being amended. The Respondent stated that the letter was changed to read as it now read. KK had explained to him that he had a concern about the commissioning of the programs and whether the best possible price was being obtained. That was neither illegitimate nor unlawful and KK had wanted particular wording to be used. The Respondent did not know that it was not true at the time that the letter was drafted.

72.43 Mr Cunningham asked the Respondent whether it was his case that the second paragraph of the letter was drafted by KK. The Respondent stated that due to the passage of time he could not be totally affirmative but it was certainly inspired by KK. If he had amended it, probably in manuscript, the Respondent would have polished it if it was not correctly expressed in English. KK had told the Respondent that the purpose of the letter was to get access to the commissioning side of the television station. Mr Cunningham put to the Respondent that as part of that "deceptive purpose" it was a good idea to pretend that everything was "rosy in the garden" and that was what appeared in the second paragraph of the letter. The Respondent replied that Mr Cunningham could "bang on as much as you want about it, but this is a letter that was drafted because [KK] wanted to procure a result". It was put to the Respondent that in the New York litigation he had, when describing his actions in his deposition, stated "that may have been devious". Mr Cunningham asked the Respondent whether, in describing his own activity in that way, he was admitting to telling a lie. The Respondent denied that he was telling a lie. He stated that the word 'devious' meant not going straight to the point and nothing more.

Mr Cunningham took the Respondent to the findings of Judge Ramos in which he had stated that the court had found that the letters were an attempt by KK to mislead VG. It was put to the Respondent that this was consistent of his description of the letters as being devious. The Respondent denied this and stated that it was consistent with his perception of KK having an intention to do things which he had not shared with the Respondent and noted that Judge Ramos had not found that he had. The Respondent took responsibility for sending the letter that he had signed but told the Tribunal that the issue here was whether he knew when the letter went out that what KK had told him was untrue. Judge Ramos had found that KK was the only person who could have corrected the letter. The Respondent told the Tribunal that KK had told him that he had concerns about getting access and has asked the Respondent to write a letter that would gain access for him. The Respondent did not know at that stage of the depth of KK's concern. He believed it was simply a commissioning problem. This did not come as a surprise to the Respondent. This was all he was aware of at that stage.

Allegation 2

72.44 The Respondent told the Tribunal that he was unquestionably involved in the scheme in that he was instrumental in creating the beta trust and he was asked to plan and implement a structure that would have the whole of TRS within it. He understood at the time that there were negotiations for KK to buy VG out and that is what he was doing. The Respondent accepted his involvement to that extent. The Respondent denied any knowledge of any underlying impropriety in KK's intentions. Mr Cunningham put to the Respondent that it was inconceivable that he did not know what he was doing when he became involved in the reorganisation. The Respondent replied that there was no need for KK to do what he had done. It was "completely pointless". This was not a moneymaking exercise, indeed it had lost millions. He had been pushing KK to accept a "shotgun" clause which would have dealt precisely with a situation where there was a deadlock between the parties. The Respondent told the Tribunal that had he known what was going on, he would not have got involved in this for a whole variety of reasons, "not least because it was exceptionally stupid". If KK had wanted control of the TV station he could have got it easily.

Allegation 3

72.45 The Respondent told the Tribunal that on 1 October he knew that control had changed. He did not however know about the "crazy scheme" that KK had put together. Mr Cunningham asked the Respondent why he had been asking GB the question about calling for payment if he did not know that something had changed, as he was maintaining. The Respondent stated that the reason he asked the question was that it would be interesting to see the reaction from NMHC. The Respondent's view that time was that there was deadlock and there was either going to be a winding up of TRS or one of the other parties would buy the other one out. The Respondent anticipated that they would say that they were not going to put any more money into the project, which in fact is what happened. The Respondent's analysis of the situation was therefore correct. The Respondent's understanding as of 1 October, was that there was a deadlock between the parties. Mr Cunningham put to the Respondent that control having changed was not a deadlock. The Respondent maintained that it was a deadlock because there was no longer a common purpose and the only way to

resolve such a situation was to go to the Delaware court to obtain an order to dissolve the company.

72.46 Mr Cunningham put to the Respondent that if he knew that KK had taken control as of 1 October 2009 at lunch in London with GB and KK then the two letters that were the subject of this Allegation were "striking in their misleading content" as the recipient was not being told that in fact control had changed. The Respondent stated that the recipient knew that control had changed but he believed that this had been achieved legitimately. Mr Cunningham put to the Respondent that if Judge Ramos's finding was correct, that would mean that not only did the Respondent know about the transfer of control at that lunch but that he would also have been told it had been achieved by the illegal method of dilution. The Respondent confirmed that that would be correct if Judge Ramos was correct, which he was not. The Respondent pointed out that Judge Ramos had found that he had joined the meeting, noting that GB was already there.

72.47 The Respondent told the Tribunal that there was a crucial difference between the Respondent and GB. GB had granted a power of attorney on the 1 September which he had not run past the Respondent and that the Respondent had not known existed at the time. The Respondent told the Tribunal that up until 1 October he had not known anything. At the lunch meeting KK announced that he now had control of TRS. The Respondent was not given any of the detail. Mr Cunningham put to the Respondent that it was inconceivable that KK would not have told him and GB the same information at the same meeting. The Respondent maintained that they were treated differently. Mr Cunningham asked the Respondent why he had not asked KK how he had seized control. The Respondent told the Tribunal that KK had given an account to him which was deliberately misleading. The Respondent had no idea why KK would mislead him but not GB. The Respondent told the Tribunal that the conclusion reached by Judge Ramos to the effect that he and GB were treated equally was completely wrong.

72.48 The Respondent, by 16 October, knew that a series of corporate operations had taken place that had a dilutive effect on IVL. Mr Cunningham put to the Respondent that he was therefore in a position to write frank and candid letters to the other side of this setting out what had happened. Mr Cunningham told the Tribunal that the Applicant's case was that the letter was a misleading by virtue of what it did not say rather than by what it did say. The Respondent stated that he had no obligation to tell the other side anything that his client told him not to tell them, unless it was a crime or a fraud. Mr Cunningham put to the Respondent that his obligations, as specified in the Ramos Judgment, as to honesty, candour and full disclosure were exactly the same as they were in England and Wales. The Respondent agreed with that but told Mr Cunningham that he was conflating KK's obligations with his obligations as the legal adviser to Iota. Mr Cunningham asked the Respondent whether he thought he should have told Covington and Burling about the Dilution. The Respondent stated that he had not been under any obligation to volunteer that information to them. His client had forbidden him to mention it and he was obliged to comply with those instructions unless they were manifestly unlawful. His client was not dishonest and there had been no finding of dishonesty. Mr Cunningham suggested that the letter was wilfully misleading in the absence of candour where the Respondent had failed to disclose the Dilution. The Respondent reiterated his position.

Findings of Fact and Law

73. The Applicant was required to prove the Allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal took into account all of the evidence and submissions presented by both parties, both orally and in writing. The submissions are summarised below. The Respondent had chosen not to make closing submissions. He had, however, made a detailed opening speech, which he had subsequently adopted as his evidence in chief and a Skeleton Argument had been prepared on his behalf before the hearing began. The Respondent was not disadvantaged by not having made closing submissions.

Rule 5

74. **Allegation 1.1 - The Respondent acted where there was a conflict (or a significant risk of a conflict) between his own interests and those of his clients and/or between the interests of different clients in respect of the following transactions (or any of them):**

1. **The Loan Agreement between Sungate Holdings Limited ("Sungate"), Tranfeld Holdings Limited ("Tranfeld") and Elite Partners Limited ("EPL") dated 12 April 2010 (the "First EPL Loan");**

2. **The Deed of Agreement between Sungate, Tranfeld and EPL dated 17 June 2010 (the "Second EPL Loan");**

3. **The Deed of Sale between Mr Stephen Cosser and EPL dated 17 June 2010 (the "Deed of Sale");**

4. **The Deed of Agreement between Sungate and EPL dated 7 September 2010 (the "Third EPL Loan"); and**

5. **The Loan Agreement between Mr Cosser and EPL dated 26 January 2011 (the "Fourth EPL Loan"), together with the First to Third EPL Loans, the "EPL Loans".**

By so acting, he acted contrary to Rules 1.02, 1.04, 1.06 and/or 3.01 of the Solicitors Code of Conduct 2007 (the "2007 Code").

Applicant's Submissions

74.1 Mr Cunningham submitted that Mr Cosser and his companies (Sungate and Tranfield) borrowed significant sums of money from EPL on onerous and one-sided terms. The companies borrowed a total of £400,000 and Mr Cosser personally borrowed 50,000 EUR at what Mr Cunningham described as "grotesque" rates of interest.

74.2 The Deed of Sale resulted in the sale of potentially valuable assets to EPL for nominal consideration of £5,000. The Respondent's suggestion that Mr Cosser had a right of redemption under the Deed of Sale was inconsistent with the terms of that agreement.

The Deed of Sale was not a mortgage but was an agreement for the sale of assets. There was nothing in the Deed of Sale to suggest that, upon repayment of the EPL Loans, Mr Cosser had any right to redeem the assets.

74.3 The Respondent had accepted that he was a director of EPL at the time of the First EPL Loan and that as such there had been a "technical breach" of his professional obligation not to act in a position of conflict. Mr Cunningham submitted that the Respondent's role within the Regroup Trust plainly went far beyond being the mere 'Protector'. In one of his responses to the Applicant the Respondent had admitted that he was "closely involved with most of the major investment decisions of [the Regroup Trust]". An involvement in the major investment decisions of the trust was entirely at odds with the Respondent's case that that the role of Protector was limited to removing trustees and certain limited powers of veto.

74.4 Mr Cunningham submitted that the evidence demonstrated that the Respondent played an active and influential role in the management and affairs of the company, long after he formally resigned as a director on 1 June 2010. In the period from May to November 2011 it was clear that the Respondent had been playing an active role in the affairs of EPL even though EPL was being represented by Grosvenor Law at the time. Grosvenor Law considered that they received their instructions on behalf of EPL directly from the Respondent. This was consistent with the email from Stratus on 29 July 2011 in which they instructed Grosvenor Law to take their instructions from the Respondent.

74.5 Mr Cunningham relied on the following facts and matters set out in the Rule 5 Statement in support of this Allegation:

- The complexity and opacity of the offshore network, of which EPL formed part, evinced an intention to conceal the true beneficial ownership of the relevant companies.

- The Respondent had never explained who the ultimate beneficiaries of EPL were. He had also not explained the circumstances in which he came to be appointed a director of EPL or in which he resigned. He had also not explained who was responsible for making decisions on behalf of EPL if it was not him.

- If, as the Respondent had contended, EPL was not separately represented in relation to the loan/deed of sale transactions, that could only be because EPL was willing to rely, and was in fact relying, on the Respondent to protect its interests. This, in turn, it was submitted, supported the inference that the Respondent himself had an interest and/or role in EPL beyond that to which he had admitted.

- The EPL Loans and the Deed of Sale prioritised the interests of EPL over those of Mr Cosser, Sungate and Tranfeld.

- An attendance note of a meeting with Lewis Silkin on 14 July 2011 recorded that the Respondent stated that he had loaned money to Elite in the sum of £70,000, which EPL then used to fund part of the total advance under the First and Second EPL Loans. The Respondent had denied that he had loaned this money. Mr Cunningham told the Tribunal that it was the Applicant's case that the

Respondent did, in fact, lend £70,000 to EPL. The fact that he did so and/or the fact that he had sought to deny it was evidence of a connection with EPL.

- The Applicant relied on an email dated 7 September 2010 from the Respondent to KS of Stratus, which it was submitted demonstrated that the Respondent had an active role in the management and affairs of EPL. In that email the Respondent had explained that he would be dealing with the EPL Loan documentation and novation of its security.

- In a telephone conference on 13 July 2011 between the Respondent and JC of Lewis Silkin the Respondent had stated that he had *"expectations"* in relation to EPL, and that "if Elite prosper that is a good thing as far as I am concerned". Mr Cunningham submitted that this was a tacit admission of some form of interest and/or role in EPL.

74.6 In terms of the allegation of a client conflict, Mr Cunningham submitted that if the Respondent did not have a personal interest and was not acting as EPL's director, which was the Applicant's primary case, then there was a client conflict as the Respondent was in his acting on both sides of the transaction.

74.7 Mr Cunningham referred the Tribunal to the Respondent's communication with Grosvenor Law on 18 July 2011, in response to a letter from LS dated 14 July 2011 in which the issue of conflict had been raised. The Respondent had written "As far as the allegations of conflict against my firm are concerned, the fact that Elite was not separately advised (which is the case) is regrettable perhaps, but Cosser would have had to pay for that advice as he did for the previous loans …"

74.8 Mr Cunningham submitted that it would have been most unlikely that EPL would have been prepared to enter into these types of loan agreements with someone who was in dire financial circumstances without taking its own legal advice. The loan agreements had been drafted by the Respondent acting on behalf of SC/his companies, and they were governed by English law. There was no evidence to suggest that Stratus, had any in-house legal expertise capable of advising in relation to complex securities arrangements governed by English law.

74.9 Mr Cunningham submitted that this was explained by the fact that EPL did not need separate legal representation because its interests were being fully protected by the Respondent.

Respondent's Submissions

<u>General Submissions</u>

74.10 In the course of written and oral submissions, the Respondent made a number of over-arching points which were relevant to some or all of the Allegations he faced. These are summarised here to avoid repetition but the Tribunal had regard to them throughout its consideration of the evidence.

74.11 In the Respondent's Skeleton Argument the Tribunal was told that the Respondent had enjoyed a long and unblemished career for 42 years. He had been provided with

8 character references, including one from the former Chair of the Paris Bar who had attested to his "human qualities and intellectual abilities and his abiding respect of the moral and ethical principles of the Avocats profession".

74.12 In respect of the Rule 7 matters, although the strike-out application (heard in July 2017) had failed, this was not because the Tribunal had found the case against the Respondent to be well-founded, only that it was not bound to fail.

74.13 The following general points were made in relation to the evidence as a whole:

- The case against the Respondent was based on inference and implication despite the huge resources that the Applicant had dedicated to the case. The Applicant failed to take witness statements from key individuals. The Applicant had chosen to only call one witness and had not even taken a statement from Mr Cosser.

- The Rule 7 Allegations relied to a large extent on the Judgment of a foreign court. This was a case in which the Respondent had not been a party and the Judge had not heard the Respondent give evidence. The Applicant could have conducted its own investigation into these matters and are called primary evidence of the matters relied upon.

- Many of the matters relied upon hearsay evidence. There was no evidence from VG or his counsel indicating that they were misled at all.

- The Respondent remained a practising Avocat in France. The Applicant had jurisdiction in relation only to the Respondent's activities in England as a member of the London Firm, not his activities through the Paris Firm.

- The initial report which led to the Applicant's investigation was made by PD. These allegations had been advanced against the Respondent in bad faith by PD who was an unreliable source of information. This was of essential importance to understanding the evidence that was before the Tribunal and that which was not. The Applicant had invited the Tribunal to draw inferences based on certain communications from the Respondent, those communications having been provided to it by PD. The Respondent was unable, due to French privilege laws, to provide the full context of those communications. The result was that the Tribunal had before it only limited parts of client files, cherry picked by PD and adopted by the SRA.

- The Rule 5 Allegations related to events that took place in 2010 to 2011 and the Rule 7 Allegations related to events that took place in 2009. It was inevitable that the recollections of the Respondent and other witnesses would have faded. This had given rise to specific evidential difficulties which had been set out in the Respondent's witness statement dated 14 July 2017.

- The pleading of the case against the Respondent was deficient. The allegations of dishonesty had not been made clearly and they lacked precision. The Respondent had faced a "moving target".

- The Applicant's prosecution of the case had been "highly oppressive". The Allegations had not been framed with the necessary precision. On a number of Allegations the Applicant had advanced a case which was misconceived and had refused to narrow it. This had put the Respondent to the burden and cost of defending a 15 day hearing. The Applicant had refused to acknowledge the Respondent's legitimate concerns as regarded his obligations under French law. The same allegations that were now advanced in the Rule 7 Allegations had been addressed in correspondence in August 2014

Respondent's Submissions on Allegation 1.1

74.14 The Respondent had admitted a technical conflict of interest in respect of the First EPL loan. He relied on the following points as mitigation:

- The Respondent had not been aware at the time that he was a director of EPL;
- He had not profited from the conflict;
- Mr Cosser had known that EPL was a client of the Paris Firm;
- Mr Cosser had now waived the technical breach and confirmed it would have made no difference to his decisions.

74.15 The Respondent accepted and regretted the technical breach. The remainder of the Allegations was denied.

74.16 The Skeleton Argument referred the Tribunal to the Respondent's Reply. The Applicant's case demonstrated "commercial naivety" about the nature of international business and legal practice. The points relied upon by the Applicant that were said to be suspicious or giving rise to inferences were "entirely regular and lawful means of conducting international corporate affairs".

74.17 The Applicant itself had been unable to identify the beneficial interest that the Respondent was alleged to have enjoyed in EPL. The Applicant was required to establish a conflict beyond reasonable doubt and it could not do that if it was unable to identify the beneficial interest and put it directly to the Respondent so that he could address it. The Allegations had relied upon the Respondent's relationship with Mr Cosser despite choosing not even to interview him. Mr Cosser's witness statements had been inconsistent with the Allegations against the Respondent.

74.18 HMRC had conducted an investigation into the Respondent following a report made to them by PD. That investigation involved three senior HMRC officers including a highly experienced accountant. They had conducted a detailed examination of the financial records of the London Firm. The Respondent had also been required to agree to a detailed examination of his personal financial affairs and those of his wife. That investigation had scrutinised the Respondent's business relationship with the Regroup Trust, Reconsulting Limited, EPL and Keysburg. HMRC's conclusion had been that the Respondent did not currently, and had not in the past, exercised control over or had any beneficial interest in any of these entities other than Keysburg, which had not been disputed. This had been a rigorous investigation and the Tribunal was invited to

accept its conclusions as compelling evidence of the fact that there was no beneficial interest in any of the entities that were in dispute.

The Tribunal's Findings

74.19 The Tribunal began by considering the nature of the Respondent's relationship with EPL. The Applicant's case was that the Respondent "was EPL". The Respondent robustly and consistently denied this suggestion. He had denied having any part in the running of EPL or a beneficial interest in it.

74.20 It was common ground that he had been a director of EPL from 9 January 2007 until 1 June 2010.

74.21 EPL was a wholly owned subsidiary of Reconsulting Limited, which was owned by the Regroup Trust. The Respondent was the 'Protector' of the Regroup Trust. The Respondent confirmed in his Response to Further and Better Particulars dated 13 April 2017 that he "would on occasion give legal advice" to officers of Reconsulting Limited".

74.22 The Respondent had confirmed in his evidence that he did not dispute having borrowed money from EPL (via Glenealy) and the Regroup Trust.

74.23 The Respondent had said, during the 'without prejudice' meeting on 14 July 2011 that he had loaned £70,000 to EPL. In these proceedings he had denied that he had in fact loaned this money to EPL, but had explained that he had said this as part of this negotiating position. The Tribunal rejected the Respondent's explanation. The 'without prejudice' rule did not permit a solicitor to make a false representation, including in relation to factual matters. If the Respondent's position was to be accepted, settlement negotiations could be conducted on an entirely false basis as parties would be free to misrepresent their client's positions. The Tribunal found that position to be nonsensical. It would not expect a solicitor to provide false information to another solicitor with the intention that the false information be relied upon.

74.24 In Mr Cosser's witness statement dated 12 January 2017 he had stated that "It was in the course of that meeting, in response to the suggestion from [JC] that some of the EPL loan might have been funded by AMH personally that he conceded that we could assume that £70K of it had been. I now know from AMH that this was a conscious strategy by him to see where that disinformation might end up". In cross-examination Mr Cosser had not recalled the word "assumed" being used. When asked when he had discovered that the reference to the £70,000 loan by the Respondent had been a 'lie' (as described by Mr Cunningham), Mr Cosser had replied "I do not to this day know that it is a lie. My suspicion was that this is a very big number for Alex to be playing with, and to the extent that £70,000 had come from Alex, it would have been on a short-term basis not a long-term basis". The Tribunal's analysis of the circumstances in which Mr Cosser's witness statements were taken is set out below. Mr Cosser's understanding had been that the Respondent was representing EPL at this meeting.

74.25 The Tribunal was satisfied that the Respondent had indeed loaned £70,000 to EPL as he had stated in the 'without prejudice' meeting.

74.26 That meeting had taken place the day after two extended telephone calls between the Respondent and JC and NK. This had been initiated by the Respondent. In the second of those telephone calls he was asked directly by NK "Do you have any relationship with Sungate Elite or Pefcos or any of the other entities er behind er either Elite or Sungate?". The Respondent had stated "Erm I am not A beneficiary of, owning structure of, er Elite, erm but I, they have been clients of mine for a while and erm I have an indirect financial interest that they have invested of their own money". He had later clarified this to state that he did not have any beneficial interest in one of those entities but immediately followed that up with "But, erm, I have expectations". When asked to explain what that meant he stated that "Well, er, if Elite prosper that would be a good thing as far as I am concerned". The Respondent later again denied that he had any beneficial interest in the trust that owned EPL.

74.27 The Respondent's reference to having "expectations" and his assertion that if EPL did well then this would be positive was consistent with what he subsequently told JC the following day, namely that he had loaned EPL £70,000.

74.28 On 7 September 2010 the Respondent had emailed KS concerning the Third EPL loan. In that email the Respondent stated "I will be sorting the Elite Loan documentation and novation of its security and novation of the Participation Agreement as well as documenting the VV loan to SRC (unless you have a preferred format) and the TCAL Loan, although plainly you will need to deal with signatures for Sungate, VV and Elite". It was clear that to the Tribunal that despite no longer being a director, the Respondent, in dealing with the "Elite documentation", had a significant involvement with EPL. This was consistent with the Respondent having an active role in the management of EPL.

74.29 On 7 May 2011 the Respondent had emailed Mr Morrison at Grosvenor Law concerning the Nanterre Judgment. The Tribunal's full analysis of this episode is set out below in relation to Allegation 1.2. The relevance of this email to Allegation 1.1 is that the enforcement of the Judgment would be to the benefit of Sungate, which was now owned by EPL. The Respondent had stated in that email "You would be acting for Elite Partners Limited…". This was consistent with subsequent correspondence from Grosvenor Law in which they confirmed they were instructed by EPL. Although this was just before his resignation as director, it was another example of close involvement with EPL and was consistent with having arranged loan documentation six months earlier. It was also consistent with the evidence of Mr Morrison and Mr Tracey. In his response to the s44B notice, Mr Morrison had stated "Our initial instructions were received from Alex Maitland Hudson, following an initial enquiry by him on 6 May 2011. Thereafter, instructions were also received from [OD] of Stratus Associates, Cyprus on behalf of Cirano Limited, the corporate director of Elite. As you will note from the correspondence provided, [OD] confirmed that instructions should be taken from Alex Maitland Hudson on behalf of Elite".

74.30 On 29 July 2011 DA of Grosvenor Law had written to DV at EPL stating "It was good to speak with you earlier. Thank you for confirming your instructions and that we should take Elite's instructions going forward from Alexis Maitland Hudson." This was a further example of the Respondent giving instructions on behalf of EPL. The Tribunal also noted an absence of any instructions to the Respondent from EPL.

74.31 The Tribunal was satisfied that the Respondent was giving instructions on behalf of EPL.

74.32 This level of involvement by the Respondent was consistent with him having an active role in the management of EPL and inconsistent with his assertion in his Amended Answer that, following the termination of his directorship "he had no role in EPL's running of any kind".

74.33 The Respondent had confirmed in his Response to the Further and Better Particulars that he had received loans of approximately 710,000 EUR from the Regroup Trust/Reconsulting Limited. The Tribunal considered these loans to involve significant sums of money being loaned to the Respondent by the group that included EPL.

74.34 The Respondent had told the Tribunal on a number of occasions that HMRC had conducted a thorough investigation into his affairs and if he had been the alter ego of EPL then HMRC would have identified this and would have pursued matters further. He had made clear to the Tribunal that the tax investigation had not resulted in him having to pay any additional taxes.

74.35 The Tribunal did not doubt that HMRC had indeed conducted a very thorough enquiry. However their focus was tax liability and not professional conduct in a regulatory context. The Tribunal was not bound by a decision of HMRC, particularly in circumstances where the focus of the investigation was entirely different.

74.36 The Tribunal took all the above factors into account together with the Respondent's consistent position that he was not the 'alter ego' of EPL. The Tribunal was satisfied beyond reasonable doubt that the evidence, cumulatively, proved that the Respondent had a beneficial interest in EPL and was actively involved in its management.

74.37 <u>First EPL Loan</u>

74.37.1 The Respondent had admitted a technical conflict of interest in relation to this loan on the basis that he was still a director of EPL at the time.

74.37.2 The London Firm represented Mr Cosser, who was originally a client of the Paris Firm, and his associated companies, including Sungate and Tranfeld. This was clear from the Respondent's Amended Answer and the Loan Agreement. The Respondent had asserted that the terms of this loan, and indeed all the EPL loans were not disadvantageous to Mr Cosser, indeed "They were the very opposite". This Respondent had compared the terms to the Pedley loan, making the point in cross-examination of Mr Baker and in his own evidence that the terms were similar to the Pedley loan. However in his email of 20 July 2011 to RM and WG, the Respondent had described the terms of that loan as "penal" and his QC had described them as "draconian" in his Advice.

74.37.3 The security for the loan vastly outweighed the sum advanced of £150,000, the repayment fee of the same amount and the arrangement fee of £10,000. It

included assigning the benefit of the Nanterre Judgment worth over 2.7m EUR and an equitable mortgage on 115 Eaton Square and 115 Eccleston Mews.

74.37.4 The interest rate was very high and, coupled with the substantial security, it could only be described as disadvantageous to Mr Cosser. It was, however, very advantageous to the Respondent given his interests in EPL. The Tribunal noted that EPL was the minority contributor to the loan according to the Participation Agreement. However it had still contributed £25,000 and was described as the Lender in the Loan Agreement. EPL's interest and thereby the Respondent's interest was therefore significant. This was therefore more than a technical conflict of interest based on the Respondent's directorship, but a significant personal business conflict. The Tribunal was satisfied beyond reasonable doubt that there was a conflict of interest between the Respondent and his clients in respect of this loan.

74.38 Second EPL Loan & Deed of Sale

74.38.1 The London Firm again represented Sungate and Tranfeld. The only material change in the Respondent's involvement in EPL was that he was no longer a director. However for reasons set out above, he still had a beneficial interest in EPL and was actively involved in the management. The terms of the loan were broadly similar to those of the First EPL Loan and the Tribunal's findings on the onerous nature of the terms were the same as in respect of that loan.

74.38.2 The Deed of Sale was the arrangement in which Sungate and Tranfeld was transferred from Mr Cosser to EPL together with his beneficial interest in 115 Eaton Square and shares in the mining company in Sierra Leone and in BMC. These transfers were not part of security for the loan, which would still have been disproportionate, but were consideration for an additional £5,000 being loaned to Mr Cosser. In other words, in return for lending £5,000 EPL received assets potentially worth millions. The benefit to EPL and thereby to the Respondent was very significant and out of all proportion to the sums being lent to Mr Cosser.

74.38.3 The fact that the assets were potentially worthless due to existing secured creditors, as the Respondent asserts in his Amended Answer, does not extinguish the conflict or make the terms less onerous. The values of the assets could have risen in the future, which would have been to the benefit of EPL.

74.38.4 The Tribunal was satisfied beyond reasonable doubt that there was a conflict of interest between the Respondent and his clients in respect of this loan.

74.39 Third EPL Loan

74.39.1 The circumstances and terms of the Third EPL Loan were similar to the First and Second Loans. The key difference by this point was that EPL had, pursuant to the Deed of Sale, obtained the beneficial interest in Sungate and Tranfeld. The London Firm was recorded as acting for Sungate and Tranfeld, was still acting for Mr Cosser. The Respondent continued to have beneficial interest in EPL. The Tribunal again found the terms to be onerous to Mr Cosser and beneficial to the Respondent.

74.39.2 The Tribunal was satisfied beyond reasonable doubt that there was a conflict of interest between the Respondent and his clients in respect of this loan.

74.40 Fourth EPL Loan

74.40.1 This loan was made directly to Mr Cosser, rather than through Sungate and Tranfeld. The Respondent was described again as the 'borrower's solicitor' – in this case the borrower being Mr Cosser. The Respondent was also acting for EPL/himself as the letter from Stratus dated 21 November 2010 made clear.

74.40.2 The interest rate in respect of this loan was 60%. The security was against the anticipated insurance proceeds following a burglary at 115 Eaton Square. This ended up being settled at approximately £450,000, the loan being for a total of 55,000 EUR. This was, again, significantly disproportionate to the sum being advanced. The penal nature of the terms as far as Mr Cosser was concerned contrasted with the benefit that the Respondent stood to gain from these terms.

74.40.3 The Tribunal was satisfied beyond reasonable doubt that there was a conflict of interest between the Respondent and his clients in respect of this loan.

74.40.4 The Tribunal found the factual basis of Allegation 1.1 and therefore a breach of Rule 3.01 proved in full beyond reasonable doubt.

74.41 Dishonesty

74.41.1 The test for considering the question of dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ….. 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 knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder 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."

74.41.2 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.

- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

74.41.3 The Tribunal assessed the Respondent's knowledge and belief of the facts relating to the loans and the conflict of interest that existed in relation to them. In doing so the Tribunal considered the loans individually and collectively. The Tribunal found that the Respondent's knowledge of the facts was complete and that he was aware of all the relevant facts and circumstances. The Respondent had facilitated all of these loans. He was at the centre of the arrangements and was the driving force. He had not been relying on other people and due to his role he knew who his clients were, created documentation and arranged introductions.

74.41.4 The Respondent, on his own case, was well aware of the financial vulnerability of Mr Cosser. Mr Cosser had fallen on hard times for a number of reasons, all of which the Respondent was aware of. A common factor in all the loans and the deed of sale was that the Respondent gained an advantage and Mr Cosser was disadvantaged. The starkest example of this could be seen in the deed of sale. The Respondent's explanation in his Amended Answer that the value of the assets was essentially worthless not only missed the point but was also unpersuasive. If the assets were worthless there would have been no point in including them in the Deed of Sale. Although the Settlement Agreement subsequently provided for the assets to be returned to Mr Cosser, this was after the event and in any case the Tribunal had grave concerns about the Settlement Agreement which are set out in detail in relation to Allegation 1.4. The Respondent had manipulated Mr Cosser, someone who he knew was unable to obtain lending from traditional institutions. He had exploited someone to whom he owed fiduciary duty. The Tribunal noted that Mr Cosser had stated that he would have accepted the loans even had he known that the Respondent had been a director at the time of the First EPL loan and that he waived any "technical conflict of interest". The Tribunal's findings were that the conflict of interest went beyond merely a technical conflict. There had been a fundamental conflict between the Respondent's own personal business interests and that of his client Mr Cosser. That sort of conflict was not one that could be waived. The fact that Mr Cosser may have accepted the terms was also not relevant. At the material time he was in a dire predicament and it was his willingness to agree to these loans and the Deed of Sale on such terms that the Respondent had exploited.

74.41.5 The Tribunal noted the unchallenged evidence of Mr Davidson. This evidence carried limited weight as Mr Davidson had stated "I was not actually involved in the fundraising and did not have any actual knowledge of the precise arrangements, not least since I did not need to know".

74.41.6 The Tribunal was satisfied beyond reasonable doubt that by the standards of ordinary decent people the Respondent had acted dishonestly.

74.42 Rule 1.02

74.42.1 The Tribunal considered whether the Respondent had lacked integrity. The Tribunal applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".

74.42.2 The Tribunal had found, for reasons set out above, that the Respondent was fully aware that there was a conflict of interest from which he stood to benefit. That situation, at an absolute minimum, called for complete transparency on the part of the Respondent to all the parties to the loan agreement and the deed of sale. Instead the opacity of the arrangements and structures meant that not only was the Respondent not fully transparent but it was difficult for any other party to establish exactly what his interests were and where they lay. A solicitor of integrity, when faced with even the realistic prospect of a conflict of interest was expected to act in a transparent and open manner or to cease acting altogether. The Respondent had done neither of these things and on four occasions involving five transactions had continued to act where there was a glaring conflict of interest, in each case to his own advantage.

74.42.3 The Tribunal was satisfied beyond reasonable doubt that the Respondent had lacked integrity in acting in this way. It also followed from the Tribunal's finding of dishonesty that the Respondent had necessarily lacked integrity. The Tribunal found the breach of Rule 1.02 proved in full beyond reasonable doubt.

74.43 Rule 1.04

74.43.1 The Respondent had a duty to act in the best interests of his client. This required him to discharge his duties solely in that clients best interests, something that was impossible where there was a conflict of interest. This was particularly obvious in a situation where he was aware of Mr Cosser's difficulties while simultaneously having an interest in EPL. The Tribunal found the breach of Rule 1.04 proved in full beyond reasonable doubt.

74.44 Rule 1.06

74.44.1 The trust the public placed in the Respondent and in the profession depended on solicitors acting honestly, with integrity and in their clients best interests. The Tribunal had found that the Respondent had failed to comply with any of those obligations and his actions most certainly diminished the trust the public

placed in him and in the profession. The Tribunal found the breach of Rule 1.06 proved in full beyond reasonable doubt.

74.44.2 The Tribunal found Allegation 1.1 proved in full beyond reasonable doubt including the allegation of dishonesty.

75. **Allegation 1.2 - In May 2011 he sought to enforce a judgment obtained against Mr Cosser in the Tribunal de Grande Instance de Nanterre dated 8 October 2009 (the "Nanterre Judgment") for the benefit of EPL in circumstances where there was a conflict (or a significant risk of a conflict) between his own interests and those of his client and/or between the interests of different clients. By so acting, he acted contrary to Rules 1.02, 1.04, 1.06 and/or 3.01 of the 2007 Code.**

Applicant's Submissions

75.1 Mr Cunningham submitted that the Respondent's involvement in the enforcement of the Nanterre Judgment against Mr Cosser at a time when he was still a client gave rise to a "stark conflict of interest". The Respondent had instructed Grosvenor Law to enforce the Judgment on 7 May 2011, at a time when Mr Cosser was still a client of the firm. The Respondent's case that the attempt to enforce the Nanterre Judgment was done not only with SC's knowledge and consent was inconsistent with the contemporaneous documents. Mr Cunningham submitted that by assisting in the enforcement of the Nanterre Judgment against Mr Cosser, the Respondent had acted where there was a conflict of interest in breach of 3.01 of the 2007 Code, and in breach of Rules 1.02, 1.04 and/or 1.06 of the 2007 Code, and that he had done so dishonestly.

Respondent's Submissions

75.2 The Skeleton Argument did not specifically address this Allegation. However the Respondent had given extensive evidence as to his position on this matter and so there was no doubt as to his case. The Respondent denied the Allegation in full.

The Tribunal's Decision

75.3 The Nanterre Judgment came about in the context of divorce proceedings between Mr Cosser and Ms Mahon. As the Respondent explained in his email of 20 July 2011 to RM, the purpose was to demonstrate that Mr Cosser had debts and was not as wealthy as had been suggested. In this email the Respondent stated that it achieved this aim as Ms Mahon's claim was limited. The Respondent denied, in his Amended Answer, that she had been cheated or that the Judgment was a sham. The particular purpose of the Judgment was not a matter which the Tribunal was required to make a finding. What was relevant however was that at the time Sungate obtained the Judgment it was owned by Mr Cosser. The Tribunal found that the Judgment was a sham to the extent that Mr Cosser had got Judgment against himself by a company that he owned. At the time of the Judgment and therefore it was not envisaged that it would ever be enforced. That position changed following the Deed of Sale when Sungate was sold to EPL in June 2010.

75.4 The next relevant date was 6 May 2011 when it came to light that Mr Cosser had diverted the insurance funds, something he maintained he was perfectly entitled to do.

The Tribunal was not required to make a finding on this point. It did not matter for these purposes whether Mr Cosser was entitled to have done so or not – what mattered was what the Respondent believed at the time and what he did about it. The Fourth EPL loan had included the insurance monies as part of the security to EPL. The Respondent had been emailed at 13.32 that day by WG asking him if he was aware. The Respondent had told the Tribunal that he was "cross about it". At 13.53 WG again emailed the Respondent stating "This means that LOGOS can send in the bailiffs again…….". This Tribunal considered this email to be relevant as it referred to the possibility that, following the diversion of the insurance monies, LOGOS would be in a position to enforce against Mr Cosser. That would have had the potential effect of leaving EPL exposed in relation to the Fourth EPL Loan.

75.5 On 7 May 2011 at 09.01 the Respondent had been sent a draft of a proposed email to Mr Cosser, which concluded in the following terms:

> "Please will you let me or Alex know whether you intend to pay LOGOS the judgment sum. You should be aware that if LOGOS do not receive payment by 16 May they are likely, if not sure, to send in the bailiffs again, which could increase the overall cost of the judgment debt by up to £12,000".

75.6 The Respondent was asked if he agreed with this email being sent to Mr Cosser, to which he replied at 11.08 "Perfecto".

75.7 This email was sent to Mr Cosser on 9 May 2011 by WG and copied to the Respondent.

75.8 At 11.24 on 7 May the Respondent emailed Mr Morrison at Grosvenor Law, the contents of which are set out above. This email appeared twice in the papers, once as part of Appendix G 114 and also at Appendix G 81 to the FIR. In G81 the timing appeared as "06:24:20 – 0400" and at G114 it shows as "11:24". The Tribunal was satisfied that it was the same email as the wording was exactly the same, as was the sender and the recipients. The difference in timing was presumed to be related to time zones.

75.9 The email at 11.24 enquired about the possibility that the Judgment could be turned into an English Judgment with a view to enforcement. It also enquired as to the possibility of enforcement taking place simply on the strength of the French Judgment alone. The Tribunal found the sentence "This would protect them against other creditors" was relevant. Enforcement on behalf of EPL would protect EPL from other creditors, such as LOGOS, getting in first. The Respondent clearly wanted this done as a matter of urgency as he wanted Grosvenor Law to have the bailiffs in by the end of the following week.

75.10 The draft proposed email to Mr Cosser contained nothing about the possibility of enforcement of the Nanterre Judgment. If the email to Mr Morrison had been sent at 06.24 then it would have been expected that the draft proposed email would have contained reference to the Respondent having approached Grosvenor Law about enforcement of the Nanterre Judgment, if it was the case that Mr Cosser wanted this to happen. If the email to Mr Morrison had been sent at 11.24 then although this would have been just after draft was approved by the Respondent it should still have

been included in the final version sent to Mr Cosser on 9 May. Further email exchanges took place on 10 May 2011 that made no reference to the Respondent seeking to enforce the Nanterre Judgment.

75.11 The Tribunal considered that the lack of transparency was reflective of the fact that the Respondent was seeking to enforce the Nanterre Judgment and was doing so without telling Mr Cosser that he was doing so. In his evidence, Mr Cosser told the Tribunal that he had never seen the email of 6.24/11.24 on 7 May 2011 before.

75.12 The Tribunal was satisfied beyond reasonable doubt that the Respondent had sought to enforce the Nanterre Judgment by his actions on 7 May 2011.

75.13 The Tribunal then considered the timing of the end of the retainer – essentially the question was on what date had Mr Cosser ceased to be a client of the Respondent. In an email to Mr Cosser of 10 May 2011 the Respondent had stated; "You appear to now be separately advised, so we will now cease any activity on your behalf and refer all enquiries in relation to your personal affairs directly to you". The email did not disclose that the Respondent had approached Grosvenor Law three days earlier with a view to enforcing the Nanterre Judgment but it was consistent with the retainer having been in existence until that date.

75.14 The Respondent had denied this in his evidence, stating that he had already ceased to act for him at that stage. The Tribunal rejected this part of the Respondent's evidence as it was contradicted by the documentation. Neither the draft to Mr Cosser approved by the Respondent on 7 May 2011 nor the email that was in fact sent on 9 May 2011 made any reference to ceasing to act. The Respondent's assertion that he parted company with Mr Cosser on 6 May 2011 was not supported by any of the emails. The email that did refer to activity ceasing did not reference any telephone conversation that had taken place in those terms.

75.15 Mr Cosser had been unclear as to when the retainer ended, but agreed that on the face of it he had been told in writing on 10 May 2011, though he had also stated that he had not been told until the without prejudice meeting in July 2011, albeit no actual work had been done by the Respondent for some time before that.

75.16 The Tribunal was satisfied beyond reasonable doubt that the retainer was still in existence until at least 10 May 2011. Therefore when the Respondent was seeking to have the Nanterre Judgment enforced on 7 May 2011, Mr Cosser was still his client.

75.17 The Respondent's position had been consistent to the effect that the enforcement was done with Mr Cosser's consent and for his benefit. If that was the case then it would not matter when the retainer ended.

75.18 The Tribunal noted that nowhere in any of the emails was there reference to the Respondent seeking to enforce the Nanterre Judgment, let alone that he was doing so for Mr Cosser's benefit or at his request.

75.19 Mr Cosser had been cross-examined in some detail about his knowledge of the Nanterre Judgment. He was shown the 6.24/11.24 email of 7 May 2011 and he had told the Tribunal that he not seen it before and that nobody had told him that EPL was

seeking to instruct bailiffs. This was plainly inconsistent with him asking for it to happen. Mr Cosser had been shown the email from the Respondent to DA at Grosvenor Law dated 20 June 2011 in which he had asked him to "organise a bailiff to take walking possession of the contents of 115 Eaton Square as soon as possible". Mr Cosser had told the Tribunal that he had not been aware of this. On 29 June 2011 DA had emailed the Respondent confirming that papers were ready to be sent to the High Court Enforcement Officer. Mr Cosser had again told the Tribunal that he was unaware of this. The Tribunal noted that on 22 June 2011 the Respondent had emailed Mr Cosser and had made no mention of enforcement of the Nanterre Judgment on behalf of EPL. The Tribunal recognised that these communications came after 10 May 2011 but they were consistent with Mr Cosser being unaware of the enforcement of the Nanterre Judgment.

75.20 There was no benefit to Mr Cosser of the Nanterre Judgment being enforced, beyond possibly being able to keep his furniture. There was, however, a significant benefit to EPL.

75.21 The contemporaneous documentary evidence was wholly inconsistent with the Respondent's position that Mr Cosser had not only been aware but had requested that course of action. The Tribunal was satisfied beyond reasonable doubt that the Respondent had sought to enforce the Nanterre Judgment, without Mr Cosser's knowledge or consent, at a time when he was a client. This was a clear conflict of interest given the Respondent's interests in EPL and the fact that the Paris Firm was acting for EPL. The Tribunal found the factual basis of this Allegation and Rule 3.01 proved beyond reasonable doubt.

75.22 Dishonesty

75.22.1 The Tribunal again applied the test in Ivey.

75.22.2 The Respondent's knowledge of matters was set out clearly in the emails he sent and received at the time, including the email sent on 9 May 2011 that he had approved on 7 May. It was immediately apparent that LOGOS would seek to enforce and send the bailiffs in. This had been spelt out to the Respondent in terms by WG on 6 May 2011. It was clearly in the Respondent's mind when he emailed Mr Morrison on 7 May, when he wrote "This would protect them against other creditors", 'them' being Sungate.

75.22.3 This was a conscious decision taken by the Respondent based on the fact that Mr Cosser had diverted the insurance monies. The Respondent knew that Mr Cosser was his client at least until 10 May 2011 and despite that had knowingly sought to enforce the Judgment by instructing Grosvenor Law. The Respondent had a financial interest in the creditor and was in a better position than anyone else because of his knowledge of the situation. The Respondent has used that knowledge to abuse his client's position. He had not told Mr Cosser what he was doing and indeed had misled him by omitting any reference to his attempted enforcement in his correspondence. The intention was to mislead Mr Cosser by creating a false impression as to the true situation as it stood following the diversion of the insurance monies.

75.22.4 The Tribunal was satisfied beyond reasonable doubt that by the standards of ordinary decent people the Respondent had acted dishonestly.

75.23 Rule 1.02

75.23.1 The Tribunal again considered the question of lack of integrity by reference to Wingate and Evans and Malins. The Respondent had owed a duty to his client of openness and transparency. Mr Cosser had been entitled to expect that the Respondent, as his solicitor, was acting in his best interests. In this case the Respondent had acted against Mr Cosser's interests, without his knowledge and had concealed this from him. This was against a background of existing conflict of interest arising from the loans, a conflict which crystallised at the point where the question of enforcement arose. The Tribunal was satisfied beyond reasonable doubt that the Respondent had lacked integrity in seeking to enforce the Nanterre Judgment against his client and without his knowledge. The Tribunal found the breach of Rule 1.02 proved in full beyond reasonable doubt.

75.24 Rule 1.04

75.24.1 The Respondent had clearly not acted in the best interests of his client for all the reasons set out above. The Tribunal found the breach of Rule 1.04 beyond reasonable doubt.

75.25 Rule 1.06

75.25.1 The trust the public placed in the profession was clearly undermined when a solicitor, acting for a client where there was a conflict of interest, sought to enforce a Judgment against a client while concealing this from that client. The Tribunal had already found that the Respondent had acted dishonestly, without integrity and not in the best interests of his client and the Tribunal was therefore satisfied beyond reasonable doubt that the breach of Rule 1.06 was proved.

75.25.2 The Tribunal found Allegation 1.2 proved in full beyond reasonable doubt including the allegation of dishonesty.

76. **Allegation 1.3 - He used confidential information about his former client Mr Cosser, and/or disclosed such information to Grosvenor Law LLP, the solicitors acting for EPL, contrary to (depending on when the disclosure took place):**

1. Rules 1.02, 1.04, 1.06 and/or 4.01 of the 2007 Code; and/or

2. Principles 2, 4 and/or 6 of the SRA Principles 2011 (the "2011 Principles") and/or Outcome 4.1 of the SRA Code of Conduct 2011 (the "2011 Code").

Applicant's Submissions

76.1 Mr Cunningham submitted that as part of the enforcement of the Nanterre Judgment against Mr Cosser, the Respondent had disclosed to Grosvenor Law confidential information about him. Mr Cunningham told the Tribunal that whether Mr Cosser was a client or former client was immaterial as the Respondent was under an obligation to maintain confidentiality in respect of matters which had been disclosed to him by Mr Cosser during the course of the retainer. The Respondent had accepted that he had disclosed confidential information to Grosvenor Law and had suggested that he had justifiable reasons for doing so. Mr Cunningham submitted that even if Mr Cosser had intimated any claims against the Respondent that would not have entitled the Respondent to share confidential information which the Respondent had obtained whilst acting for Mr Cosser. The Tribunal was referred to Prince Jefri v KPMG [1999] 2 AC 222 where Lord Millett had stated; "It is of overriding importance for the proper administration of justice that a client should be able to have complete confidence that what he tells his lawyer will remain secret".

76.2 Mr Cunningham submitted that the Respondent had acted in breach the obligation to maintain client confidentiality, lacked integrity, failed to act in the best interests of his client and failed to maintain the trust the public placed in him and in the provision of legal services. In doing so he had acted dishonestly.

Respondent's Submissions

76.3 The Skeleton Argument did not specifically address this Allegation. However the Respondent had given extensive evidence as to his position on this matter and so there was no doubt as to his case. The Respondent denied the Allegation in full.

The Tribunal's Decision

76.4 This Allegation identified six items of personal information as set out above. In the Respondent's Amended Answer he had accepted sharing the personal information with Grosvenor Law save for the details relating to the Nanterre Judgment, including the fact that it was a sham device which had been obtained "to try to cheat [his] wife out of cash". The Tribunal considered the attendance note of the meeting of 1 November 2011.

76.5 In the interview with the SRA on 23 November 2015 the Respondent had stated "Most of this information, if not all of it, was already known to the corporate parties on that. The non-lawyer parties. All of this had been discussed and revealed at Cosser's request".

76.6 The Tribunal had regard to the advice provided by his QC dated 16 March 2015 which confirmed that the material was confidential. It pointed out that the information relating to Mr Cosser's financial affairs was known to Sungate, Tranfeld and EPL at the time the loans were negotiated and that sharing the information was incapable of amounting to a breach of confidence. It also stated that the companies and the Respondent had "come under attack by Mr Cosser" in relation to these transactions and so privilege did not apply as they had to defend themselves.

76.7 The Tribunal noted that there had been no pre-action protocol letter issued and proceedings had not commenced. The question of the applicability or otherwise of common defence privilege did not therefore arise. The Tribunal was satisfied beyond reasonable doubt that the Respondent had used confidential information about Mr Cosser and disclosed it to Grosvenor Law. The Tribunal found the factual basis of Allegation 1.3 proved.

76.8 Dishonesty

76.8.1 The Tribunal again applied the test in Ivey.

76.8.2 The Respondent's state of knowledge was that he knew the information was confidential and that he was under a duty to Mr Cosser, as a former client, to respect that confidentiality. There was no evidence that any litigation was taken or threatened by Mr Cosser at the time when the Respondent disclosed the information. It was a conscious decision to disclose the information as the Respondent had stated that he believed that he was entitled to do so on the basis of joint defence privilege. The intention was to damage Mr Cosser's position and the Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

76.9 Rules 1.02, 1.04, 1.06 and 4.01 – 2007 Code

76.9.1 The Rule 5 Statement specifically pleaded this Allegation on the basis of the meeting on 1 November 2011. From 6 October 2011 the relevant code was the 2011 code. The Tribunal was limited to the scope of the Rule 5 Statement and therefore the alleged breaches of the 2007 code fell outside the scope of this Allegation. The Tribunal therefore found the breaches of Rules 1.02, 1.04, 1.06 and 4.01 of the 2007 code not proved.

76.10 Principle 2

76.10.1 The Tribunal again considered the question of lack of integrity by reference to Wingate and Evans and Malins. The Tribunal found that no solicitor of integrity would disclose confidential information about a former client without their consent. A fundamental part of the solicitors relationship with the client was that, subject to some limited exceptions, the duty of confidentiality was absolute. This duty continued even after a solicitor ceased acting for a client. The purpose of the disclosure had been to put to Mr Cosser at a disadvantage in the negotiations that were ongoing at the time. The Tribunal was satisfied beyond reasonable doubt that in so acting the Respondent had lacked integrity. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

76.11 Principle 4

76.11.1 It was wholly incompatible with the client's best interests for their solicitor to disclose confidential information about them that their consent. The Tribunal found the breach of Principle 4 proved beyond reasonable doubt.

76.12 Principle 6

76.12.1 The public's trust in the profession depended heavily on their ability to rely on their solicitor's adherence to the duty of confidentiality. While there were obvious but limited exceptions to this duty, for example prevention of criminal activity, the public trust in the profession would be seriously undermined when the duty was breached. None of the exceptions applied in this case and therefore the Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

76.12.2 The Tribunal found Allegation 1.3 proved in full in respect of the breaches of the 2011 code and dishonesty but not proved in respect of the alleged breaches of the 2007 code.

77. **Allegation 1.4 - He sought to take advantage of Mr Cosser:**

1. By seeking to enforce the Nanterre Judgment, contrary to Rules 1.02, 1.04, 1.06 and/or 10.01 of the 2007 Code; and/or

2. By causing or permitting Mr Cosser to enter into a Settlement Agreement dated 9 November 2011 (the "Settlement Agreement") without the knowledge of his solicitors and/or on terms which were materially disadvantageous to him, thereby acting contrary to Principles 2 and/or 6 of the 2011 Principles and/or Outcome 11.1 of the 2011 Code.

Applicant's Submissions

77.1 Mr Cunningham submitted that at the time the Settlement Agreement was signed, Lewis Silkin were aware, and had consented to, there being direct discussions between Mr Cosser and the Respondent. However they had not been aware that the Respondent intended to meet with Mr Cosser and invite him to sign the agreement at a time when the negotiations concerning its terms were still ongoing. At the time the Settlement Agreement was entered into, Lewis Silkin were awaiting a response to their letter of 8 November 2011 raising a number of issues in relation to the draft agreement.

77.2 Mr Cunningham submitted that the terms of the agreement were "incredibly onerous" on Mr Cosser. An example of this was the defamation clause. The Respondent could not have had any genuine belief that £500,000 was a reasonable amount for Mr Cosser to pay in settlement of the alleged claim. The Respondent must have appreciated that it was a "wholly excessive and unjustifiable amount, bordering on the absurd".

77.3 Under another term of the Settlement Agreement, Mr Cosser was required to undertake not to make "any allegations of unlawful or improper conduct" against the London Firm or the Respondent. Mr Cunningham submitted that such an undertaking prohibited Mr Cosser from making a complaint to the SRA about the Respondent's conduct. This was in breach of Outcome 10.07 of the 2011 Code.

77.4 Mr Cunningham submitted that in procuring Mr Cosser to enter into the Settlement Agreement on such terms, the Respondent had taken unfair advantage of Mr Cosser for his own benefit and/or that of benefit of EPL and had done so dishonestly.

Respondent's Submissions

77.5 The Skeleton Argument did not specifically address this Allegation. However, again, the Respondent had given extensive evidence as to his position on this matter and so there was no doubt as to his case. The Respondent denied the Allegation in full.

The Tribunal's Findings

77.6 Allegation 1.4 concerned two specific parts of the narrative, the first being the enforcement of the Nanterre Judgment and the second being the Settlement Agreement. The Tribunal considered these elements of the Allegation separately out of fairness to the Respondent and the sake of clarity in this judgment.

77.7 Nanterre Judgment

77.7.1 The Tribunal had already made findings to the effect that the Respondent had acted where there was a conflict of interest in seeking to enforce the Nanterre Judgment. The process of enforcing this Judgment had commenced at a time when Mr Cosser was still a client. The Tribunal had further found that the Respondent had acted dishonestly in doing so.

77.7.2 At the time the Judgment was obtained, Sungate was owned by Mr Cosser and there was no intention that it would be enforced as this would have involved Mr Cosser enforcing it against himself. Even if he had chosen to take such a step it could not have happened without his knowledge. The position had changed however once Sungate had been transferred to EPL. This gave the Respondent and EPL control over whether, and how, the Judgment would be enforced. This put the Respondent at a considerable advantage over Mr Cosser, an advantage that the Tribunal had already found the Respondent to have exploited. The Respondent used information about the Judgment to enforce it against Mr Cosser and this in itself was unfair. The unfairness was aggravated by the fact that the Respondent did not tell Mr Cosser what he was doing and indeed painted a misleading picture of the situation to him. The full circumstances of this are set out in the Tribunal's findings in relation to Allegation 1.2. The Tribunal was satisfied beyond reasonable doubt that the Respondent had taken unfair advantage of Mr Cosser by seeking to enforce the Nanterre Judgment. The factual basis of this Allegation and the breach of Rule 10.01 was proved beyond reasonable doubt.

77.8 Dishonesty

77.8.1 The Tribunal again applied the test in Ivey.

77.8.2 The Respondent's state of knowledge is discussed in detail in relation to Allegation 1.2. The Tribunal had found that the Respondent was the driving force behind the enforcement of the Judgment. He was aware of the real

reason for the Judgment having been obtained in the first place. Despite this he had not told Mr Cosser that he was considering enforcing it let alone that he was actively seeking to enforce it. This was a deliberate decision to keep Mr Cosser in the dark even though he was a client when the Respondent started to seek enforcement. This demonstrated to the Tribunal that the Respondent was aware of all the material facts and circumstances. The Tribunal was satisfied beyond reasonable doubt that the Respondent's actions in seeking to enforce the Judgment behind Mr Cosser's back were dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved in full beyond reasonable doubt.

77.9 Rule 1.02

77.9.1 The Tribunal again considered the question of lack of integrity by reference to Wingate and Evans and Malins.

77.9.2 The Tribunal found the Respondent to have lacked integrity for the same reasons as set out in relation to Allegation 1.2. A solicitor of integrity would not take unfair advantage of the client.

77.10 Rule 1.04

77.10.1 It followed as a matter of irresistible logic that taking unfair advantage of a client could not be in their best interests. Mr Cosser was a client until at least 10 May 2011 and therefore, at least between 7 to 10 May 2011, the Respondent had not been acting in Mr Cosser's best interests. The Tribunal had already rejected the Respondent's defence that Mr Cosser had consented to and sought the enforcement of the Judgment. The reasons for this set out in relation to Allegation 1.2. The Tribunal found the alleged breach of Rule 1.04 proved in full beyond reasonable doubt.

77.11 Rule 1.06

77.11.1 It again followed as a matter of logic that public trust in the profession was diminished when a solicitor took unfair advantage of a client and then former client by seeking to enforce a judgment against them without their knowledge. The Tribunal found the alleged breach of Rule 1.06 proved in full beyond reasonable doubt.

77.11.2 The Tribunal found Allegation 1.4 (Nanterre Judgment) proved in full beyond reasonable doubt.

77.12 Settlement Agreement

77.12.1 The Tribunal considered the circumstances in which Mr Cosser entered into the Settlement Agreement and then considered the terms of that agreement and whether they were materially disadvantageous to Mr Cosser.

77.12.2 The Settlement Agreement was signed on 9 November 2011. At that time Mr Cosser was represented by Lewis Silkin. The Respondent, in his Amended Answer, set out a chronology of events leading up to the signing of the Settlement Agreement. The Tribunal found this a useful starting point.

77.12.3 The Respondent had referred to the possibility of a Settlement Agreement in his letter to Lewis Silkin dated 14 July 2011. On 17 July 2011 the Respondent had emailed PD, WG and EG which referred to possible terms of an agreement. The email stated "this is not what we would all like to do, since we want to nail the bastard, but DF says that life's too short". The Respondent had stated in his evidence that this reflected a collective view about Mr Cosser. The Tribunal accepted that may well be correct but the collective view included the Respondent.

77.12.4 On 25 August 2011 Lewis Silkin wrote to the solicitors representing the Respondent in the course of negotiations about a possible settlement. In that letter Lewis Silkin wrote:

> "We remind you that until June last year, Mr Maitland Hudson of your client was a director of Elite. It appears to us however that since your client had a direct financial interest in Elite and was its director, the arrangement of loans by Elite to our client on what are quite extraordinary disadvantageous terms to our client, created a direct conflict of interest".

The letter concluded as follows:

> "As to the second and third dotted paragraphs in this section, in principle, these two can be agreed. It appears to us that no settlement can be reached of this dispute until (at the very least) we receive a full explanation of your client's relationship with Elite and conduct of our client's affairs in that context; and all the relevant documentation to establish that the offer made in the first dotted paragraph of your letter under reply is one which Mr Maitland Hudson of your client (or those associated with it) are in a position to deliver".

It was therefore clear that Lewis Silkin did not believe that the matter could be settled in the absence of a full explanation about the Respondent's relationship with EPL.

77.12.5 The reply sent on behalf of the Respondent dated 6 September 2011 did not provide such an explanation. The letter stated "Further, you have continued to make a number of inflammatory and unsubstantiated allegations about our clients' honesty and probity which do not warrant an answer". It then went on to make a number of points, including expressing the view that Mr Cosser had committed a criminal offence when he diverted the insurance monies.

77.12.6 The correspondence continued and on 3 November 2011 Grosvenor Law wrote to Lewis Silkin with proposed settlement terms. A draft agreement was subsequently sent to Lewis Silkin by Grosvenor Law on 7 November and at

this time it was clear that the Respondent and Mr Cosser had been speaking directly. Lewis Silkin was aware of this communication as it had been referred to in an email of 4 November.

77.12.7 On 4 November 2011 Mr Morrison had emailed the Respondent with a proposed figure for Grosvenor Law's legal fees. The Respondent replied the same day as follows:

> "Very reasonable Dan. Look forward to a decent lunch to celebrate, if [JC] doesn't eff it all up for us. Best to tell him sooner rather than later that the case is already settled on the terms proposed but subject to the cap of £1.2m".

The Tribunal considered that this reflected the fact that the general nature of the Settlement Agreement had been agreed but that there was a concern that Lewis Silkin's involvement could potentially de-rail matters.

77.12.8 On 7 November the Respondent had met Mr Cosser to discuss the Settlement Agreement. The Attendance Note recorded that Mr Cosser "…said he would have to run it past LS…"

77.12.9 On 8 November 2011 Lewis Silkin wrote to Grosvenor Law seeking clarification of seven points arising out of the draft settlement agreement. This included queries concerning a schedule which had not been enclosed, bills rendered to the London Firm, questions about Stratus and questions about the calculation of libel damages. These were significant queries about key parts of the draft settlement agreement. It also reflected the fact that Lewis Silkin were still acting for Mr Cosser at that time.

77.12.10 On 8 November 2011 the Respondent spoke with Mr Cosser on the telephone. Mr Cosser told him that Lewis Silkin had commented on the draft and the Respondent provided responses to a number of points. The document was then drawn up and that afternoon the Respondent travelled to Mr Cosser's home and the Settlement Agreement was signed.

77.12.11 On 11 November 2011 Lewis Silkin wrote a chasing letter following their letter of 8 November. It was clear from this that Lewis Silkin were not aware that the Settlement Agreement had been signed.

77.12.12 The Tribunal found that it was inappropriate for the finalisation of the Settlement Agreement to have taken place without the knowledge of Lewis Silkin.

77.12.13 In his evidence the Respondent had stated that Mr Cosser had told him that NK of Lewis Silkin had advised that the figure of £500,000 for defamation was acceptable. However there was no contemporaneous documentary evidence of that. There was, however, evidence that Lewis Silkin were troubled by the figure of £500,000 as evidenced by their letter of 7 July 2011 from JC. Further, the Respondent's evidence was contradicted by the letter of

11 November 2011, which would not have been sent in such terms had advice of that sort been given by NK.

77.12.14 The Tribunal noted Mr Cosser's evidence, in his witness statements, that he had chosen not to have JC/Lewis Silkin involved. However the Tribunal noted that Mr Cosser was not fully aware of the Respondent's interest in EPL or his role in enforcing the Nanterre Judgment. Mr Cosser was not therefore in possession of the full facts and circumstances when he made that decision.

77.12.15 The Respondent knew that Mr Cosser was represented by Lewis Silkin and that negotiations were ongoing. He had expressed concern that JC might "eff it all up" and had gone directly to Mr Cosser so as to sign an agreement that he knew Lewis Silkin had concerns about. The Tribunal was satisfied beyond reasonable doubt that it was unfair of the Respondent to have caused and permitted Mr Cosser to enter into the Settlement Agreement without Lewis Silkin being informed and without the queries raised by JC on 8 November 2011 being responded to.

77.12.16 The Tribunal then considered the terms of the Settlement Agreement.

77.12.17 Clause 3.1c prevented Mr Cosser making any negative remark about EPL, Sungate or Tranfeld but made no reference to the calculation of the estimate of loss. This was because the clause was drafted so widely that it could include any negative remark of any sort from "disparaging" to "defamatory". It included not only these companies mentioned but their employees, officers or assigns. It was impossible to see how Mr Cosser could have agreed that £100,000 was a "genuine pre-estimate of loss". In his evidence Mr Cosser told the Tribunal that the term "genuine pre-estimate of loss" came from the Respondent. The Tribunal found this clause was unfair to Mr Cosser as it was unreasonably widely drafted and the penalty was arbitrary and disproportionate.

77.12.18 Clause 4.1a required the payment of £250,000 plus VAT in settlement of claims for costs, fees and disbursements "whether accruing at the date hereof or at any time hereafter". The letter dated 3 August 2011 to Lewis Silkin from Kingsley Napley, who were acting for the Respondent at the time, referred to fees of 155,844.94 EUR. The Respondent accepted that the figure was well short of £250,000 and had told the Tribunal that it was a figure produced under pressure and it did not include work in progress ("WIP") much of which had been accrued in Paris. There was no evidence of any WIP, let alone in the quantity that would have resulted in such a large increase. The Tribunal rejected the Respondent's evidence on this point as it was not supported by any contemporaneous documentary evidence. The Tribunal found this clause to be unfair as it did not reflect the work done.

77.12.19 Clause 4.1c suffered from the same unfairness as Clause 3.1c. The difference here was that it related to Mr Cosser giving undertakings to the London Firm and Paris Firms. This clause was unfair for the reasons set out in relation to 3.1c.

77.12.20 Clause 5.1b required Mr Cosser to pay £500,000 as agreed damages to the Respondent, "it being agreed that such amount reflects the gravity of the allegations made by SRC to 3rd parties in relation to AMH's conduct of SRC's affairs over the years". The Respondent told the Tribunal that the purpose was to avoid litigation which could have resulted in a very high level of costs. The Respondent maintained that Mr Cosser had enough information to make an informed assessment of the gravity of the defamation and that he had defamed the Respondent on more than one occasion. The Tribunal rejected this evidence as it was contradicted entirely by the evidence of Mr Cosser. Mr Cosser did not believe that he was responsible for any defamation and that he and the Respondent simply "came up with a number". The Tribunal found Mr Cosser to be a credible witness. His evidence was generally consistent with the contemporaneous documents and given the size of the defamation payment the Tribunal accepted his evidence that he and the Respondent had, come up with a global figure. It was clear from Mr Cosser's evidence that he did not agree that £500,000 reflected the gravity of the defamations given that he did not believe that he had defamed the Respondent at all. The Tribunal therefore rejected the Respondent's evidence as it was contradicted by Mr Cosser's evidence and the contemporaneous documents. The sum of money referred to in the Settlement Agreement was, again, totally disproportionate. The Tribunal was satisfied that this clause was grossly unfair to Mr Cosser. The result of it was that the Respondent became entitled to an enormous pay-out for a defamation that had either never occurred at all, or was worth substantially less the £500,000.

77.12.21 Clause 7 was a confidentiality undertaking. Clause 7.1 began by purporting to apply to each party but clause 7.1b allowed for an exception at the "reasonable discretion" of the Respondent, the London Firm of the Paris Firm. This was therefore a one-sided clause as Mr Cosser did not have the benefit of any such exceptions. The Tribunal was satisfied that this clause too was unfair to Mr Cosser.

77.12.22 Taken together the Tribunal found the terms of this Settlement Agreement to be egregious. The Tribunal was satisfied beyond reasonable doubt that the Respondent had sought to take unfair advantage of Mr Cosser in relation to the Settlement Agreement. The factual basis of the Allegation and the breach of Outcome 11.1 was proved beyond reasonable doubt.

77.13 Dishonesty

77.13.1 The Tribunal again applied the test in Ivey.

77.13.2 The Tribunal considered the Respondent's state of knowledge. The Respondent had played an essential role in the drafting of the Settlement Agreement. The agreement was hugely disadvantageous to Mr Cosser and at the same time greatly to the advantage of the Respondent. The Respondent had taken advantage of Mr Cosser's financial position based on information he had obtained whilst acting for him. As the Tribunal had found in relation to Allegation 1.2, the Respondent had deliberately not disclosed to Mr Cosser that he had sought to enforce the Nanterre Judgment and that Mr Cosser was

not aware of this at the time he entered into the Settlement Agreement. The Respondent was well aware that Lewis Silkin had demanded a full explanation from the Respondent as to his links with EPL before they were prepared to advise their client to reach an agreement. The Respondent had not provided that answer and, by agreeing a settlement Mr Cosser without the involvement of Lewis Silkin, the Respondent avoided having to provide it. The Tribunal was satisfied beyond reasonable doubt that the Respondent's actions in taking unfair advantage of Mr Cosser would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

77.14 Principle 2

77.14.1 The Tribunal again considered the question of lack of integrity by reference to Wingate and Evans and Malins.

77.14.2 The Tribunal found that a solicitor acting with integrity would not cause a former client to enter in to a hugely disadvantageous Settlement Agreement in circumstances where that former client was not aware of the full facts and circumstances due to the solicitor's concealment of them. A solicitor acting with integrity would also not cause or permit the former client to enter into a Settlement Agreement when they were represented by solicitors and there was an outstanding query about a number of the terms from those solicitors which the solicitor had not responded to. The Tribunal found that the terms of the Settlement Agreement benefited the Respondent to a very significant extent. This was a crystal-clear example of a lack of integrity, which the Tribunal had also found to be dishonest. The Tribunal found the alleged breach of Principle 2 proved in full beyond reasonable doubt.

77.15 Principle 6

77.15.1 It followed as a matter of logic from the Tribunal's findings in relation to dishonesty and lack of integrity that the trust the public placed in the profession would be seriously undermined by circumstances in which a solicitor acting dishonestly and lacking integrity took advantage of a former client, such that the solicitor potentially benefited to the tune of hundreds of thousands of pounds. The public's trust in the profession was unquestionably diminished by this conduct and the Tribunal found the alleged breach of Principle 6 proved beyond reasonable doubt.

77.15.2 The Tribunal found Allegation 1.4 (Nanterre Judgment) proved in full beyond reasonable doubt including the allegation of dishonesty.

78. **Allegation 1.5 - By clause 4.1(c) of the Settlement Agreement, the Respondent sought to hinder or prevent Mr Cosser from making a complaint to the SRA in respect of his conduct, contrary to Principles 2 and/or 6 of the 2011 Principles and/or Outcome 10.7 of the 2011 Code.**

Applicant's Submissions

78.1 The Applicant's submissions on this Allegation were made together with those relating to Allegation 1.4 and are therefore included in the summary of submissions in relation to that Allegation above.

Respondent's Submissions

78.2 The Skeleton Argument did not specifically address this Allegation. However the Respondent had given extensive evidence as to his position on this matter and so there was no doubt as to his case. The Respondent denied the Allegation in full.

The Tribunal's Decision

78.3 Clause 4.1c referred to "improper conduct" and to "any" allegations. This clearly included allegations of professional misconduct as the clause related to an undertaking to the London Firm and the Paris Firm. The clause was very wide and as such a report to SRA was captured by its scope. The context in which the Settlement Agreement was reached was relevant. The possibility of reports to the SRA had been canvassed in correspondence between the Respondent's solicitors and Lewis Silkin. It had been expressly referred to in the letter from Lewis Silkin of 25 August 2011.

78.4 The issue of the SRA was therefore in the Respondent's mind and he had accepted in his evidence that the SRA were involved or soon would be.

78.5 The exceptions to the disclosure clause in 7.1b that specifically referred to the SRA did not apply to Mr Cosser. The exceptions were at the discretion of the Respondent.

78.6 The consent order attached to the Settlement Agreement referred to an "organisation", which would include the SRA.

78.7 Clause 4.1b of the Settlement Agreement also required Mr Cosser to deliver up documents relating to VF who, he had accepted in his evidence, he knew had made a complaint to the SRA. The Respondent, in his Amended Answer, had argued that the effect of the clause was not to prevent Mr Cosser making a complaint and that such a clause would be unenforceable in any event. The question for the Tribunal was not whether the clause was enforceable but whether it was an attempt to hinder or prevent Mr Cosser from making a complaint, particularly if in doing so he would have believed that he was exposing himself to significant financial liability for breaching the terms of the agreement. The fact that complaints may already have been pending with the SRA did not preclude the Respondent from seeking to prevent Mr Cosser making further complaints or continuing to assist the investigation in relation to existing complaints.

78.8 The Tribunal was satisfied beyond reasonable doubt, based on the wording of the Settlement Agreement and the context in which it was entered into, that the Respondent had sought to hinder or prevent Mr Cosser from making a complaint to the SRA in respect of his conduct. The Tribunal found the factual basis of this Allegation and the breach of Outcome 10.7 proved beyond reasonable doubt.

78.9 Dishonesty

78.9.1 The Tribunal again applied the test in Ivey.

78.9.2 The Respondent's state of knowledge was that he was an integral part of the drafting of the Settlement Agreement, having had a leading role in all the events leading up to it. He also knew of the existing allegations that had been made to the SRA and of the possibility the further allegations may be made. He was also aware that Mr Cosser had the capacity to create significant difficulties for him if he cooperated with the SRA. The Tribunal found that this was a comprehensive and concerted attempt to withhold information and documents from the SRA. The Tribunal was satisfied beyond reasonable doubt the by the standards of ordinary decent people this would be regarded as dishonest. The Tribunal found beyond reasonable doubt that the Respondent had acted dishonestly.

78.10 Principle 2

78.10.1 The Tribunal again considered the question of lack of integrity by reference to Wingate and Evans and Malins.

78.10.2 It was completely at odds with the Respondent's duty to act with integrity to draft an agreement which sought to prevent Mr Cosser from making an allegation of misconduct to the SRA. This had the effect of circumventing the regulatory system for the Respondent's benefit. The Tribunal was satisfied beyond reasonable doubt so doing the Respondent had lacked integrity and breached Principle 2.

78.11 Principle 6

78.11.1 The trust the public placed in the profession was based in large part on the regulatory system working effectively. This was completely undermined in circumstances where a solicitor deliberately sought to prevent a former client from making a complaint to the regulator. The Tribunal was satisfied beyond reasonable doubt that the Respondent had breached Principle 6.

78.11.2 The Tribunal found Allegation 1.5 proved in full beyond reasonable doubt including the allegation of dishonesty.

79. **Allegation 1.6 - The Respondent misled the SRA by making the false statements referred to in Paragraph 71 of the Rule 5 Statement, contrary to Principles 2, 6 and/or 7 of the 2011 Principles and/or Outcome 10.6 of the 2011 Code.**

Applicant's Submissions

79.1 Mr Cunningham submitted that the Respondent had told a number of lies to the SRA as part of its investigation, lies that he had persisted with during these proceedings.

79.2 The false statements identified by Mr Cunningham were:

- That the Respondent did not have any interest in EPL beyond the very limited role which he admitted to having;

- That he was not instructing Grosvenor Law to enforce the Nanterre Judgment on behalf of EPL;

- That the attempts to enforce the Nanterre Judgment were made with the consent of Mr Cosser, and the bailiffs were not in fact meant to attend;

- That the Firm did not act for Sungate in relation to the EPL Loans.

Respondent's Submissions

79.3 The Skeleton Argument did not specifically address this Allegation. However the Respondent had given extensive evidence as to his position on this matter and so there was no doubt as to his case. The Respondent denied the Allegation in full.

The Tribunal's Decision

79.4 This Allegation identified six statements or representations that were said to be false such that they misled the SRA. These were set out in paragraph 71 of the Rule 5 Statement.

79.5 "He (the Respondent) did not have any interests in EPL".

79.5.1 The Tribunal had considered the question of the Respondent's interests in EPL in relation to Allegation 1.1. The Tribunal had found that the Respondent did have interests in EPL for the reasons set out in that part of the Judgment. The Tribunal was satisfied beyond reasonable doubt that the Respondent's assertion that he had no interest in EPL was false and misleading.

79.6 "He (the Respondent) was not instructing Grosvenor Law to enforce the Nanterre Judgment on behalf of EPL"

79.6.1 The Tribunal had considered the question of the Respondent's efforts to enforce the Nanterre Judgment in relation to Allegation 1.2 and the first part of Allegation 1.4. The Tribunal had found those Allegations proved in full. The Tribunal was satisfied beyond reasonable doubt that the Respondent's statements that he had not instructed Grosvenor Law to enforce the Judgment on behalf of EPL were false and misleading.

79.7 "The attempts to enforce the Nanterre Judgment were made with the consent of Mr Cosser and the bailiffs were not in fact meant to attend".

79.7.1 The Tribunal, again, had considered the question of Mr Cosser's knowledge of efforts to enforce the Nanterre Judgment in relation to Allegations 1.2 and 1.4. The Tribunal had accepted Mr Cosser's evidence that he had not known of the Respondent's efforts to enforce the Judgment and therefore could not have consented to it. The Tribunal found Mr Cosser's evidence to be credible. He had been clear and had not appeared to be confused, as suggested by the

Respondent. When he had not known the answer to something he had said so. Mr Cosser clearly had significant physical health problems but there had been no evidence of this affecting his mental faculties. Mr Cosser had been called as a witness by the Respondent but when his evidence had not supported the Respondent's case the Respondent had sought to discredit him. The Tribunal was concerned by the way in which the statements of Mr Cosser had been taken. The Respondent, who was represented at this time, had attended Mr Cosser's home and recorded their conversations. He had then prepared witness statements containing various technical phrases which Mr Cosser had confirmed in his oral evidence he did not understand. When Mr Cosser was taken to documents that contradicted his written evidence he moved away from some aspects of those witness statements. It was clear to the Tribunal that Mr Cosser had not been aware of a number of material facts when he signed his witness statement and the most obvious example was his lack of knowledge about the Respondent role in enforcing the Nanterre Judgment. The Tribunal was satisfied beyond reasonable doubt that the Respondent's statements on this point were false and misleading.

79.8 "The Firm did not act for Sungate which is directly contradicted by the terms of the EPL Loans".

79.8.1 In each of the loan agreements the London Firm was described as the borrower solicitors. The First, Second and Third loans were made to Sungate. The Tribunal was satisfied beyond reasonable doubt that the Respondent statements were false and misleading.

79.9 "The Respondent lied about whether Mr Cosser had obtained independent legal advice in relation to the EPL Loans and the Deed of Sale".

79.9.1 The Tribunal found that Mr Cosser had not obtained independent legal advice and that even if he had, because he was unaware of the conflict of interest owing to the Respondent's interests in EPL, that advice would have been taken without full knowledge of the facts. The Tribunal was satisfied beyond reasonable doubt that the Respondent's statement to this effect was false and misleading.

79.10 "In addition the Respondent stated that "*he had loaned money to Elite in the sum of £70,000*" in a meeting with Lewis Silkin on 14 July 2011 whereas he has now implausibly stated that this was in fact a calculated lie".

79.10.1 The Tribunal had already made findings concerning the loan of £70,000 when considering Allegation 1.1 and had been satisfied that the Respondent had in fact told the truth during the meeting of 14 July 2011 about this loan. It therefore followed that the Tribunal was satisfied beyond reasonable doubt that the Respondent's subsequent assertions that he had not loaned this money were false and misleading.

79.10.2 The Tribunal found the factual basis of Allegation 1.6 proved beyond reasonable doubt. It followed from this finding that the Respondent had clearly not fully cooperated with the SRA and therefore breached Outcome 10.6.

79.11 Dishonesty

79.11.1 The Tribunal again applied the test in Ivey.

79.11.2 The Respondent's state of knowledge when making these false and misleading representations was that he was aware when he made them that they were not true. This was because he was at the centre of all the various transactions and negotiations. The Tribunal found that the making of false and misleading statements knowing them to be untrue would be considered dishonest by the standards of ordinary decent people. The Tribunal was satisfied beyond reasonable doubt that in respect of each of these representations the Respondent had acted dishonestly.

79.12 Principle 2

79.12.1 The Tribunal again considered the question of lack of integrity by reference to Wingate and Evans and Malins.

79.12.2 A solicitor of integrity would not make false and misleading statements to the SRA. The Tribunal found the alleged breach of Principle 2 proved in full beyond reasonable doubt.

79.13 Principle 6

79.13.1 The trust the public placed in the profession depended upon solicitors being open and co-operative with the regulator, not making false and misleading statements to it. The Tribunal found the alleged breach of Principle 6 proved in full beyond reasonable doubt.

79.14 Principle 7

79.14.1 It followed as a matter of logic that making false and misleading statements to the regulator was incompatible with the solicitors' legal and regulatory obligations. The Tribunal found the alleged breach of Principle 7 proved beyond reasonable doubt.

79.14.2 Allegation 1.6 was proved in full beyond reasonable doubt including the allegation of dishonesty.

Rule 7 Allegations

Applicant's General Submissions

80. Mr Cunningham made a number of general submissions that were relevant to all the Rule 7 Allegations. They are set out here for the avoidance of repetition.

81. Mr Cunningham submitted that the Rule 7 Allegations arose from the Respondent's involvement in a "massive fraud" perpetrated by his former client, KK, against his business partner, VG. Judge Ramos had found that KK had ousted VG from TVI using the "traditional Russian and Ukranian method – diluting Mr VG's interest in

TVI". He had also made an express finding that the Respondent had been "acting in multiple capacities" and that he "had helped plan and cause the Dilution and the trademarks transfer". Mr Cunningham submitted that, as Judge Ramos had found, the Respondent knew about the Dilution on or around 1 October 2009.

82. Mr Cunningham referred the Tribunal to Rule 15(4) of the SDPR and submitted that the Ramos Judgment was admissible as proof of the findings of fact but not conclusive evidence of those facts:

> "The judgment of any civil court in any jurisdiction may be proved by producing a certified copy of the judgment and the findings of fact upon which that judgment was based shall be admissible as proof but not conclusive proof of those facts".

83. Mr Cunningham told the Tribunal that he was not inviting it to adopt the findings of Judge Ramos "wholesale". The Tribunal was invited to attribute considerable weight to the Ramos Judgment. It was lengthy, detailed, cogent and well-reasoned. It had also been upheld on Appeal. It followed an extensive trial at which the court had considered a vast quantity of documentary evidence, deposition transcripts and witness testimony.

84. Mr Cunningham accepted that the New York court was applying the civil standard of proof whereas this Tribunal would be applying the criminal standard. However, that distinction was no impediment to the Tribunal relying on the Judgment since there was nothing to suggest that Judge Ramos had any doubts about what he found or that his findings would have been different had he been applying the criminal standard of proof.

Respondent's General Submissions

85. The Respondent's Skeleton Argument also made a number of general points that were relevant to all the Rule 7 Allegations. They are set out here for the avoidance of repetition.

86. The Respondent submitted that the pleadings against him were seriously deficient. The dishonesty allegations were not properly particularised. The Ramos Judgment did not support the Applicant's case that the Respondent was knowingly involved in the matters alleged. The Respondent did not dispute that the Judgment was admissible nor did he invite the Tribunal to exclude it from evidence. He submitted however that the Tribunal should attach no weight to it. It was of no probative value because of the circumstances in which it was reached. It had not applied English law. The Respondent had not been a party to the litigation, was unrepresented, had no right to cross-examine witnesses, had no right to call evidence or to make submissions on his personal position. The Respondent had not given evidence at the trial. The Judgment had largely adopted the written submissions of the claimant and essentially amounted to the Judge Ramos' opinion of the matter. The Judgment was very critical of KK and this caused a risk of prejudice to the Respondent.

87. **Allegation 1 - The Respondent sent two identical letters on behalf of KK to TS on behalf of New Media dated 17 and 19 August 2009 respectively which he knew contained false statements designed to mislead VG and New Media**

Applicant's Submissions

87.1 Mr Cunningham referred the Tribunal to the Ramos Judgment, which had found that the letters of 17 and 19 August 2009, sought to "lull [VG] and [NM] into believing that the parties remained at peace" which was not true. Mr Cunningham submitted that the Respondent knew that the parties were not at peace at the time the letter was written and that it was professional misconduct for the Respondent to have sent knowingly misleading letters on behalf of his client.

87.2 Mr Cunningham invited the Tribunal to determine how much weight to attach to the clearly admissible Ramos Judgment. The Respondent had submitted previously that it was inadmissible and valueless and this had been rejected by Tribunal at the strike-out hearing.

Respondent's Submissions

87.3 In his Skeleton Argument the Respondent submitted that the Ramos Judgment did not find that the Respondent knew when he sent the letters that there had been an agreement to dilute the ownership. There was therefore no finding, or evidence, that what he was writing was in anyway false. Judge Ramos had in fact found that KK "never told Mr Maitland Hudson that he needed to correct the text of the letters…". The Applicant had not provided any explanation as to why they alleged that the Respondent has been dishonest.

The Tribunal's Decision

87.4 The Tribunal considered the circumstances in which the letters dated 17 and 19 August 2009 were drafted and sent. It had been accepted by the Respondent in his evidence that the letters were misleading. The question for the Tribunal was whether the Respondent knew they were misleading. The Respondent's case was that he did not know as KK had not told him. In his evidence before the Tribunal the Respondent had stated that although he was a trusted legal adviser of KK, he had not been made party to all that KK was thinking or planning.

87.5 The Ramos Judgment was clearly admissible and it was a matter for the Tribunal how much weight should be attached to it. The Ramos Judgment was very detailed following a thorough review of the paperwork by the Judge and a 24-day trial during which thirteen witnesses had given evidence. A further 10 witnesses, including the Respondent, had given depositions and more than 250 exhibits were adduced. The Judgment had been tested on Appeal and had been upheld. The Tribunal noted the criticisms made of the Judgment by the Respondent but concluded that there was no basis on which to find that it was flawed. The Tribunal therefore attached considerable weight to the Judgment, while recognising that it did not amount to conclusive proof.

87.6 Judge Ramos had found that KK had requested and authorised the sending of the letters and recorded that KK had conceded that they were inaccurate. Judge Ramos found that "Despite knowing the letters were inaccurate, [KK] never told Mr Maitland Hudson that he needed to correct the text of the letters, nor did he reprimand Mr Maitland Hudson for making false statements in the letters. This Court finds that the letters were part of a preconceived plan to keep any suspicions of [NM] and [VG] at bay while Defendants carried out their plan to consolidate their control over the network". The Judgment did not explicitly state that at this point the Respondent was part of that preconceived plan. Judge Ramos had found that the Respondent was involved in preparing a corporate reorganisation under which control of the television station will be transferred but it was not clear from the Judgment that the Respondent had become involved in this before 19 August 2009.

87.7 Judge Ramos had also found that KK discussed the draft of the letters with the Respondent before they were sent. However the details of these discussions and the Respondent's state of knowledge was insufficiently clear for the Tribunal to be sure to the high standard that was required, that the Respondent knew that the letters were false and designed to mislead. It was conceivable that the Respondent was misled and/or not given the full picture by his client.

87.8 The Tribunal found this Allegation not proved.

88. **Allegation 2 - The Respondent provided advice and/or assistance in relation to the improper and/or unlawful Scheme**

Applicant's Submissions

88.1 Mr Cunningham submitted that the Respondent helped plan and cause the Dilution and the Trademarks Transfer. He relied on the finding of Judge Ramos and the cross-examination of the Respondent in support of his submissions.

Respondent's Submissions

88.2 In his Skeleton Argument the Respondent submitted that nothing in the Ramos Judgment assisted the Applicant's case against him. The Judgment did not find that the method used to achieve the Dilution was the basis of the Respondent's instructions or that the Respondent knew of any unlawful plan. The Judgment did not suggest that what the Respondent had done was in any way unlawful, "still less knowingly or dishonestly so". The Rule 7 Statement did not explain what the advice and/or assistance was nor how it was unlawful. It also did not explain why it was said that the Respondent had given such advice, if he did, knowingly or dishonestly. The Applicant had referred to a proposed structure chart sent to the Respondent. This had not been a structure chart reflecting a Dilution. The transfer of ownership was different and could not be achieved by Dilution. This therefore proved that the Applicant's charge that the Respondent gave advice and/or assistance in respect of the Dilution was not made out. There was "not a jot of evidence to link" the Respondent with any plan or preparation for the Dilution. The documents referred to in the Rule 7 Statement that were said to show that the Respondent assisted with the Trademarks Transfer did not make clear the basis on which the Respondent was said to be

dishonest. The Respondent submitted that "there is not one bit of evidence to support that case".

The Tribunal's Decision

88.3 Judge Ramos had found that the effect of the Dilution was to deprive New Media of its 50% ownership interest in TVI and this Dilution had breached the contractual and fiduciary obligations owed to New Media. The Respondent, in his reply to the Rule 7 Allegations denied that the scheme was in some way improper. He stated that he had prepared the corporate structure in the belief that KK intended to buyout VG. The Respondent's evidence appeared to the Tribunal to clarify his defence to the effect that whatever the propriety or otherwise of the scheme, the Respondent was unaware of KK's intentions. Judge Ramos had found that the basis of the Dilution was a breach of fiduciary duty. By the conclusion of his ruling he had found that the scheme was improper and unlawful. There was no evidence before the Tribunal to suggest that this finding in relation to the nature of the scheme was flawed. The Tribunal was satisfied beyond reasonable doubt the scheme was improper and unlawful.

88.4 It was not in dispute that the Respondent had advised and assisted KK. The question for the Tribunal was whether he was aware that the advice and assistance that he was providing was enabling the improper and/or unlawful scheme to be implemented. The Respondent had strenuously denied that he was aware. The Tribunal considered the findings of Judge Ramos and the contemporaneous documents as well as the witness statement of Mr Dementiev.

88.5 Judge Ramos found the following in relation to the Respondent's involvement:

> "Directors and agents of Iota - including [GB], other directors and administrators at Capita involved with Iota, and Iota's counsel Mr Maitland Hudson – helped plan and cause the dilution and transfer of TVI's trademarks to [KK]'s family trusts".

88.6 The Tribunal considered the email to the Respondent from CW at Capita on 23 September 2009 which read as follows:

> "Alex,
> Further to our discussions I confirm that we have today met with [CP] from Jupiter to discuss the proposed structure. He gave us his agreement to take on this work, in principle however will revert to us on Friday with a definitive answer.
> I have attached the proposed structure chart given to him, based on your conversations with [G] and will await comments"

88.7 The chart was attached and was described as "Iota Re-structure Structure Chart as at 22 September 2009". This was consistent with Judge Ramos' finding that the Respondent had begun preparing a corporate reorganisation in, or shortly after, summer of 2009.

88.8 The Tribunal read the letters from Mr Slalina and Mr Fulco and considered their contents. Neither were witness statements and they were not presented to the Tribunal as expert witnesses. Mr Slalina's opinion related to the Delaware Conduct Rules and as such was not addressing the conduct rules by which this Tribunal had to determine the Allegations. His letter had been written in 2014 and so he had not seen the Rule 7 Allegations. Mr Fulco's letter also pre-dated the Rule 7 Statement and he, too, was not an independent expert witness, indeed he had appeared before Judge Ramos in the New York litigation. The Tribunal attached very little weight to their letters.

88.9 The Tribunal was satisfied beyond reasonable doubt that the Respondent had provided advice and assistance in relation to the improper and/or unlawful scheme and had done so knowingly. The factual basis of Allegation 2 was proved beyond reasonable doubt.

88.10 Dishonesty

88.10.1 The Tribunal again applied the test in Ivey.

88.10.2 The Tribunal found that the Respondent was heavily involved in the proposed restructuring and that as Judge Ramos had found he had helped to plan and cause the Dilution pursuant to a scheme which he knew was improper and/or unlawful. The Tribunal had not been satisfied to the required standard that the Respondent was aware of all the material facts at the time he sent the letters dated 17 and 19 August as discussed in Allegation 1. However by the time he was drafting the reorganisation the Tribunal was satisfied that he had knowledge of all material facts as he could not have drafted it otherwise.

88.10.3 The Tribunal was satisfied beyond reasonable doubt that preparing a corporate reorganisation and thus participating in a scheme which was improper or unlawful and which operated on the basis of concealment and breach of fiduciary duty was dishonest by the standards of ordinary decent people. The Tribunal was satisfied beyond reasonable doubt that the Respondent had acted dishonestly.

88.11 Rule 1.02

88.11.1 The Tribunal again considered the question of lack of integrity by reference to Wingate and Evans and Malins. A solicitor with integrity did not involve themselves in advising and assisting on schemes which were improper or unlawful. Tribunal was satisfied beyond reasonable doubt that the Respondent had lacked integrity and that the breach of Rule 1.02 was proved.

88.12 Rule 1.06

88.12.1 The trust the public placed in solicitors depended on adherence on the part of that solicitor to the fiduciary duties and their duty of candour. That trust was inevitably diminished when a solicitor advised and assisted on the scheme which they knew to be unlawful or improper. The Tribunal found the breach of Rule 1.06 proved beyond reasonable doubt.

88.13 The Tribunal found Allegation 2 proved in full beyond reasonable doubt together with dishonesty.

89. **Allegation 3(a): Following the implementation of the Scheme, on 1 October 2009 the Respondent sent an email (whether directly or indirectly) to TS which he knew to be misleading in that it deliberately failed to refer to the fact that the Dilution had taken place.**

Allegation 3(b): Following the implementation of the Scheme, the Respondent sent a letter dated 16 October 2009 to VG's New York attorneys, Covington and Burling LLP, which he knew to be misleading in that it deliberately failed to refer to the fact that Dilution had taken place; and or/

Allegation 3(c): In early October 2009, the Respondent encouraged the Partnership to demand further payments from VG and/or failed to advise the Partnership not to demand further payments from him

Applicant's Submissions

89.1 Mr Cunningham submitted that if the Respondent was unaware of the Dilution having been carried out until after 6 October 2009, then Allegations 3(a) and 3(c) could not succeed because those emails would have been written at a time when the Respondent was not aware of the Dilution. However, in relation to Allegation 3(b), the Respondent was aware of the Dilution at the time he wrote the letter of 16 October 2009.

89.2 In relation to Allegation 3(a), Mr Cunningham submitted that the email of 1 October 2009 was misleading not because of what it did say, but because it did not say that the Partnership had already lost 99 per cent of its "major investment". Judge Ramos had found that the email was sent as part of a deliberate attempt to mislead VG into believing that the Partnership still owned 100 per cent of TVI.

89.3 In relation to Allegation 3(b), Mr Cunningham submitted that this letter had been a further attempt to mislead VG by concealing the Dilution from him. The letter may have been strictly accurate but it did not say was that the Partnership's interest in TVI had been diluted from 100 per cent to less than one per cent and that 99 per cent of its interest had been transferred to KK in breach of the partnership agreement. Mr Cunningham submitted that a statement could be misleading even if it was strictly accurate. He referred the Tribunal to the decision in Mellor v. Partridge [2013] EWCA civ 477. At [17] the Judgment had stated "a representation which is literally true may nevertheless be a misrepresentation if relevant facts are concealed." In this case KK and VG had been joint owners of a Partnership and owed each other duties of honesty and good faith in relation to the affairs of the Partnership. The email of 1 October and the letter of 16 October were misleading because they amounted to half-truths in that they deliberately omitted to mention that the Partnership's asset had been diluted to only one per cent. They had therefore amounted to a breach of the obligations of honesty and good faith which KK owed to VG.

89.4 Mr Cunningham told the Tribunal that the Applicant's case that the Respondent was under a positive obligation to inform VG about the Dilution. Its case was that no solicitor should be party to a deliberate attempt by a wrongdoer to conceal from the victim of the wrongdoing the fact that he had been defrauded. Mr Cunningham submitted that it "would be surprising if that proposition was considered controversial". If KK was not prepared to tell the truth to VG about what had taken place then the Respondent ought to have withdrawn.

89.5 In relation to Allegation 3(c), Mr Cunningham made similar submissions to the effect that the Respondent should not have encouraged VG to provide additional funding to the Partnership on 6 October 2009, at a time when the Dilution had already occurred. This was not the conduct of a solicitor acting honestly and with integrity.

Respondent's Submissions

89.6 In his Skeleton Argument the Respondent submitted that this Allegation "gets off to a fundamentally bad start". The Ramos Judgment had not found that the Respondent knew that VG's interest had been reduced to the extent that it had been on 1 October 2009.

89.7 In respect of Allegation 3(a), the Ramos Judgment made no findings at all about the Respondent's knowledge or his state of mind. The Allegation was therefore hopeless.

89.8 In respect of Allegation 3(b) the Respondent submitted that the Allegation was not understood. The letter dated 16 October 2009 had been carefully worded but every one of the extracts contained in the Rule 7 Statement was true. A solicitor was bound to act on his client's instructions subject to the duty not to say or do anything that was dishonest or unlawful. A solicitor was not obliged to "reveal a wrong" if that was the client's instructions. In any event the failure to mention the Dilution did not make the lesson misleading as the letter was not about shareholdings but about a repudiatory breach of contract by VG. The letter had not been misleading and not been designed to mislead or conceal.

89.9 In respect of Allegation 3(c), the Respondent submitted that the same deficiencies arose as in relation to Allegation 3(a) in that it was based on the assertion that the Respondent knew of the Dilution on 1 October 2009. The Rule 7 Statement had misunderstood the email exchanges of 6 October 2009. It was not GB asking for additional funding, but was VG and New Media requesting licence fees from KK. GB had been asking whether he should request contributions from both partners, to which the Respondent had told him that he saw no reason not to. The Applicant had not explained why this was said to be dishonest.

The Tribunal's Decision

89.10 Allegation 3 (a)

89.10.1 The Tribunal considered chronology surrounding the email of 1 October 2009, the subject of this element of the Allegation. The Respondent's case was that the most he knew on 1 October 2009 was that the controlling interest had been transferred outside the partnership.

89.10.2 The Dilution took place on 30 September 2009. This was confirmed to Mr Dementiev the same day. Judge Ramos described the events of 1 October 2009. He stated as follows:

> "That afternoon, Mr Maitland Hudson joined [GB] and [KK] for lunch at [KK]'s home in London. At this meeting [KK] told [GB] and Mr Maitland Hudson that a controlling interest in TVi had been transferred outside of the Partnership".

89.10.3 In his evidence before the Tribunal the Respondent had confirmed that he was told that KK had acquired control of TVI but not the Dilution. He had also told the Tribunal that he joined the meeting on 1 October, GB having already arrived and that GB's role was different to the Respondent's.

89.10.4 The Tribunal considered the witness statement of Mr Dementiev. He had stated that he had met KK in Ukraine on 30 September 2009. KK had told him of the reorganisation that had resulted in him taking control of TVI and IVL's role being reduced "substantially" but had made no mention of the Respondent's role. Mr Dementiev had expressed his opinion that in meetings on 9-10 October 2009, the Respondent "was discovering for the first time" the events that resulted in the Dilution. It was clear to the Tribunal that in view of the Respondent's undoubted role in the reorganisation, that Mr Dementiev was not in possession of all the relevant facts at the time he formed his views on 9-10 October. In his witness statement he fairly conceded that his recollection of events was "somewhat hazy" but that he had done his best to recall them. The Tribunal did not doubt this to be the case. However his evidence as to his observations on 9-10 October 2009 was not supported by the contemporaneous documentary evidence.

89.10.5 The Tribunal's found that the Respondent was told of the Dilution at the lunch meeting. There was no evidence that Judge Ramos' conclusions on this point were wrong and it was implausible that KK would have told GB more than he had told the Respondent about an arrangement in which the Respondent had been instrumental in devising. KK also required the Respondent's assistance going forward, as is discussed in relation to Allegations 3(b) and 3(c).

89.10.6 The email sent at 18.17 on 1 October 2009 made no reference to the Dilution. It made no reference to the Dilution and therefore painted a misleading picture of the situation in that it omitted a material fact. Judge Ramos had found:

> "In an email sent around 6.17pm on October 1, 2009 to NMDC's counsel, Mr Maitland Hudson warned that the "failure to provide the content needed to maintain the broadcasts of the programmes in the Ukraine would cause irreparable damage to the major investment of Iota Ventures LLP". Neither Mr Maitland Hudson nor [GB], who also received the email, mentioned that in a lunch meeting earlier that day, [KK] had confirmed that over 99 percent of the ownership interest in TVi now belonged to his trusts; the Partnership's ownership interest in its "major investment" had been reduced to less than one percent".

89.10.7 The Tribunal was satisfied beyond reasonable doubt that at the time the Respondent sent this email he had knowledge of the true situation and the background to it for the reasons discussed above and as such he knew that his email was misleading. The Tribunal found the factual basis of Allegation 3(a) proved beyond reasonable doubt.

89.11 Allegation 3(b)

89.11.1 The Tribunal had found that the Respondent was told of the Dilution on 1 October 2009. The Respondent, in his Reply to the Rule 7 Allegations, confirmed that he was aware by 16 October 2009 that VG's interest had been diluted. On 16 October 2009 the Respondent had sent a lengthy and detailed letter to VG's solicitors. That letter made no reference to the Dilution, something that was clearly a very significant development and which VG was evidently unaware of. In his evidence the Respondent told the Tribunal that he was under no obligation to have told Covington and Burling about the Dilution, indeed his obligation was not to tell them as his client had forbidden him to do so. There was a contradiction in the Respondent's position to the extent that on the one hand he argued that he could not tell VG as he had been prevented from doing so by his client, but on the other hand he had argued that VG already knew of the Dilution and that the letter was therefore not misleading at all. In his deposition in the New York litigation he had described the information as being "irrelevant to the issues being raised", which was a further difference of position.

89.11.2 There was no evidence that VG already knew of the Dilution. The Respondent was, of course, under an obligation to follow his client's instructions but only up to a point, that point being breaching his duty of candour and being misleading. If a client instructs a solicitor to do something that is unethical then that solicitor should decline to act.

89.11.3 The Tribunal recognised that the letter did not contain a positively false statement. However in the absence of any reference to the Dilution, the letter was sent on an entirely false premise and was therefore misleading, as described by Judge Ramos.

89.11.4 The Respondent was in possession of the full facts by this point and therefore the Tribunal was satisfied beyond reasonable doubt, not only that the letter was misleading but that the Respondent knew it was and that it was deliberately so. Judge Ramos had found:

> "When Mr Maitland Hudson wrote the letter, he was aware that the Partnership's ownership interest in TVi had been diluted to less than one percent, but omitted this fact from his letter".

This finding was borne out by the contemporaneous documents and the Tribunal reached the same view as Judge Ramos beyond reasonable doubt.

89.11.5 The Tribunal found the factual basis of Allegation 3(b) proved in full beyond reasonable doubt.

89.12 Allegation 3(c)

89.12.1 The Tribunal had found that the Respondent was aware of the Dilution from 1 October 2009 as discussed above. The Respondent had accepted he was aware of it by 16 October 2009 but, in his Reply to the Rule 7 Allegations, denied knowing he was aware of it by 6 October 2009. Judge Ramos had found that "Throughout October and November 2009, the Defendants repeatedly and intentionally misled [VG] into believing that the Partnership still owned 100 percent of TVi". The email sent by the Respondent on 6 October 2009 stated "I do not see any reason not to call for payment from the partners, if only to see the reaction from NMHC". The reference to not seeing "any" reason was unequivocal. The Respondent had stated in his Reply that VG and NM were in substantial arrears of their licence payments, a point alluded to in the Respondent's Skeleton Argument relating prepared for the Strike-out hearing. The email of 6 October 2009 made no reference to such arrears.

89.12.2 In his evidence, the Respondent had explained that he believed there to be a deadlock at the time and this explained his reference to seeing the reaction from NMHC. The Tribunal noted that this too did not appear in the email and it appears at odds with the alternative suggestion put forward that the monies were owed in any event.

89.12.3 The Tribunal was satisfied beyond reasonable doubt that the Respondent encouraged the Partnership to demand further payments and failed to advise that they should not be doing so. The Tribunal found the factual basis of Allegation 3(c) proved in full beyond reasonable doubt.

89.13 Dishonesty

89.13.1 The Tribunal again applied the test in Ivey.

89.13.2 The Respondent's state of knowledge was that he had been aware, from 1 October 2009, that the Dilution had taken place. With that knowledge he had sent an email that he knew to be misleading the same day, a letter that he knew to be misleading two weeks later both of which failed to disclose the existence of the Dilution or make any reference to it. The result of this was that the recipient was reading the correspondence without knowledge of a material development. The Respondent had also encouraged the partnership to proceed in a similar manner. The Tribunal was satisfied beyond reasonable doubt that this would be regarded as dishonest by the standards of ordinary decent people. The Tribunal was satisfied beyond reasonable doubt that the Respondent had acted dishonestly.

89.14 Rule 1.02

89.14.1 The Tribunal again considered the question of lack of integrity by reference to Wingate and Evans and Malins.

89.14.2 A solicitor of integrity would not send misleading communications. The Tribunal recognised that a solicitor was under a duty to act in the best interests of their client. There was a line to be drawn however if acting in that way would involve a solicitor acting unethically. In those circumstances the solicitor should withdraw. In any event it had not been clear to the Tribunal that this was the Respondent's position as his justification further behaving in the way he had done on an after October 2009 had not been consistent. The Respondent was under a duty to be scrupulously accurate and this included not omitting material facts in correspondence. The Tribunal was satisfied beyond reasonable doubt that the Respondent had breached Rule 1.02.

89.15 Rule 1.06

89.15.1 The trust the public placed in the profession depended on a solicitor adhering to their duties of candour where in correspondence. In this case the Respondent had breached that duty by writing misleading emails and letters and by encouraging others so to do. The Respondent had not been honest in his dealings with VG's solicitors and this inevitably diminished the public's trust. The Tribunal was satisfied beyond reasonable doubt that the Respondent had breached Rule 1.06.

89.15.2 The Tribunal found Allegation 3 proved in full beyond reasonable doubt.

Previous Disciplinary Matters

90. None.

Mitigation

91. The Tribunal announced its findings in open court on 20 April 2018. The Tribunal notified Mr Cadman by email as to which Allegations had been proved. The email was sent to Mr Cadman as the Tribunal had been requested to communicate with him rather than the Respondent directly.

92. In that email the Tribunal informed Mr Cadman that the matter would be adjourned until 2 May 2018 to enable the Respondent to have a reasonable opportunity to present any submissions, orally or in writing, that he may wish to concerning mitigation, sanction and costs.

93. On 1 May 2018 the Tribunal received an email from Mr Cadman containing the following:

> "Out of professional courtesy we inform the Tribunal that Mr Maitland Hudson will not be attending the hearing on Wednesday 2nd May. He remains unfit to be a litigant in person and unfit to attend the hearing.
>
> Mr Maitland Hudson's family are not prepared to fund representation for the hearing.

It therefore follows that neither Mr Maitland Hudson nor any representative will be attending SDT on Wednesday 2nd May".

94. The Respondent did not provide any written representations or medical evidence consistent with Mr Cadman's email. He did not attend and was not represented on 2 May 2018. No mitigation was therefore advanced on his behalf. However in considering sanction the Tribunal considered any mitigating factors that may exist and any points that the Respondent may have presented had he been in attendance.

Sanction

95. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

96. The Tribunal found the Respondent's motivation was financial. The misconduct was planned and the Respondent had breached the trust of VG and Mr Cosser. In the case of Mr Cosser the Respondent had taken advantage of his precarious position and of their friendship. The Respondent had direct control and responsibility for the circumstances giving rise to the misconduct. He had a beneficial interest in EPL, had a direct role in the management of EPL and was at the centre of the loans, the enforcement of the Nanterre Judgment, the Settlement Agreement and the Dilution of VG's interests in TVI.

97. The Respondent was very experienced and had used that experience to manipulate each of these situations for his own self-interest.

98. The Tribunal found the Respondent to be highly culpable.

99. The harm caused took a number of forms. The intervention into the London Firm caused it to close with the loss of jobs and inconvenience to clients.

100. The impact on Mr Cosser was significant, as reflected starkly in the terms of the loans and the Settlement Agreement.

101. The impact on VG was also significant as he had lost his interest in TVI and had had this fact concealed from him after the event.

102. The harm to the reputation of the profession was very significant. The Respondent had acted dishonestly in respect of all the matters referred to above including in international jurisdictions. The public would be seriously concerned about a solicitor abusing his position in this way for his own benefit and would find it impossible to have trust in a solicitor who behaved as the Respondent had done. There was also damage caused to the reputation of the profession by the Respondent's actions.

103. The misconduct was aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

104. The Respondent had, twice in the proceedings, sought to defend dishonest behaviour. He had suggested that it was appropriate for a solicitor to "take a position" in a without prejudice meeting that was completely false (on his case) and had suggested that being "devious" was not dishonest. The Tribunal firmly rejected both suggestions. It was never acceptable for a solicitor to make a representation knowing it to be untrue or to be devious.

105. The way in which the Respondent had gone about procuring the Settlement Agreement with Mr Cosser was outrageous. The defamation clause was particularly egregious but the document as a whole was totally unacceptable. The Respondent had inserted gagging clauses into this Settlement Agreement and this was simply wrong. The Tribunal strongly disapproved of this tactic.

106. The misconduct had been deliberate, calculated and repeated and had continued over a number of years. The Respondent had concealed his interests, his motives and his wrongdoing from Mr Cosser, VG and the SRA.

107. In considering mitigating factors the Tribunal had regard to the Respondent's submissions and evidence during the course of the hearing and it considered whether there was anything in the material that mitigated the misconduct.

108. The Tribunal found that matters were mitigated by the fact that the Respondent had no previous disciplinary record. He had made a very limited admission to a conflict of interest in respect of the First EPL loan, albeit he had described it as a technical breach and the Tribunal had found it to be more than that. The Respondent had not demonstrated any insight and the Tribunal therefore found the mitigating factors to be limited.

109. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less. The Respondent's misconduct had been at the high end of the scale and had involved elaborate concealment and dishonesty. The public had to be protected from this type of conduct and others in the profession had to understand that this type of behaviour would not be tolerated.

110. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Respondent had not advanced any such circumstances. The Tribunal had regard to the Respondent's health issues but noted that there was no evidence that the misconduct had been in any way caused by them. The Tribunal found there to be nothing that would justify an indefinite suspension as an alternative to a strike-off.

111. The only appropriate and proportionate sanction was that the Respondent be struck-off the Roll.

Costs

112. Application to Adjourn

112.1 Respondent's Submissions - On 30 April 2018 the Tribunal had received an email from Mr Cadman stating as follows:

> "We note that SDT are proceeding to sanctions and supplementary applications on Wednesday 2nd May. We would wish to make representations as to costs. However, we would invite the SDT to adjourn that application until such time as we have had the opportunity of receiving and considering SDT's decisions to date in the form of their written Judgment. This is a pre-requisite to being able to make informed submissions on any cost application made by SRA in the light of the Respondent's financial circumstances. To expect otherwise would in our view be wholly unfair.
>
> Accordingly, we would ask SDT to proceed only to sanction on Wednesday and to adjourn any costs applications and ancillary matters until a date after SDT Judgment has been published. We would note in passing that despite being in possession of the Respondent's Personal Financial Statement since last December, the SRA have adduced no evidence whatsoever to indicate that it is not a wholly accurate statement of his true position".

112.2 Applicant's Submissions - The Applicant had written to the Tribunal on 1 May 2018 opposing the application to adjourn and inviting the Tribunal to proceed to deal with sanction and costs on 2 May 2018. Mr Levey confirmed this opposition at the hearing and submitted that the offer of £7,500 for the Respondent to be represented had included submissions on costs and had not been withdrawn. The Respondent had chosen not to take up the offer.

112.3 The Tribunal's Decision - The Tribunal considered the submissions made on behalf of the Respondent and the Applicant.

112.4 The Tribunal had notified Mr Cadman on 20 April 2018 that the matter was being adjourned until 2 May precisely to give the Respondent a reasonable opportunity to make submissions in relation to mitigation, sanction and costs. The Respondent had been given nearly two weeks to do so and had chosen not to. The decision to adjourn had been taken in light of the Respondent's absence and the nature of the case. The usual procedure was to proceed immediately to all such matters upon the announcement of findings.

112.5 The Tribunal's usual procedure was to deal with all matters, including costs, before the publication of the written Judgment. There was no basis for this procedure to be departed from in this case. The Respondent was aware of which Allegations had been proved and their nature. He was also aware of the Applicant's position with regards to costs. The Respondent had served a Personal Financial Statement and three further witness statements concerning his means. The Tribunal would consider all of these when deciding the question of costs. There was no basis for an adjournment, which would increase costs still further. The application to adjourn was refused.

113. Application for Costs

113.1 Applicant's Submissions - Mr Levey reminded the Tribunal that the division that had heard the strike out application had directed that the Respondent pay the costs of that application which had been summarily assessed at £57,720. That division directed that this be incorporated into the final order. Mr Levey invited the Tribunal so to do.

113.2 In respect of the remaining costs, excluding the strikeout application, Mr Levey presented a cost schedule, which had been sent to Mr Cadman, showing costs in the sum of £603,099.10. Mr Levey submitted that in view of the Tribunal's findings it was appropriate that the Respondent pay the Applicant's costs. The fact that one or two matters had not been proved did not make a difference to the costs application. Mr Levey did not invite the Tribunal to summarily assess these costs and submitted that they should be sent for detailed assessment. However he did invite the Tribunal to make an interim order in the sum of £300,000. This figure was based on the likely minimum amount of costs that would be ordered following detailed assessment. Mr Levey submitted that the hourly rates of Bevan Brittan were extremely modest, ranging between £100-£145 per hour.

113.3 Mr Levey invited the Tribunal not to take what the Respondent had put in his personal financial statement and all the subsequent witness statements at face value. The Tribunal had found him to be dishonest and it was clear from the evidence in the case that he was somebody who had access to large sums of money. This had included substantial loans including from the Regroup Trust.

113.4 Mr Levey submitted that the burden was on the Respondent to show that he could not pay a costs order and he had not done so. By ordering the Respondent pay the Applicant's costs this was not simply giving the money to the Applicant. It was a gateway that would allow the Applicant to seek to recover its costs through enforcement. If it turned out that indeed the Respondent did have no money then so be it. However the Tribunal was invited not to shut the door as the alternative was that the burden would fall entirely on the profession and this would not be in the interests of justice.

113.5 The Tribunal's Decision - The Tribunal considered the Cost Schedule, the Respondent's Personal Financial Statement and his witness statements dated 27 March 2018, 29 March 2018 and 13 April 2018 and the exhibits to those documents.

113.6 The Tribunal noted the previous Division's direction that the Respondent pay the Applicant's costs of the strike out application in the sum of £57,720 duly made that order.

113.7 In respect of the balance of costs, the vast majority of the Allegations had been proved and therefore there was no reason for the Applicant not to have its costs. The Tribunal agreed with the submission of Mr Levey that they should be the subject of detailed assessment. The principle question for the Tribunal was therefore whether the Respondent should be ordered to make an interim payment and, if so, in what sum.

113.8 Having determined that the Respondent should pay the Applicant's costs in principle, the Tribunal considered the level of any interim payment. The sum being sought by the Applicant was less than half the total costs claimed. The Tribunal was satisfied that even on the most stringent detailed assessment, the Applicant would still recover at least half its costs.

113.9 The Tribunal considered the Respondent's ability to pay. The burden was on the Respondent to show that he was unable to pay costs, as set out in SRA v Davis and McGlinchy [2011] EWHC 232 (Admin).

113.10 The Respondent's Personal Financial Statement confirmed that the Respondent could pay £2,000 a month towards any costs order and his witness statement of 27 March 2018 confirmed that he continued to work and to practice in Paris. The Respondent had demonstrated an ability to raise funds, most notably the instruction of Mr Cohen QC for a strike-out application. The Respondent had clearly transferred some assets into his wife's name. The circumstances of these transfers was unclear but the Tribunal was satisfied that the Personal Financial Statement raised questions which the Respondent had not answered.

113.11 The Tribunal noted what Mr Levey had said about a realistic approach to enforcement. There was no basis to conclude that the Respondent could not pay the costs and the Tribunal therefore ordered that he pay £300,000 by way of an interim payment in addition to the £57,720 in respect of the strike out application.

Statement of Full Order

114. The Tribunal Ordered that the Respondent, ALEXIS MAITLAND HUDSON, solicitor, be STRUCK OFF the Roll of Solicitors.

The Tribunal further Ordered that:

1. The Respondent do pay the Applicant's costs of and incidental to the strike-out application heard on 26 and 27 July 2017, fixed in the sum of £57,720.

2. In respect of the costs of and incidental to this application and enquiry, excluding the strike-out application, the Respondent do pay the Applicant's costs, such costs to be the subject of a detailed assessment unless otherwise agreed.

3. In respect of the costs of and incidental to this application and enquiry, excluding the strike-out application, the Respondent do make an interim payment towards the Applicant's costs in the sum of £300,000.

Dated this 20th day of June 2018
On behalf of the Tribunal

A. E. Banks
Chair