SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11603-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

GEOFFREY MARTIN SIGNEY — Respondent

Before:

Mr E. Nally (in the chair)
Ms A. Horne
Dr P. Iyer

Date of Hearing: 8 & 9 August 2017

Appearances

Mr Edward Levey and Mr Simon Paul, Counsel of Fountain Court Chambers, Fountain Court Temple, London EC4Y 9DH instructed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent appeared and represented himself.

JUDGMENT

Allegations

1. The allegations brought by the Solicitors Regulation Authority against the Respondent, Geoffrey Martin Signey, were that:

1.1 On or about 20 February 2012, the Respondent agreed to sell his shares in Signey Law Limited ("Signey") (and/or sold them) to C Investments Limited ("C Ltd"), which agreement and/or sale was improper because C Ltd was at all material times owned, managed and controlled by a non-solicitor ("Mr X") who was not at any time authorised by the SRA to be a manager or owner of a recognised body such as Signey. The Respondent thereby acted in breach of (and/or aided the breach of) Rules 13.1, 16.1 and 19.1 of the SRA Practice Framework Rules 2011 and Regulation 5.1 of the SRA Recognised Bodies Regulations 2011 and (from 31 March 2012) Rule 8.6 of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 (hereafter "the SRA Authorisation Rules 2011"), and acted in breach of Principles 2, 6, 7 and 8 of the SRA Principles 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.

1.2 The Respondent failed to make any or any adequate inquiries as to the ownership, management and control of C Ltd prior to the said agreement to sell his shares in Signey (and/or the sale thereof), and thereby acted in breach of Principles 2, 6 and 8 of the SRA Principles 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.

1.3 The Respondent (when sole Director of Signey) failed to take any steps to notify the Applicant or to ensure or confirm that the Applicant had been duly notified of the ensuing change of ownership/control of Signey in consequence of his Agreement with C Ltd, and thereby acted in breach of (and/or aided the breach of) Rules 18.2 and 19.1 of the SRA Practice Framework Rules 2011 and Regulations 1.6(b) and 3.1 of the SRA Recognised Bodies Regulations 2011, and Principles 2, 6 and 8 of the SRA Principles 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.

1.4 The Respondent (when sole Director of Signey) signed in blank on the back of Signey's application for funding from an investment fund (which application form was then populated by others with incorrect information) and failed thereafter to review the document (whether before or after submission), thereby facilitating a materially false application, and acting in breach of Principles 2, 6 and 8 of the SRA Principles 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.

1.5 On or about 20 February 2012, the Respondent (when sole Director of Signey) signed a Litigation Funding Agreement with an investment fund on Signey's behalf without having made any or any adequate inquiries as to the propriety of the said Agreement, or of the said investment fund, or of the investment managers appointed by it. He thereby acted in breach of Principles 2, 6 and 8 of the SRA Principles 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.

1.6 The Respondent (when sole Director of Signey) caused or permitted Signey to accept, and use, monies received (on dates between 23 March 2012 and 16 August 2012) from an investment fund totalling £4,778,803, in circumstances where it was improper for the Respondent to do so for the following reasons:

(a) He was reckless or careless in his failure to undertake any due diligence on Axiom prior to Signey applying for, receiving or expending the funds.

(b) He was reckless and/or careless as to whether Signey had complied with the terms of the Litigation Funding Agreement (and, just as importantly, if not, why not and why the Investment Managers had purportedly accepted such a scenario).

(c) He was reckless or careless to the fact that the Litigation Funding Agreement pursuant to which the monies were purportedly advanced did not reflect the purpose for which Signey intended to use and/or in fact used the monies (as evident, inter alia, from payments out of the office account), contrary to stipulations in the Litigation Funding Agreement intended to protect the interests of the investment fund and of the ultimate investors in the investment fund (which the Respondent had no basis at any time for treating as modified or discharged). The Respondent had read and signed the Litigation Funding Agreement dated 20 February 2012, and at all times had access which enabled him to view (as he did from time to time) activity on Signey's bank accounts, in particular its office account.

(d) He thereby recklessly or carelessly facilitated the misuse of the funds received by failing to ensure they were applied only towards "Eligible Legal Expenses", as defined in and required by the Litigation Funding Agreement; and recklessly or carelessly risked Signey being a party to transactions in fraud of the investment fund and/or of the ultimate investors, or which involved other serious breach of duty by the Investment Managers towards them (or one of them).

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

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

1.7 The Respondent (when sole Director and Principal of Signey) failed to ensure that the aforesaid £4,778,803 (or any part thereof) was paid into client account, alternatively failed to ensure an office account was opened whose sole purpose was to hold the monies pending their use for an authorised purpose, contrary to Principles 2, 6, 8 and 10 of the SRA Principles 2011 and to rules 1.2(a), 1.2(b), 6 and 14.1 of the SRA Accounts Rules 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.

1.8 The Respondent abrogated his responsibilities as sole Director and Principal of Signey in the period from about 20 February 2012 to about 23 October 2012, and thereby breached Principles 2, 6 and 8 of the SRA Principles 2011, and failed to achieve outcomes 7.1, 7.2, 7.3, 7.4 and 7.8 in the SRA Code of Conduct 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.

1.9 The Respondent accepted a payment of £30,000 from Signey when resigning as Director (and transferring his shares in Signey to Mr Y) which payment was improper because (a) it would (in part if not in whole) require to be paid out of monies received from the investment fund, in further breach of the Litigation Funding Agreement, and/or (b) the Respondent had no coherent or justifiable basis to accept the same, and/or (c) the natural inference is that the payment was expected and understood to buy the Respondent's silence (in the sense of not reporting - to among others the Applicant - events at Signey during 2012). The Respondent thereby acted in breach of Principles 2 and 6 of the SRA Principles 2011. Dishonesty is alleged, although this is not a requirement for the allegation to be proved.

2. It is alleged that the Respondent acted dishonestly in relation to the matters set out at paragraph 1.9. For the avoidance of doubt, if he was not dishonest (as alleged) he was reckless; alternatively careless. It is also alleged that the Respondent acted recklessly in relation to the matters set out at paragraphs 1.1 – 1.8 inclusive, but if he was not reckless (as alleged) he was careless. The allegations do not, however, depend on the Tribunal making a finding of dishonesty or recklessness.

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Core Bundle comprising:
  - Rule 5 Statement dated 31 January 2017
  - Respondent's Answer dated 27 February 2017 and additional documents
  - Tribunal Memorandum dated 2 June 2017
  - Witness statement of Lindsey Barrowclough dated 20 June 2017
  - Witness statement of Alexander Gisborne dated 20 June 2016 and exhibits
  - Witness statement of the Respondent dated 16 June 2017
  - Relevant correspondence between the Applicant and the Respondent
  - Costs schedules dated 31 January 2017 and 8 June 2017
  - Applicant's Certificate of Readiness and proposed Hearing Timetable
  - Respondent's Certificate of Readiness and proposed Hearing Timetable
- Exhibit PAS1 to the Rule 5 Statement (volumes 1, 2, 3, 4)
- Exhibit PAS2 to the Rule 5 Statement (volume 5)
- Applicant's skeleton argument drafted by Mr Edward Levey and Mr Simon Paul of Counsel dated 1 August 2017
- Applicant's authorities bundle volumes 1 and 2
- Judgment in the case of SRA v Emeana, Ijewere and Ajanaku [2013] EWHC 2130 (Admin)
- Summary of Applicant's costs for final hearing

Respondent

- Respondent's Answer listed above in Core Bundle
- Respondent's witness statement listed above in Core Bundle

Preliminary Issues

4. At the commencement of the substantive hearing, the Tribunal took the Respondent through all the allegations 1.1 to 1.9 in order to clarify the extent of his admissions. The Respondent confirmed that he admitted allegations 1.1 to 1.8, including in each case the allegation of recklessness which was attached to it, and also breach of Principle 2 of the SRA Code of Conduct, the requirement to act with integrity. In respect of allegation 1.9, the Respondent indicated that he had decided to accept that he should not have taken the payment of £30,000. He challenged one aspect of allegation 1.9: (c) the natural inference alleged that the payment of £30,000 was expected and understood to buy the Respondent's silence (in the sense of not reporting - to among others the Applicant - events at Signey during 2012). The Respondent accepted that it was dishonest to take the payment of £30,000. In those circumstances the allegation in the alternative of recklessness or carelessness became irrelevant. Later in the proceedings at the beginning of his defence, having heard the detail of the Applicant's case the Respondent withdrew his admission of dishonesty in respect of allegation 1.9 and the Tribunal treated that allegation as denied in considering its findings of fact and law.

Factual Background

5. The Respondent was admitted to the Roll in 1972. He did not currently hold a practising certificate. He was, between 26 March 2010 and about 23 October 2012, the sole Director and Principal of Signey Law Limited ("the firm"). In addition, between 26 March 2010 and about 20 February 2012, he was the legal and beneficial owner of all 100 issued shares in the firm.

6. Having been duly authorised to do so, an Investigation Officer ("IO") of the Forensic Investigation Department of the Applicant commenced an inspection of the books of account and other documents of the firm on 21 November 2012. During the ensuing investigation, the Respondent was interviewed on 18 December 2012 and 6 March 2013. He also submitted responses to written questions on about 20 February 2014 and 12 March 2014. The investigation resulted in a Forensic Investigation ("FI") Report dated 14 April 2015. There was also an interim FI Report dated 21 May 2013.

7. The Applicant sent an Explanation With Warnings ("EWW") letter to the Respondent relevant to the Rule 5 Statement, dated 18 May 2015. The Respondent responded by letter dated 26 June 2015.

8. Following his admission to the Roll, the Respondent worked as an in-house solicitor for R Homes Ltd from 24 July 1987 to 7 July 2006, and he did not practise between July 2006 and June 2010. In June 2010, at a time when he was a non-practising solicitor, he applied to the Applicant for the firm to be recognised.

9. The firm was incorporated on 26 March 2010, with the Respondent as sole director and shareholder. The firm's aim was to pursue "financial irregularity claims" (specifically, claims against mortgage lenders arising from non-disclosure of broker commissions to borrowers), introduced to the Respondent by an accountant, Mr Z. In order to become principal of the firm, the Respondent had to make an urgent application for a practising certificate and apply for recognition by the Applicant.

10. On or around 20 February 2012, the Respondent purported to transfer his shareholding in the firm to C Ltd a company wholly owned, managed and controlled by Mr X, a non-solicitor, and one of the individuals subsequently alleged to have defrauded the Axiom fund.

11. The Respondent remained sole director of the firm until around 23 October 2012, when he resigned and Mr Y was appointed. Mr Y is a solicitor. Disciplinary proceedings have been issued and certified by the Tribunal against Mr Y in relation to the Axiom Fund, but the allegations had not been adjudicated at the date of this hearing.

12. In September 2012, a barrister, Mr H was briefly employed by the firm in a compliance role, but he resigned due to his suspicion that the firm was "part of a sham or a front for (sic) money laundering operation". On or around 30 October 2012, V Ltd, a firm in receipt of some £6m of Axiom funding (and of which Mr Y and Ms D were members), acquired the firm, providing an indemnity against its liabilities to Axiom which, including the Facilitation Fee (see below) and other costs, exceeded £8m in respect of some £4m of borrowing.

13. It appeared that no claims were successfully pursued during the Respondent's tenure as principal of the firm. An audit of the firm's financial mis-selling files, dated 2 October 2012, reviewed 242 of the 567 cases loaded onto the firm's case management system, and noted "Nothing of value has been done on any of the cases we have seen…", that some 80 of the cases "are already statute barred", and that proceedings had only been issued in two cases. In March 2013, one client complained to the Applicant about the firm's failure to repay an application fee and to procure an insurance policy in respect of his claim.

14. There had been a number of cases before the Tribunal involving the Axiom Fund, as well as proceedings in the Chancery Division and substantial press coverage. In broad summary: Axiom was a segregated portfolio company incorporated in the Cayman Islands on 31 October 2007, comprising various sub-funds (the details of which are not relevant to these allegations). The Axiom Fund was established by Timothy Schools, a former solicitor who was struck off the Roll in June 2014 following the collapse of the fund. By 2012, Axiom had obtained over £100m in investment. The fund was a quasi-retail fund with numerous small investors, including individuals. A website set up by investors stated that individual investors suffered average losses of approximately £80,000. The smallest loss was reported at £15,000 and the largest at £250,000.

15. Investments were obtained pursuant to offering memoranda, which promoted the Axiom Fund to investors as a feeder fund that invested in the Axiom Fund Master, which would provide funding to law firms in the UK to finance the conduct of legal

cases. The most recent such document, prior to the firm's entry into its funding arrangements, was the January 2012 Supplemental Offering Memorandum, which stated under the heading "Investment Objective and Strategy": "The Master Segregated Portfolio provides short term fixed charge loans to Panel Law firms to pursue legal cases on behalf of their client." The Supplemental Memorandum further noted that the funds were to be invested as follows:

(a) Loaned to law firms for "permitted costs related to Permitted Uses", where "Permitted Uses" were said to be "restricted to different types of litigation funding or dispute resolution".

(b) The "Permitted Uses" were to be determined according to three criteria: (i) that the cases for which funding was provided carried ATE insurance, (ii) that it must be "straightforward to determine the likely success of each case easily", and (iii) there is a "high probability that cases can be completed in under a year".

(c) There was no mention of the 50% "Facilitation Fee" which the investment managers purported to charge the firm by adding 50% to the amount of the debt.

Other documents intended for investors that were readily available on the Internet contained similar statements to those in the January 2012 Supplemental Offering Memorandum, emphasising that the monies would be used to fund specific litigation cases.

16. The Axiom Fund's investment manager was initially The Synergy Solution Ltd ("Synergy"), until 1 March 2012 when Tangerine Investment Management Limited ("Tangerine") took over the role until its appointment was terminated in October 2012. Mr Schools was the sole shareholder of Tangerine, and was also a director of both companies. The Axiom Fund was suspended in October 2012 amid widely publicised allegations of fraud against Mr Schools, Mr X and others. In December 2012, Receivers were appointed by the Grand Court of the Cayman Islands.

17. On 21 May 2013, proceedings were commenced in the Chancery Division against (amongst others) Mr Schools, Mr X and a Mr Q (the financial controller of the firm and involved in other firm(s)) alleging an unlawful means conspiracy by which monies totalling £110 million were misappropriated from the fund, purportedly by way of qualifying loans to UK based "Panel Firms" (such as the firm) in breach of fiduciary duty. It was further alleged that a substantial proportion of the £110 million was transferred or received by the defendants for their own benefit, and that "[i]nsofar as any funds reached the Panel Law Firms, a substantial sum was transferred to Panel Law Firms owned or controlled by one or other of the Individual Defendants and/or…the monies borrowed were not used for the purposes for which they were lent….". A worldwide freezing order was obtained. It was understood that the action had been settled against some of the Defendants, including Mr Schools and Mr X, by a confidential agreement.

18. The firm drew down the following payments from Axiom:

- £132,050 on 23 March 2012
- £264,100 on 4 April 2012
- £82,288 on 20 April 2012
- £264,100 on 23 April 2012
- £54, 488 on 27 April 2012
- £707,655 on 22 May 2012
- £1,489,800 on 2 August 2012
- £1,203,300 on 2 August 2012
- £581,022 on 16 August 2012

Witnesses

19. There were no witnesses.

Findings of Fact and Law

20. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's right 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.

(References to the submissions below include both submissions made in writing and orally.)

General Submissions for the Applicant

21. Mr Levey submitted that each of allegations 1.1 to 1.9 included an allegation of breach of Principle 2, the requirement for a solicitor to act with integrity, and an allegation of recklessness. To succeed in an allegation of recklessness, the Applicant must show that the Respondent possessed the requisite mental state. None of the rule breaches alleged required the Applicant to prove recklessness. The most serious allegation, that of dishonesty was only associated with allegation 1.9. Lack of integrity was a step down from dishonesty, and was a very serious matter of professional misconduct. Mr Levey reminded the Tribunal that until this hearing the Respondent had denied recklessness, but he now admitted it, and he also admitted lack of integrity which he had admitted in his Answer. However, in his witness statement he denied lack of integrity. In respect of integrity, Mr Levey relied on the case of Bolton v Law Society where Sir Thomas Bingham had stated:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms, and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties.... If a solicitor is not shown to have acted dishonestly but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of the profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgement, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind will the tribunal be likely to regard as appropriate any order less severe than one of suspension.
>
> It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way... In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence... The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission."

Mr Levey submitted that the Master of the Rolls made a distinction between dishonesty and lack of integrity but said that lack of integrity was still very serious misconduct.

22. Mr Levey reminded the Tribunal that there was a debate between the authorities, and the Tribunal would need to say what test it would apply in determining the allegations of lack of integrity. He urged the Tribunal to follow the test used in many cases in which dishonesty and lack of integrity had been held to be conceptually distinct for example in the case of Scott v SRA [2016] EWHC 1256 (Admin) in which Holyrode J (agreeing with Sharp LJ) provided the example of a solicitor borrowing and then repaying money from a client account, who did not appreciate that what he was doing was dishonest (although he appreciated it was contrary to his professional obligations). Such an approach, on Holyrode J's analysis, would demonstrate a lack of integrity, but might not support a finding of subjective dishonesty. The Judge referred to the case of Hoodless and Blackwell v FSA [2003] UKFTT FSM007 (3 October 2003) where it was said:

> "In our view integrity connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards…"

The Scott judgment also referred to SRA v Chan and ors [2015] EWHC 2659 (Admin) where it was said:

> "In my view it serves no purpose to expatiate on its meaning. Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case."

Mr Levey also referred to the case of Newell-Austin v Solicitors Regulatory Authority [2017] EWHC 411 (Admin) (03 March 2017) where Morris J confirmed that lack of integrity expressly had no subjective element at all:

> "Thirdly, it is clear that, by contrast with the test of dishonesty, the test of lack of' "integrity" is an objective test alone. A distinction must be drawn between subjective knowledge of the facts of the underlying conduct (which are alleged to give rise to the integrity) and subjective knowledge of the fact that the conduct would be regarded by reasonable people as lacking in integrity…"

This meant that the Tribunal could look at what the Respondent knew, but not whether he knew that it amounted to lack of integrity. Mr Levey contrasted these cases with SRA v Malins [2017] EWHC 835 (Admin), where Mostyn J held that dishonesty and absence of integrity were synonyms. The Applicant has sought permission to appeal against that judgment. The judgment was disapproved of in the case of Williams v SRA [2017] EWHC 1478 (Admin), Mrs Justice Carr noted that "Dishonesty and want of integrity have long been treated as different (if overlapping) regulatory concepts. One can lack integrity without being dishonest…" In that case, the solicitor's Leading Counsel expressly declined to adopt Malins as being correct on this point and accordingly the Divisional Court proceeded on the basis:

> "both on the authorities and as a matter of principle, that, in the field of solicitors' regulation, the concepts of dishonesty and want of integrity are indeed separate and distinct. Want of integrity arises when, objectively judged, a solicitor fails to meet the high professional standards to be expected of a solicitor. It does not require the subjective element of conscious wrongdoing."

Sir Brian Leveson (agreeing with Carr J) expressly rejected Mostyn J's description of dishonesty and lack of integrity as synonyms. Mr Levey submitted that Lord Bingham in the case of Bolton made it clear that there was something called honesty and something called integrity. Mr Levey referred to an additional authority SRA v Emeana and others [2013] EWHC 2130 (Admin):

> "The essential principle is that which was identified by Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 1286. The profession of solicitor requires complete integrity, probity and trustworthiness. Lapses less serious than dishonesty may nonetheless require striking off, if the reputation of the solicitors' profession "to be trusted to the ends of the earth" is to be maintained.

> The principle identified in Bolton means that in cases where there has been a lapse of standards of integrity, probity and trustworthiness, a solicitor should expect to be struck off. Such cases will vary in severity. It is commonplace, in mitigation, either in first instance or on appeal, whether the forum is a criminal court or a disciplinary body, for the defendant to contend that his case is not as serious as others. That may well be true. But the submission is of little assistance. If a solicitor has shown lack of integrity, probity or trustworthiness, he cannot resist striking off by pointing out that there are others who have been struck off, who were guilty of far more serious offences. The very fact that an absence of integrity, probity or trustworthiness may well result in striking off, even though dishonesty is not proved, explains why the range of those who should be struck off will be wide. Their offences will vary in gravity. Striking off is the most serious sanction but is not reserved for offences of dishonesty."

Mr Levey submitted that trustworthiness also extended to incompetence, and relied on Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin). Thus if a solicitor "exhibits manifest incompetence…it is impossible to see how the public can have confidence in a person who exhibited such incompetence." In such a case, the "only appropriate remedy is to remove him from the roll…the public is entitled not only to solicitors who behave with honesty and integrity, but solicitors in whom they can impose trust by reason of competence." The Master of the Rolls then covered the purpose of sanction; it was both punitive and deterrent.

23. The Bolton judgment also covered mitigation:

> "Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. None of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in any appropriate case that the solicitor may be unable to re-establish his practice when a period of suspension is passed. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member…"

Mr Levey submitted that the question of recklessness initially seemed to have been the battleground in this case but it was not a very important one; the key issues were dishonesty and lack of integrity.

24. **Allegation 1.1 - On or about 20 February 2012, the Respondent agreed to sell his shares in Signey Law Limited ("Signey") (and/or sold them) to C Investments Limited ("C Ltd"), which agreement and/or sale was improper because C Ltd was at all material times owned, managed and controlled by a non-solicitor ("Mr X") who was not at any time authorised by the SRA to be a manager or owner of a recognised body such as Signey. The Respondent thereby acted in breach of (and/or aided the breach of) Rules 13.1, 16.1 and 19.1 of the SRA Practice Framework Rules 2011 and Regulation 5.1 of the SRA Recognised Bodies Regulations 2011 and (from 31 March 2012) Rule 8.6 of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 (hereafter "the SRA Authorisation Rules 2011"), and acted in breach of Principles 2, 6, 7 and 8 of the SRA Principles 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.**

Allegation 1.2 - The Respondent failed to make any or any adequate inquiries as to the ownership, management and control of C Ltd prior to the said agreement to sell his shares in Signey (and/or the sale thereof), and thereby acted in breach of Principles 2, 6 and 8 of the SRA Principles 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.

Allegation 1.3 - The Respondent (when sole Director of Signey) failed to take any steps to notify the Applicant or to ensure or confirm that the Applicant had been duly notified of the ensuing change of ownership/control of Signey in consequence of his Agreement with C Ltd, and thereby acted in breach of (and/or aided the breach of) Rules 18.2 and 19.1 of the SRA Practice Framework Rules 2011 and Regulations 1.6(b) and 3.1 of the SRA Recognised Bodies Regulations 2011, and Principles 2, 6 and 8 of the SRA Principles 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.

24.1 For the Applicant, Mr Levey submitted that the Respondent had a dormant law firm as shown by the accounts lodged at Companies House. For some years before he incorporated the firm the Respondent had not been practising. The firm was in the Assigned Risks Pool ("ARP") which meant the Respondent could not even afford professional indemnity insurance ("PII") at the relevant time. The firm was not undertaking any legal work. There was evidence that the Respondent said at the relevant time that, unless he could obtain some funding, he would have to close the firm. He was in business with Mr Z who was an accountant and who had financial irregularity claims to be pursued. Along came a group of individuals Mr Schools, Mr X and Mr Q. People investing in the Fund believed that they were funding litigation to enable firms to run cases and that the money invested would be repaid. Mr Schools, Mr Q and Mr X went into a number of different law firms. Solicitors ceded control of their firms to individuals who then ran the firms, and stripped out vast sums of money from the Axiom Fund and paid it to themselves. Mr Levey submitted that in 2011 and 2012 Mr Schools, Mr X and Mr Q offered an escape route for struggling firms through the Axiom Funding, which would enable such firms to

get cases off the ground. The Respondent submitted that this was not quite the case with this firm; rather he was transferring the whole of the firm/company to C Ltd represented by a Mr U, a sole director, who signed the agreement as sole shareholder. The Respondent was retained as a non-executive director to help the transition go smoothly. The Respondent submitted that he was not taking the Axiom Funding for his law firm; it was for someone else's firm.

24.2 Mr Levey submitted that in his letter to the Axiom Receivers' solicitors dated 4 October 2014, the Respondent stated: "I never actually spoke to [Mr U]". In interview with the Applicant on 6 March 2013 he said "Well [Mr U] has disappeared from the scene. I never met him..." The Respondent sold the firm purportedly to C Ltd, and the Applicant did not challenge that the Respondent believed that Mr U owned C Ltd. Mr U, a solicitor, came from another firm of solicitors AB. His staff were drafted into the Respondent's firm and one of his colleagues, Ms D, was drafted in to supervise. Mr Levey informed the Tribunal that Mr U (and Ms D) were subject to disciplinary proceedings at the Tribunal which would be heard later on.

24.3 The Applicant's detailed case was that, between 26 March 2010 (when the firm was incorporated) and about 20 February 2012, the Respondent was the legal and beneficial owner of all 100 issued shares in the firm. On or about 20 February 2012, pursuant to the Agreement with C Ltd, the Respondent agreed to transfer and duly transferred the 100 shares in the firm to C Ltd absolutely. Alternatively, between about 20 February 2012 and about 23 October 2012 (when he transferred any remaining interest in the shares to a solicitor, Mr Y), the Respondent remained the legal owner of all the shares in the firm on trust for C Ltd. The material terms of the Agreement were as follows: The Respondent sold to C Ltd at completion all 100 issued shares in the firm (clause 2.1). Completion was to take place immediately following the making of the Agreement (clause 4.1). The sale price was £1.00 (clause 3). The Respondent agreed to continue as a Director of the firm for a period of 12 months from 1 March 2012 on a fixed term contract of £12,000 (paid monthly in arrears), and "in the event that the Purchaser shall at any time require his resignation, the bringing into effect of such resignation triggers payment of the balance for compensation for loss of office previously referred to" (clause 4.4). The Respondent was not required to attend the firm's offices "except for monthly board meetings, and or on other occasions which he considers, at his absolute discretion, necessary" (clause 4.4).

24.4 Mr X, who controlled C Ltd, had not at any time been authorised by the Applicant to be a manager or owner of a recognised body such as the firm. Specifically a June/July 2012 return filed at Companies House confirmed that Mr X was (as he had previously been) the sole Director of, and shareholder in, C Ltd. Other material filed at Companies House indicates that he was appointed the sole Director of C Ltd on 9 June 2011 (the date C Ltd was incorporated), which post he retained throughout the material period; no other person had ever been appointed as a Director of C Ltd; and no other person was recorded at Companies House as ever having had an interest in the shares of C Ltd. On 22 October 2012, Mr X noted in an email to (amongst others) the Respondent:

> "[C Ltd] is my consultancy business that I have tried to run with a view to helping these law firms and other businesses flourish"

24.5 By a purported Agreement dated 14 December 2011 between Mr X and Mr U, Mr X agreed to transfer to Mr U all his shares, interest and goodwill in C Ltd (clause 2.1). C Ltd was to proceed forthwith with the acquisition of AB, which carried on business as a solicitors' practice (clause 2.2). Clause 5 provided as follows:

> "In anticipation of a change in the law relating to the ownership and management of Solicitors Practices [U] agrees to hold the former interest of (sic) including but not limited to shares, goodwill and assets of [X] in [C Ltd] **IN TRUST** for [X] and will when so permitted by statute transfer at the direction of [X] all or such interest shares goodwill and other assets to [X] or at any time to such person being a Solicitor as [X] may direct for the consideration of one pound (£1.00)"

It was submitted that the purported Agreement dated 14 December 2011 was illegal, void and of no lawful effect. The true intention of Messrs U and X was to circumvent restrictions on ownership and control of a solicitors' firm by an unauthorised non-solicitor (Mr X), but to do so in a manner which concealed that intention to others (in particular, the Applicant). At all material times: Mr X was the sole appointed Director of C Ltd. There was no evidence that Mr U was ever appointed a director, or that Mr X's interest in the shares of C Ltd was ever in fact transferred to Mr U, and it was to be inferred that neither occurred. If any such transfer was effected it was solely in respect of the legal interest in the shares, the beneficial interest remaining at all times with Mr X. Mr Levey submitted that the agreement between Mr X and Mr U was a very odd one, but it did not matter because the agreement was a sham. Mr Levey referred the Tribunal to a set of written questions and responses from Mr U, given on 25 October 2013 to the Applicant, in which Mr U stated that he was a nominee for Mr X (an owner on trust for him). Mr X was the sole beneficial owner of the shares in C Ltd and was in effective control of it. The sale of the Respondent's firm had been a sale to C Ltd, a sale to Mr X.

24.6 Although the Applicant accepted that the Respondent proceeded on the understanding that Mr U owned and controlled C Ltd, and that he was a solicitor, it was alleged that the Respondent took no meaningful steps to investigate or confirm the position. In particular the Respondent did not take the elementary precaution of conducting a company search on C Ltd, nor did he carry out any other checks on C Ltd, as he admitted at interview. The Respondent did not make a single rudimentary check to see who owned C Ltd. If he had, he would have realised that Mr U was not a shareholder or director. It was part of the Respondent's responsibilities to ensure that the firm was run by solicitors or people who were regulated by the Applicant and not complete strangers. Mr Levey submitted that the Respondent made an improper sale of his shares in the firm to C Ltd. The Respondent appeared to have relied on the fact that Mr U signed the Agreement as "Sole Director" of C Ltd, and possibly on hearsay verbal assurances passed via Mr Z. At any rate, the Respondent received no clear or reliable assurances that Mr U was the beneficial owner of C Ltd, or any supporting documentation. By clause 3 of Schedule 2A, the Respondent warranted that he was the sole beneficial owner of the relevant 100 issued shares in the firm. No comparable warranty or promise was sought from, or made by, Mr U in relation to any interest he held in C Ltd. The Respondent was reckless and (given the obvious risks) careless to a very high degree in the precautions taken before determining that it was appropriate and lawful to sell his shares in the firm to C Ltd.

24.7 Notwithstanding the Agreement with C Ltd, the Respondent remained sole Director of the firm until about 23 October 2012. As confirmed by the Respondent in interview, no steps were taken (whether by the Respondent or anyone else), following the Agreement with C Ltd on or around 20 February 2012, to notify the Applicant of the change in ownership and control of the firm. This was a serious matter, in the Applicant's view. When asked if he could explain why the Applicant had not been notified of the C Ltd transaction, the Respondent responded "no". Had the Applicant been so notified (as it should have been, within a short period), it would have taken steps to check out and verify (or otherwise) the true position regarding the ownership and control of C Ltd, such as conducting a company search of C Ltd as part of the Applicant's risk assessment review of the Company's directors and owners in line with the SRA Regulatory Risk Framework, to make a formal decision approving or objecting to the ownership by a non-authorised party. The inevitable anomalies that would have been thrown up by a simple Companies House search would have led to the Applicant investigating matters further with, amongst others, the Respondent.

24.8 The Tribunal questioned why one would expect to see in such an Agreement a warranty from the purchaser. Mr Levey accepted that one would not necessarily expect to have a warranty from the purchaser, but submitted that the Respondent had undertaken no checks at all. Mr Levey drew to the attention of the Tribunal an e-mail from Mr Z dated 20 February 2012 to Mr Q, copied to Mr X:

> "...Further to discussions with Geoff [the Respondent] and various aspects previously mentioned please find the following notes;
>
> ...
>
> 4. Last accts date - the company has filed accts for 31/8/10 (effectively dormant) and needs to file accts for 31/8/11 by 31/5/12... how do you want this to work both in agreement and also in practical terms done
>
> ...
>
> Other aspects:
>
> ...
>
> c. Geoff thinks that it would be a good idea for [Mr U] to be a director of [the firm] also..."

Mr Levey submitted that the Respondent remained the sole director, even if he thought it would be good idea for Mr U to be a director. The Respondent submitted that he had signed an appointment form for Mr U, which went with the statutory books to AB. The Respondent expected the recipients would then decide who was to take on the responsibility for the firm and deal with lodgement of the necessary forms.

24.9 Mr Levey directed the Tribunal's attention to a search which showed the directors of the firm to be Mr Y and Mr P, and that the Respondent had resigned on 31 October 2012, Y and P having been appointed the following day. Mr U had never been appointed a director of the firm; the annual return for the firm dated 17 September 2012 showed the Respondent as the sole director. The sale of the shares

to C Ltd had also never been registered, even though the Respondent was no longer the beneficial owner because he had agreed to sell the shares to C Ltd.

24.10 In respect of the Respondent's failure to notify the Applicant of the change of ownership, Mr Levey referred to the witness statement of an Authorisation Officer of the Applicant, Mr Alexander Gisborne, which was not challenged. Mr Gisborne explained the steps that would have been taken if the Applicant had known about the change:

> "Under the SRA Authorisation Rules 2011 (SRA Authorisation Rules) and the Legal Services Act 2008 (LSA), if it was intended that an SRA recognised body was to sell shares to a non-authorised entity (not a recognised or licensed body authorised by the SRA or another regulatory body approved as such under the LSA), it would have to apply to the SRA for that entity to be approved as a non-authorised corporate owner. If the existing authorised body was currently a legal services body it would also have to apply [to] become a licensed body."

Mr Levey submitted that this was not just a formality. He referred to the SRA Practice Framework Rules 2011 (version 2) which at the time of the Agreement between (amongst others) the Respondent and C Ltd, included:

- Rule 13.1 which provided that a recognised body's "managers and interest holders" had to be legally qualified, save that it was permissible for a non-authorised person to control the exercise of less than 10% of the voting rights in a body that had an interest in the recognised body. Here, however, Mr X effectively controlled all voting rights in C Ltd at all material times.

- Rule 16.1 which provided who could be a director, member or shareowner in an authorised body. The 10% shareholding limit contained in Rule 13.1 applied. Accordingly, in light of Mr X's controlling interest in C Ltd, it was not entitled to holds shares in the firm.

- Rule 18.2 which required that an authorised body had to notify the Applicant within seven days of any change to (amongst others) its managers, members or (if a recognised body) its interest holders. Mr Levey submitted that this responsibility rested with the Respondent because he was still a director.

- Rule 19.1 which provided that an authorised body and its managers and employees must at all times ensure that they act in accordance with the requirements of the Applicant's regulatory arrangements as they applied to them.

24.11 At the time of the Agreement between (amongst others) the Respondent and C Ltd, the SRA Recognised Bodies Regulations 2011 (version 2) included:

- Regulation 1.6(b), an applicant for recognition must notify the Applicant "as soon as any information provided in an application under these regulations has changed".

- Regulation 3.1:

  "A recognised body which has succeeded to the whole or a part of one or more recognised bodies ... must within 28 days of the change taking place deliver to the SRA a notice of succession in the prescribed form".

- Regulation 3.2 "succeeded" for the purposes of Regulation 3.1 "includes any taking over of the whole or any part of a recognised body ... for value or otherwise".

- Regulation 5.1, an individual who was not a lawyer had to be approved by the Applicant in order to be either a manager or owner of a recognised body, or a manager of a body corporate which is a manager of a recognised body. Mr X was not so approved by the Applicant.

- Regulation 14, the Applicant was obliged to keep a register of recognised bodies, which was required to contain (amongst other things) a list of the body's managers.

24.12 Further, on 31 March 2012, the SRA Authorisation Rules 2011 came into force for legal services bodies, and recognised bodies transitioned into "authorised bodies". Rule 8.6 of the SRA Authorisation Rules 2011 provided that an authorised body must ensure that any "manager or owner of the authorised body" had been approved by the Applicant under Part 4. At no time was C Ltd so approved by the Applicant (nor did it benefit from deemed approval under the Rules).

24.13 Mr Levey submitted that the Respondent's professional misconduct arose as follows: the Agreement between the Respondent and C Ltd in relation to the sale of the Respondent's shares in the firm (and the sale of such shares) was improper because C Ltd was at all material times owned, managed and controlled by an unapproved non-solicitor (Mr X). Further, the Respondent acted improperly in failing to make any or any adequate inquiries as to the ownership, management and control of C Ltd prior to the Agreement and sale of his shares to C Ltd. Accordingly (and as regards Allegations 1.1 and 1.2), the Respondent acted in breach of (and/or aided the breach of) the regulatory requirements set out above. He also failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 and/or acted recklessly in that he was (despite the obvious risks) careless to a very high degree in not making even elementary checks to confirm Mr U's beneficial ownership and genuine control of C Ltd, and thus the lawfulness and propriety of the sale of his shares in the firm. The Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services, in breach of Principle 6 of the SRA Principles 2011. He failed to comply with his legal and regulatory obligations, in breach of Principle 7 of the SRA Principles 2011. He also failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound risk management principles, in breach of Principle 8 of the SRA Principles 2011.

24.14 Further (as regards allegation 1.3), it was alleged that the Respondent (at a time when he was the sole Director of the firm) failed to take any steps to notify the Applicant or to ensure or confirm that the Applicant had been duly notified of the ensuing change

of ownership of the firm in consequence of his Agreement with C Ltd. He said he thought others would do so. Accordingly, the Respondent acted in breach of the regulatory requirements set out above. He also failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 and/or acted recklessly in not taking any steps at all to investigate the extent of any duty to report the sale to C Ltd to the Applicant, and whether there had been compliance with that duty. He was also in breach of Principle 6. At the very least, the Respondent's conduct and failure to make the necessary inquiries as to the reporting/notification position was extremely careless. It was also submitted that he failed to comply with his legal and regulatory obligations, in breach of Principle 7. He failed (at a time when he was sole Director) to run his business, or carry out his role in the business, effectively and in accordance with proper governance and sound risk management principles, in breach of Principle 8.

24.15 The Respondent admitted all aspects of allegations 1.1, 1.2 and 1.3.

24.16 The Tribunal had regard to the evidence and the submissions for the Applicant, and the admissions by the Respondent. In respect of allegation 1.1, the Tribunal found proved as a fact that by an agreement in February 2012 between the Respondent, Mr Z (as guarantor) and C Ltd (for whom Mr U signed) the Respondent sold his 100 shares in the firm to C Ltd of which Mr X was the sole director and shareholder as shown by a return dated 9 June 2012. Mr Gisborne, an authorisation officer of the Applicant, set out in his statement dated 20 June 2017 the procedure which had to be gone through if an authorised body was to sell shares to a non-authorised entity. He further stated that an extensive search of the Applicant's records showed there had been no application or e-mails regarding this matter from the Respondent or relating to the firm. The interim FI Report stated that during the investigation it was established that Mr X, a non-regulated individual, potentially owned the firm between 20 February 2012 and 23 October 2012. The assertion that Mr X was not regulated had not been disputed. The Tribunal found proved on the evidence to the required standard that the Respondent had breached Rules 13.1, 16.1 and 19.1 of the SRA Practice Framework Rule 2011 and Rule 5.1 of the SRA Recognised Bodies Regulations 2011 and as from 31 March 2012, Rule 8.6 of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011. In determining whether there had been a breach of Principle 2 for the purposes of this and all the allegations, the Tribunal employed the objective test for integrity recently restated in the Williams case following a long line of established authorities, rather than the test enunciated in Malins. The Tribunal found proved on the evidence to the required standard that the Respondent had acted in breach of Principle 2 by his conduct in agreeing to sell his shares improperly, of Principle 6 because his conduct breached his duty to maintain public trust, of Principle 7 by failing to comply with his legal and regulatory obligations, and of Principle 8 in his running of his business and carrying out his role in it. The Tribunal also found proved that the Respondent's conduct had been reckless. Indeed all these breaches were admitted.

24.17 In respect of allegation 1.2, the Tribunal found as facts that in interview the Respondent was asked if he had carried out any checks on C Ltd at Companies House regarding who owned it. The Respondent did not answer the question but referred to the firm of solicitors AB, which was the source of the draft Agreement, and at which Mr U worked, and to his belief that Mr U, whom he thought owned C Ltd, was a solicitor. In his statement he referred to his understanding of the sale agreement but he

did not address allegation 1.2. In his response to the Rule 5 Statement, the Respondent admitted allegation 1.2. The Respondent did not dispute that he never met Mr U, that he did not undertake a company search on C Ltd nor any other checks. He simply proceeded on the understanding that Mr U owned and controlled C Ltd and that he was a solicitor and that was enough. The Tribunal found that the Respondent had breached Principle 2 by effectively washing his hands of responsibility for checking to whom he was selling his shares in the firm. The Tribunal also found that by doing so the Respondent was in breach of Principles 6 and 8 and that his conduct was reckless. Indeed all these breaches were admitted.

24.18 In respect of allegation 1.3, the Tribunal found that the Respondent was sole director of the firm until 23 October 2012 when he resigned, on his own case relying on the Minutes which he drafted and took to the meeting on that day. Again the undisputed evidence of Mr Gisborne showed that the Respondent took no steps to notify the Applicant or ensure or confirm that the Applicant had been notified of the change of ownership of the firm to C Ltd, and in interview the Respondent gave no explanation of why he failed to notify. The Respondent had earlier applied for the firm to become a recognised body, but had failed to notify the regulator when the firm's circumstances changed in February 2012. He gave the regulator no notice of any kind, let alone any notice of succession as required by Regulation 3.1. The Tribunal found that by his conduct the Respondent was in breach and/or aided in the breach of Rule 18.2 and 19.1 of the SRA Practice Framework Rules 2011 and Regulations 1.6(b) and 3.1 of the SRA Recognised Bodies Regulations 2011 and Principles 2, 6 and 8 of the SRA Principles. The Tribunal also found that by his conduct the Respondent had been reckless. Indeed all these breaches had been admitted.

25. **Allegation 1.4 - The Respondent (when sole Director of Signey) signed in blank on the back of Signey's application for funding from an investment fund (which application form was then populated by others with incorrect information) and failed thereafter to review the document (whether before or after submission), thereby facilitating a materially false application, and acting in breach of Principles 2, 6 and 8 of the SRA Principles 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.**

Allegation 1.5 - On or about 20 February 2012, the Respondent (when sole Director of Signey) signed a Litigation Funding Agreement with an investment fund on Signey's behalf without having made any or any adequate inquiries as to the propriety of the said Agreement, or of the said investment fund, or of the investment managers appointed by it. He thereby acted in breach of Principles 2, 6 and 8 of the SRA Principles 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.

Allegation 1.6 - The Respondent (when sole Director of Signey) caused or permitted Signey to accept, and use, monies received (on dates between 23 March 2012 and 16 August 2012) from an investment fund totalling £4,778,803, in circumstances where it was improper for Mr Signey to do so for the following reasons:

(a) He was reckless or careless in his failure to undertake any due diligence on Axiom prior to Signey applying for, receiving or expending the funds.

(b) He was reckless and/or careless as to whether Signey had complied with the terms of the Litigation Funding Agreement (and, just as importantly, if not, why not and why the Investment Managers had purportedly accepted such a scenario).

(c) He was reckless or careless to the fact that the Litigation Funding Agreement pursuant to which the monies were purportedly advanced did not reflect the purpose for which Signey intended to use and/or in fact used the monies (as evident, inter alia, from payments out of the office account), contrary to stipulations in the Litigation Funding Agreement intended to protect the interests of the investment fund and of the ultimate investors in the investment fund (which the Respondent had no basis at any time for treating as modified or discharged). The Respondent had read and signed the Litigation Funding Agreement dated 20 February 2012, and at all times had access which enabled him to view (as he did from time to time) activity on Signey's bank accounts, in particular its office account.

(d) He thereby recklessly or carelessly facilitated the misuse of the funds received by failing to ensure they were applied only towards "Eligible Legal Expenses", as defined in and required by the Litigation Funding Agreement; and recklessly or carelessly risked Signey being a party to transactions in fraud of the investment fund and/or of the ultimate investors, or which involved other serious breach of duty by the Investment Managers towards them (or one of them).

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

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

Submissions for the Applicant about the background to the Axiom related allegations

25.1 For the Applicant, Mr Levey submitted that the Applicant understood that in the civil action there had been no trial of the allegations of fraud against Mr Schools and those involved in the Axiom fund. For the purposes of this hearing, the Applicant therefore did not invite the Tribunal to proceed on the basis that those allegations were proven, but it was not necessary to do so in order to establish the allegations against the Respondent of professional misconduct set out in the Rule 5 Statement. Nevertheless, it was right that the Tribunal should be aware of the allegations of fraud and serious wrongdoing that had been made in the wake of the collapse of the Axiom Fund, and of the substantial losses that investors had sustained. The highly dubious nature of this transaction formed part of the factual background against which the Respondent's misconduct fell to be assessed. Mr Levey submitted in this regard that the Tribunal should note: the prima facie case of fraud that led to the granting of freezing relief;

and the Respondent's own position that Mr Q and Mr X were "persons perhaps intent on fraud" and that he was "the subject of a concerted deception".

25.2 Mr Levey referred the Tribunal to the application form which the Respondent had submitted to the Applicant for initial recognition of a limited company under the style of Signey Law Ltd. The authorised officer dealing with it in June 2010 noted that the Respondent was admitted as a solicitor in 1972, and that after admission he worked as an in-house solicitor from 24 July 1987 to 7 July 2006, and that he had not practised as a solicitor since that time. She also noted that the Respondent had not provided any evidence that he had experience of being involved in a managerial role, and that as an in-house solicitor neither would he have had relevant experience of management responsibilities. The Applicant granted the Respondent's application for initial recognition of the firm (noting his lack of prior managerial experience) on condition that he attended courses on the Code of Conduct, the solicitors accounts rules and management. In the statement the Respondent prepared when he was notified of the investigation into the firm, he described the inception of the firm. He referred to being introduced to Mr Z in January 2010:

> "I was asked if I would like to lead a new Company which was to solely deal with Financial Irregularity cases.
>
> I was advised that these would be undertaken on a "No Win, No Fee", basis, with ATE insurance.
>
> [Z] advised that Funding was available for the FI cases following external audit.
>
> I advised the meeting that if I were to head the Company, I did not have the expertise, to organise and supervise a dedicated Litigation unit, and nor could I comment on the validity of the statements being made with regard to the success rate of the cases.
>
> I was not prepared to, and nor would it be appropriate for me to have any day to day involvement with Clients or the firm.
>
> I was assured that others suitably qualified were to be brought in when the operation had commenced, and when funding could then be drawn down..."

Mr Levey submitted that until June 2012 nothing really happened. The firm had files but it had no PII and was not actively undertaking litigation. There may have been potential claims received from Mr Z, but it was not clear if there were "clients" as one usually understood the term, as the firm was about to be closed down. (In the exchanges below "IO" indicates an Investigation officer of the Applicant.) The Respondent stated in interview, when discussing the sale of the shares to C Ltd:

> "Following various paths of trying to find a home for the Signey Law files and financial irregularity, it was brought to me by this stage Signey Law Limited was a basket case, it did not have the funding to proceed. It was due to be closed down at any minute by me because we could not operate. A firm in Blackburn was planning to take over the files but delayed and delayed and

delayed and then it was brought to me that a firm had funding available for litigation was prepared to step in and take over Signey Law and that was [C] Ltd."

and

"IO: OK, so you'd previously informed us that at that point, you know, there was no funding available to fund the cases and you basically wanted someone to take or another firm to take those cases on because you wanted to get out of the firm, is that correct?

R: Not quite like that, not because I wanted to get out. In order for those cases to be actioned upon, another firm or somebody who was in a position to fund them and deal with them properly, because Signey Law didn't have the machinery in place to be able to deal with it, we'd need to take it on

IO: OK and you wanted an exit strategy as well

R: It certainly would not have been a condition of anybody taking on those files that they took me on a well"

and

"IO: OK and that agreement was signed in February wasn't it and we've got a copy of that, your transfer over to, of your shares over to [C Ltd]. On the same day, we've got a copy of the panel firm agreement with Axiom, which you've agreed that was signed by you wasn't it on 20th February 2012. On what basis they did you sign that form?

R: Because it was important that the funding was drawn down as quickly as possible in order that the PI could be brought into effect and if there was, it was explained to me, if there was a delay whilst information was filed at Companies House for the new directors, it may delay the funding.

IO: OK, so what PI, what you mean by PI, the insurance?

R: Yes

IO: So why would that be impacted on the funding agreement being signed?

R: Well because our, sorry, why would it?

IO: Why would the funding agreement being signed on that day impact on the insurance of the firm?

R: Well until the funding is obtained, there was no working capital and working capital was needed to fund the firm including payment of PI insurance

IO: OK, so the funding then was used to pay for the PI insurance

R: Some of the funding would be used to pay for the PI insurance, yes

…

IO: OK, and did you carry out any due diligence on Axiom?

R: No, I didn't"

and

"IO: OK. The form also states that Signey had been trading for two years, is that true?

R: Well we traded from the date of incorporation, I suppose. Well we hadn't actually trained [traded] from the date of incorporation because it was several months before we started to put things together

IO: OK and Companies House record states that the firm was dormant

R: Certainly one of the those the annual return which said it's dormant, it wasn't, that was incorrect and I don't know why the accountants put that in

IO: OK have you made any steps to get that corrected?

R: It was being done as I left

IO: And what legal work was being done on those files at Telford?

R: No legal work? Was this the audit to see the case was viable?"

Mr Levey submitted that the agreement with C Ltd was then entered into.

25.3 Mr Levey referred the Tribunal to the ways in which the Respondent described himself. In his witness statement dated 16 June 2017, he stated:

> "I believed that by the Agreement I entered into in February 2012 and my execution of the Share Transfer of the whole of my shareholding in Signey Law Ltd, I no longer had any proprietary interest in the Company. From that date I was an employee of the new Owner of the Company, on the terms set out in the Sale Agreement. This was a commitment of one day a month. I had been required to sign a Letter of Resignation which could be implemented at any time. I considered that I was staying on as, and in the capacity of a non-executive Director. The deal had been rushed through and I

thought that this would be in the best interests of clients and would assist in achieving a smooth transition of files and the practice.

At the same time as I executed the Sale Agreement I was asked to, and signed Axiom funding Agreements. I had already been told that Axiom funding was NOT available for the Company's existing Financial Irregularity Claims. I read through the Funding Agreement and took it to be a Platform Agreement only. No funds could, or would be advanced without further application and Tangerine carrying out due diligence."

In interview the Respondent stated: "My understanding of the management structure, until such time as new owners were put in place, I was there as the figurehead…" In his statement in response to the investigation being notified, the Respondent stated: "As far as I was concerned I was merely now, and always had been a caretaker…" In interview the Respondent stated: "I was there as I say holding the coats" - this referred to June 2012 when he had found someone else to take over the business in the person of an individual whom the Respondent referred to as its chief executive officer ("CEO"), and others referred to with the CEO as "the Consortium". Mr Levey submitted that on his own case, the Respondent had allowed someone else to take over the firm. Mr Levey then referred to the transcript of a telephone call which took place on 11 June 2012 between Mr Q and Mr X. It was a discussion about moving cases from AB to the Respondent's firm. The conversation included:

"X: And I think it depends what Tim and I want ultimately, but I'd rather have people who actually understood what they were doing and when businesses properly, you know, I think, you know, having … [Ms D, Mr U],. I think it's b*****t really in the long run because they don't know what they're doing

Q: No, but you need a solicitor, but you see that's why Signey's perfect, you've got your solicitor, but he doesn't want to be involved, that's what I'm saying, all of this risk is here under two people that no one has any faith in or any trust that they can do it. Well, take it out of here, put it into Signey and you've got the people in that you have trust in. They fundamentally don't have any control because they're not directors"

The firm was being described as the perfect vehicle. The Respondent was viewed as perfect person; he was only required to attend one day a month and he had signed a resignation letter that could be tendered at any moment. Mr Levey confirmed that this telephone conversation had been surreptitiously recorded, by either Mr U or another solicitor at AB, when the individuals referred to in the conversation came to suspect that a fraud was being committed. The tape had been provided to the Applicant in June 2012. Mr Q was the financial controller at AB as well. Tribunal proceedings were outstanding against both Mr Q and Mr X in respect of AB, which had received around £30 million of Axiom Funds.

25.4 Mr Levey submitted that there was no suggestion that the Respondent saw what the Applicant regarded as the most relevant document for investors, the January 2012 Supplemental Offering Memorandum, but he should have done, and it would have reinforced what was clear in the Litigation Funding Agreement ("LFA"); that money

from Axiom could only be used for funding litigation. The following was stated on page 3 of the Supplemental Offering Memorandum, under the heading "Important Information" and Mr Levey described it as the basis for investing:

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

The document included: "The Master Segregated Portfolio provides short term fixed charge loans to Panel Law Firms to pursue legal cases on behalf of their client". This was what investors understood would happen. Under the heading "Investment Criteria", the following was then stated:

> "Loans are provided to suitably qualified law firms exclusively in the United Kingdom (excluding Scotland), for "Permitted Uses". Permitted Uses of the loans are determined by the Investment Manager using the criteria that:
>
> 1. Litigation cases must carry "After the Event" insurance to repay the costs if the case loses and Indemnity Loan Guarantee insurance, non-litigious cases (such as divorce) must carry Indemnity Loan Guarantee insurance.
>
> 2. It must be straightforward to determine the likely success of each case easily.
>
> 3. There is a high probability that cases can be completed in under a year."

Under the heading "Security for the return of the Loan", the following was stated:

> "Use of the Master Segregated Portfolio is restricted to Permitted Uses and shall always include the provision of an Indemnity Loan Guarantee insurance policy that is taken out by the Master Segregated Portfolio to cover the risk that a law firm goes into bankruptcy without repaying its loans. If the case is lost, a claim is made on the After The Event insurance.
>
> For cases where funding is provided for litigious cases, monies shall not be released to any law firm, or disbursements made on its behalf, until an After The Event insurance policy has been issued by an authorised insurer to the law firm to cover the costs of the case if it loses.
>
> Where funding is advanced for non-litigious matters, such as divorce disputes, which carry no third party liability to costs, then only the Indemnity Loan Guarantee insurance is taken out.

> At the conclusion of the litigation conducted by the respective law firm, the loan amount, including the insurance premiums plus the charges on the loan, are recovered from the losing side as provided under the Access to Justice Act of the United Kingdom."

Under the heading "Use of the Money", the following was stated:

> "Loans to law firms are only available to meet permitted costs related to Permitted Uses. These Permitted Uses shall, for the time being, be restricted to different types of litigation funding or dispute resolution such as divorce actions.
>
> The permitted costs referred to above will be paid from a practice disbursement account held by the Loan Manager and are paid directly by the law firm and reimbursed by the Master Segregated Portfolio or paid directly by the Master Segregated Portfolio and charged to the respective law firm's account."

Under the heading "Law Firm Security", the following was stated:

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

25.5 Mr Levey submitted that investors thought they were investing in straightforward cases and would get their money back at the end. The Supplemental Offering Memorandum document was also misleading because it made an inaccurate reference to an indemnity fund for solicitors as ensuring the solvency of law firms. Mr Levey believed that this document had been available on the Internet at the material time. He submitted that, had any due diligence been done, the Respondent would have asked for the basic prospectus. If the Respondent had asked to see such documents, it would have been clear to him that it was being represented to the investors that money was being provided to firms to fund cases. Statements like those in the January 2012 Supplemental Offering Memorandum highlighted above were also contained in documents which were available at the material time from Axiom's website and/or on the Internet. In summary, this documentation contained statements as to "100% allocation" of monies, with no management fee or "fixed charge to the fund" by the Investment Manager (or Strategic Adviser), that the Solicitor's Indemnity Fund "should ensure" the solvency of borrower firms, that monies were loaned for specific cases, of a particular variety, and that there would be two insurance policies, one being ATE insurance and the other insuring against the risk of the borrower firm going bankrupt.

Submissions for the Applicant in respect of Allegation 1.4

25.6 Mr Levey submitted that allegation 1.4 related to an application for funding to Axiom for the firm. It was undisputed that this occurred in the process of the shares being sold to C Ltd, and was an important document. It was an application to become an Axiom panel firm. It was submitted for the Applicant that the Respondent, as he admitted in interview, signed the application form for Axiom funding in blank (at a time when he was sole Director of the firm), by signing on the back of one of the pages before the rest of it had been completed. However, the Applicant had been unable to locate this signature page within the investigation papers. The Respondent did not see the form again before it was submitted to Axiom. It was not clear who filled out the detail. The Respondent allowed the application to be submitted. It was not suggested that the Respondent knew that the form contained false information, as he never bothered to look at it. The signed application form was dated 28 December 2011 and was completed either (and most likely) by Mr Q, the financial controller of the firm who was appointed by C Ltd, or by Mr Z. The form requested £12m in funding for an anticipated 2,183 cases. In interview, the Respondent said he suspected the form was completed by either of the individuals, and preferred Q. Mr Z stated in his interview that "As far as I know, [the Respondent] signed the back and it was completed by [Q]".

25.7 The application form was submitted to the Axiom Funds/the Investment Manager. The form contained material inaccuracies. In particular, on the second page, the total number of fee earners was stated as 12 currently and 8 a year ago, and the number of fee earners in the litigation department was stated as 8 currently and 6 a year ago. None of this was true, as the firm had no more than 4 employees at the material times. Further, the form referred to enclosing a certificate showing the firm's PII cover, but this cover had lapsed at the end of September 2011 and had not been renewed by the time of the application. The firm was in the Assigned Risk Pool and needed the funding in order to obtain insurance. In addition, a company called F Ltd was incorrectly identified as a salaried partner or consultant in the firm. This company was managed and owned by people with no connection at all to the firm, or the Respondent, as evidenced by a company search. The Respondent stated at his interview that he had no knowledge of F Ltd. Under the heading "Types of cases" "mis-selling 27.84%" and "UCCA 10.99%" had been added in hand writing which was curious as the Respondent said in his witness statement that he had been told the LFA would not fund financial irregularity cases. The Respondent admitted at interview that "information [on the application form] is not correct". The Respondent did not at any time review or verify the application form after signing it in blank. Nor was there any evidence that he asked or sought to do so (and it was to be inferred that he did not). Mr Levey submitted that it was this document which led to Axiom funding being approved. One would think that, where a £12 million lending facility was being provided, a solicitor would want to make some enquiries, particularly where the money was being provided to a dormant firm with no PII, and files upon which no legal work was being done. The approach the Respondent took was that one did not ask questions.

25.8 Mr Levey submitted that the professional misconduct arose as follows in respect of allegation 1.4: In signing the application form in blank and then taking no further interest in it, the Respondent failed to act with integrity in breach of Principle 2 and/or

acted recklessly in that he allowed the obvious risk to be run that another person would (whether knowingly or otherwise) include on an important document false or incorrect information that would mislead the Axiom Funds and the ultimate investors. Indeed, the Respondent's evidence was that the blank application form which he signed would have been completed by either Mr Q or Mr Z, probably the former as to whom: Mr Q, who was connected to Mr Schools, was not previously known to the Respondent, and had been appointed as financial controller of the firm by C Ltd. The Respondent made no inquiries to establish Mr Q's suitability for the role. There was a clear risk that Mr Q might, at least inadvertently, put inaccurate information on the application form; or worse, that deliberately false information would be put forward in order to secure access to a £12,000,000 funding line. The Respondent's recognition of this was reflected in his comment at interview that "I can only assume that they filled in the financial information in order to get the funding approved". Mr Z had a financial interest in the continued operation of the firm, to which he had referred (through his company, M Audit Services Ltd) financial irregularity cases for which he hoped he would be reimbursed. There was a clear risk that Mr Z might put inaccurate or over-optimistic information on the application form in order to procure funding. It was submitted that the Respondent's conduct also breached Principle 6 and at the very least, his conduct and failure to take any precautions before the application form was submitted, was extremely careless. It was also submitted that the Respondent by his conduct failed (at a time when he was sole Director) to run his business or carry out his role in the business effectively and in accordance with proper governance and sound risk management principles, in breach of Principle 8 of the SRA Principles 2011.

Submissions for the Applicant in respect of Allegation 1.5

25.9 Mr Levey submitted that on 20 February 2012, almost simultaneously with the sale of the shares to C Ltd, the Respondent signed the LFA. The Respondent said in his witness statement that he "*will have* read" the document. The Respondent confirmed at interview that he carried out no due diligence at all prior to signing the LFA. He said that he understood it was a platform agreement, but he had no idea what the Axiom Fund was, what its funding was, or what the investors understood was happening to the money. If he had looked at it properly he would have realised what the investors were being told; that the money was only to be used for specific purposes. Under the LFA, the Axiom Fund Master agreed to make available to the firm a revolving loan facility in an aggregate amount stated in the agreement to be £12,000,000 (clause 2.1 and the definition of "Total Commitments" in clause 1.1). The LFA contained various terms restricting and controlling the use of the monies provided under it, as the Respondent would have appreciated from reading the document. The evident purpose of these terms was to reduce the risk that sums provided by the Axiom Fund Master to the firm would not be repaid, and to protect the interests of the Axiom Fund Master (and of its ultimate investors in the Axiom Fund). The material provisions of the LFA were as follows:

- Monies advanced could only be used for two specific purposes (clause 2.2), which were:

(a) To fund "Eligible Legal Expenses", as defined in clause 1.1, which essentially were disbursements in respect of a claim evidenced by an invoice. "Legal Expenses" were defined as meaning:

> "any sum payable in respect of Counsel's fees, expert's fees, Court fees, arbitration fees, the Legal Expenses Insurance or referral fees in relation to the Claimant's Claim or its Proceedings".

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

- The LFA specifically prohibited monies provided under it from being used towards the firm's fees (clause 1.1, definition of "Legal Expenses") or in respect of any cases other than a funded case (as detailed in the relevant Utilisation Request) (clause 2.2(c)).

- Monies received from Axiom were effectively required to be paid into a client account, since their purpose was to fund individual client's claims, not the firm generally (clauses 4.2(a)(iii) and 4.4, and the definition of "Client Account" in clause 1.1).

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

  (a) Various documents concerning the firm's constitution and its ability to enter into the Agreement.

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

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

- It was a further condition precedent for each provision of funding that the firm provided the Investment Manager with details of the relevant Legal Expenses for which the money was requested and all related invoices, and that the Investment Manager confirm that it was satisfied that the Legal Expenses were Eligible Legal Expenses (clause 3.2 and Part B of Schedule 1). Mr Levey submitted that the firm could not just use the money as a £12m overdraft facility to fund the firm. It allowed specific sums for specific purposes for specific cases.

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

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

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

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

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

Mr Levey submitted that it could not have been clearer that all the above documents even including a CFA had to be in place. The firm was required to comply with each document for each case for each draw down. There was no evidence that the LFA was complied with in this regard.

25.10 It was submitted that the Utilisation Request for each drawdown had to satisfy certain requirements (clause 4), including that:

- It should specify the client account to which the proceeds were to be credited.
- In the case of Eligible Legal Expenses, copies of the relevant invoices should be attached.
- The firm was required to take out what was described as "Financial Guarantee Insurance" to cover amounts outstanding under the Agreement and procure the inclusion of the Axiom Fund Master as co-insured (clauses 5 and 12.3).

25.11 The Facility was to be repaid in full on 20 February 2013 (clause 6, coupled with the definition of "Termination Date" in clause 1.1). Clause 1.1 defined the Facilitation Fee as 50% of the amount of each Loan. The Facilitation Fee was also to be repaid in full on 20 February 2013 (clauses 1.1 and 10.2). In addition, interest (on monies received and on the Facilitation Fee) was charged at 15% in the first 12 months, and 1.5% per month thereafter (clause 10.1). Mr Levey submitted that the Axiom offer documents said that it only funded cases if they would be complete in a short time, and the firm had to repay the whole loan within a year, even though it was described as a "basket case" when the Respondent entered the Agreement. The Respondent confirmed in interview that he was aware that the Facilitation Fee would be deducted at source, and was charged at the rate of 50% of the amount loaned. Mr Levey submitted that every time £1,000 was drawn down from Axiom the firm incurred a debt of £1,500 because of its obligation to pay the Facilitation Fee. It was almost impossible to see how the arrangement could work, and how the fund could be repaid within the year. The firm would have to win every case just to repay the Facilitation Fee, let alone the Loan amount.

25.12 By clause 11.1, the firm represented and warranted to the Lender that the obligations expressed to be assumed by it in the Finance Documents were legal, valid, binding and enforceable obligations. The Finance Documents were defined (clause 1.1) as including the LFA itself. The LFA contained an entire agreement clause, which made it clear that the written terms of the LFA superseded any prior arrangement, agreement or representation (clause 22). Mr Levey submitted that this was not a case in which the Respondent asserted that assurances had been given that the Fund did not mind if the conditions were not met as had occurred in other Axiom cases. The Respondent said that he allowed Mr X, Mr Q and the CEO to get on with it.

25.13 Mr Levey submitted that clause 2.2 of the agreement provided that

> "Purpose
>
> (a) The Panel Firm shall apply the proceeds of each Loan towards payment of the Eligible Legal Expenses in relation to which the Loan was requested.
>
> (b) The Panel Firm may apply the proceeds of a Loan to fund the insurance premium relating to the Financial Guarantee Insurance.
>
> (c) For the avoidance of doubt, no amount borrowed under this Agreement may be used to fund the claims, proceedings, dispute resolution or cases of any other client of the Panel Firm, other than a Claimant in respect of a Claim or the Proceedings relating to that Claim (as detailed in the relevant Utilisation Request)."

Eligible legal expenses were defined, as were "Legal Expenses", and the definition was very restrictive:

> ""Legal Expenses" means any sum payable in respect of Counsel's fees, expert's fees, Court fees, arbitration fees, the Legal Expenses Insurance or referral fees in relation to the Claimant's Claim or its Proceedings. Such expenses may include VAT where applicable, unless the Claimant is registered for VAT in which case the Claimant will be liable to pay the VAT element of such expenses. Such expenses shall not include any costs payable in respect of the Panel Firm's fees or any costs or expenses payable to one or more Opponents or to another party to the Proceedings;"

25.14 Mr Levey submitted that the professional misconduct arose in respect of allegation 1.5 as follows: The Respondent admitted that he carried out no due diligence into Axiom prior to signing the LFA. When he was asked to explain why he had adopted this approach, the following exchange occurred:

> "GS Isn't it similar to a busker asking somebody whose (sic) just put money in his cup where have you got that money from? Signey Law is a basket case. There's going to [be] clients who weren't going to be serviced who were going to perhaps not lose money because they'd not put up any more, but lose the prospect of recovery and there was [Z] who'd put up money to try and get to this stage. It would be perverse of me to start questioning Axiom and their, where they got the funds from. On an agreement which it seemed that the (sic) were putting up costs or putting up funding and getting repaid out when the cases were successful. It seemed to be very user friendly
>
> IO: OK
>
> IO: Did you not check that they were legitimate or, you know, who they were, who was behind the fund, whether there was anything
>
> R: The money was going to come via a bank

IO: Right

R: Not cash that's coming in, its coming via a bank so I mean what do you need to do, isn't it the paying bank that's supposed to check where the funds are coming from

IO: Well you've entered into a business relationship with somebody and you've got a liability of several million pounds to that fund, you know, you should, any business relationship with anybody you enter into you would may be carry out some checks prior to doing that to make sure that you were satisfied that it's somebody you'd want to deal with and want to be associated with

R: Again, I wasn't really going to be associated in my own mind. All I was doing was assisting those [C Ltd] who were going to carry on with the business"

With even a modest degree of due diligence regarding the Axiom Funds, the appointed Investment Manager and the LFA, it would have been readily apparent to the Respondent that the transaction was one which he could not properly enter into, at any rate without substantial further investigation and coherent explanation. In particular the LFA did not propose loan advances which could be used freely for practice expenses, in the manner of an unrestricted bank loan. Its terms clearly stated the restrictions on such use, and the limited permitted uses of the monies. The Respondent should have taken steps to investigate whether this was a credible and realistic basis for the firm to commit to the terms of the LFA given, amongst other things, the onerous Facilitation Fee and interest charges. Alternatively, he should have declined to sign the LFA. Had the Respondent conducted a reasonable measure of due diligence, he would likely have come across, or been provided with, the January 2012 Supplemental Offering Memorandum, or the other Axiom-related documentation, that were available from Axiom's website and/or over the Internet. In that event, the message would have been reinforced that Axiom monies were not intended to be provided for general practice funding. It would have been apparent to the Respondent that investors in the Axiom Funds might well not have been informed about the 50% Facilitation Fee which the Investment Manager sought to levy, as this was not mentioned in the documents, and was inconsistent with those documents. The Respondent should have known that the statement in the January 2012 Supplemental Offering Memorandum representing that "All solicitors ... must be members of the respective solicitors' indemnity fund that helps to ensure their solvency" was not a correct statement. By 1 September 2000, the Solicitors Indemnity Fund had ceased to indemnify new claims, save for certain run-off claims made against practices that ceased at least six years earlier, having been replaced by other arrangements, and in any event the Solicitors Indemnity Fund (and the arrangements that replaced it) did not help to ensure the solvency of solicitors' firms. The Respondent ought to have known that no such arrangements (even if possible) had been put in place by the firm to secure advance client consent to the arrangement mentioned in the January 2012 Supplemental Offering Memorandum that "In the unlikely event that a solicitor's practice does go bankrupt, the cases and the loan facility could simply be transferred to another solicitor approved by the Investment Manager who would then take over conduct of the case".

25.15 It was also submitted that, in signing the LFA when sole Director of the firm, without having made any or any adequate attempts at due diligence, the Respondent failed to act with integrity in breach of Principle 2 and/or acted recklessly in that he ran the obvious risks that the LFA, or the manner in which it was intended to be operated, was improper and might wrongfully prejudice the ultimate investors in the Axiom Funds. His attitude to due diligence expressed at his interview, in particular the comparison with a "busker" and the purported reliance on the mere fact that monies would be received by bank transfer, was wholly inadequate, in particular for a solicitor of many years' experience. This was not a well-known high street lender but an offshore fund, with which a solicitor would not regularly become involved, and so the solicitor needed to ensure they were not becoming involved in something dubious. Participation in a dubious transaction could also amount to a breach of Principle 6. Thus a solicitor who, through incompetence, failed to appreciate that a transaction in which they participated was dubious, was liable for a failure to maintain public confidence as set out in Bryant v Law Society [2009] 1 WLR 163. Mr Levey submitted that it was concerning for an offshore fund, on the strength of a four page application form, without meeting the Respondent, and where he had never met anyone involved in the Axiom Fund, to provide funding up to £12m. The fact that Axiom was prepared to lend might not be obviously dubious, but it required a rudimentary check of information which was publicly available on the Internet about Axiom. Mr Levey submitted that there would have been a breach, even if the money had been drawn down by reference to litigation cases, and had been repaid in full; a solicitor should undertake basic checks. The Tribunal queried whether a reasonable solicitor, who understood the limited purposes of the funding provided for in the LFA, and who had checked the publically available documentation, would not have found that the offer documents absolutely fitted with the LFA. Mr Levey responded that checking would reinforce what was clear from the LFA; that this was not general practice funding, but disbursement funding for specified cases. Not all offshore funders were fraudulent, but a solicitor should undertake basic due diligence to work out if the funder was legitimate. The LFA had been entered into in a hurry in order to pay the PII. It was also alleged that the Respondent was in breach of Principle 6, and at a time when he was sole Director of the firm of Principle 8. At the very least, the Respondent's conduct and failure to undertake any due diligence before signing the LFA was extremely careless.

Submissions for the Applicant in respect of Allegation 1.6

25.16 Mr Levey submitted that allegation 1.6 related to the use of the money drawn down from Axiom, and that the Respondent effectively ceded control of it to third parties. He allowed the firm to receive and use money from an investment fund improperly. He carried out no due diligence on the fund, and took no steps to ensure that the firm complied with the funding agreement; the Respondent was careless regarding the LFA. Mr Levey submitted that in the case of SRA v Wingate and Evans [2016] EWHC 3455 (Admin) Mr Justice Holden had said that the agreement was crystal clear that it required monies to be used for very specific purposes:

> "The language of the written Funding Agreement was, therefore, crystal clear, and was reinforced by a number of other provisions of it to which I need not specifically refer, that the purpose of the loan towards which the proceeds must be used exclusively was funding legal expenses of individual claims…"

Mr Levey informed the Tribunal that the version of the LFA in Wingate and Evans was not identical to the one in this case, but the differences favoured the Applicant's case and not the Respondent's. Mr Paul of Counsel had undertaken a very detailed comparison of the two versions of the agreement. The definition of "Legal Expenses" in the Wingate and Evans version was significantly broader; it allowed the firm to do other legal work relevant to a legal firm and not just litigation. What the Tribunal had to consider was narrower; just litigation funding.

25.17 Mr Levey submitted that the firm used, or substantially used, the monies received for (amongst other things) the following purposes, none of which were permitted under the LFA:

- A substantial part of the Axiom funding was disbursed on general office expenditure and overheads, including wages, rent and other ordinary business expenses associated with a solicitor's firm.

- On 23 May 2012, £300,000 was transferred by the firm to an account at the National Bank of New Zealand in the name of Tangerine: the payment request was signed by Mr Q. Mr X purported to explain in an email dated 14 September 2012 to the CEO that these monies related to some kind of opportunity for the firm to establish links with New Zealand law firms. As to there being no mention in e-mail traffic of the £300,000 payment, Mr Levey submitted that the only explanation ever put forward for it was that it was allowed by the LFA, which it plainly was not, and the Respondent accepted that it was an improper payment.

- On 9 July 2012, 7 August 2012 and 14 September 2012, cheques to Mr X cleared the firm's office account in the respective sums of £31,912.46, £14,022.51 and £17,588.25. All three payments were in satisfaction of purported expense claims submitted by Mr X. Virtually none of the purported expense claims (that is apart from occasional train trips to a city where, in any event, Mr X resided) had any obvious or possible connection with the firm. The purported expense claims include matters such as aeroplane, hotel and restaurant expenses for Mr X within the UK and worldwide (including Singapore, Frankfurt, London, Thailand, Hong Kong, Australia and Canada), a telephone landline at Mr X's home address and for two mobile accounts, purchase of office equipment and stationery, car hire for 22 days in Mallorca for the period 12 August to 3 September 2012, including for the rental of two child seats, and a KLM flight from Manchester to Toronto on 3 July 2012 for a brother of Tim Schools. Mr Levey submitted that this was all paid from Axiom money, and it was not a proper use of litigation funding money, and the Respondent did not suggest the contrary.

- On 3 August 2012, £360,000 was paid to M Ltd. The payment request was signed by Mr Q. The directors of M Ltd were Mr Schools and his wife, and she was the 99% owner of the company. There was no evidence that any of the services listed on the invoice had been rendered, and it was to be inferred that they had not. Even if they had been provided, this was not what the LFA was meant to fund.

25.18 Mr Levey submitted that each of these payments had been designed to fund the individual recipients' lifestyle. No money was ever repaid to the firm. All the payments described above were evidenced in the firm's bank statements. The payments were made for wholly improper purposes, and to keep the facade of the law firm going. The facts in the FI Report had not been challenged; the firm had no source of income save for the Axiom money. In terms of whether funding was generated by any of the case work being undertaken, Mr Levey clarified for the Tribunal that, in relation to the financial irregularity cases, apart from in two matters no claims were ever issued. All the healthcare cases subsequently received were undertaken on CFAs. Some employment cases were run by a solicitor, Mr A, which generated £21,379.00. There was also a record that £1,000 had been generated from an employment case which was the only one not run on a CFA, but Mr Levey submitted that this was a drop in the ocean. In interview, the Respondent was asked about the payment of £1.25 million to a company, S Ltd, which he had prevented from going through: "Would you agree that those funds could only be paid out using the Axiom funds?" He answered "There was no other money in."

25.19 Mr Levey submitted, in respect of the abortive payment to the company S Ltd, that it was initiated on or around 20 August 2012. Although this payment was not made (and was relied on by the Respondent as evidence that in this respect he acted appropriately), it formed part of the relevant background, and was evidence of the improper uses to which those with control over the firm's finances attempted to put the Axiom funds. It was notable that: the payment to S Ltd was supported by an invoice for £2m for payment to a Marshall Islands company, payable via a Swiss bank, for services described only as "PROFESSIONAL CONSULTANCY SERVICES – from 1st January 2012 to 1st August 2012"; the payment instruction was requested by Mr Q; the payment was blocked by the bank and precipitated a visit to the firm's office by the police. On 21 September 2012, the police consented to the payment being made, but ultimately the payment was not made. S Ltd was an entity (alleged by Axiom's Receivers) to have been controlled by Mr Schools and/or implicated in the alleged fraud on the fund.

25.20 Mr Levey drew the attention of the Tribunal to what the Respondent had said in an interview about his relationship to the improper payments:

> "IO: OK, but in terms then of any payments that were, you know, processed by [Q], did he have to come to you for authority or did he have access to make (sic) sign cheques and make online payments?
>
> R: He had access to make online payments
>
> IO: OK, did you review those payments?
>
> R: I kept an eye on them
>
> IO: OK
>
> R: 'cos I have online access here so I would check
>
> IO: And did any of the payments ever give you any cause for concern?

R: When a £1 million came in, yes it did. I've never seen so much money

IO: Is this at the beginning of the draw down?

R: Yes

IO: OK, so what did you do then when that £1 million came in?

R: Well I didn't do anything. I didn't switch it around, I just left it there

IO: But did you ask what's this for

R: No, I was expecting monies to come in, but I didn't know how much would be coming in

IO: And this is from the fund

R: This would be from the fund

IO: Yeah and did you speak to anyone about that money coming in then at the time

R: There were certainly in the early stages, yes, I would be in touch with [Q] presumably he didn't have direct access at that stage and if he wanted me to make a payment, I would make it online."

Mr Levey submitted that it did not matter if the Respondent specifically knew about the £360,000 payment, and the money going to New Zealand; if he did not know he ought to have done. Moreover, despite his access to the office account of the firm at all material times, there was no evidence that the Respondent was aware of or made any inquiries regarding the £300,000 payment to Tangerine in the period while he remained sole Director of the firm, and it was to be inferred that he did not. The Respondent was asked at interview to explain why the £300,000 was paid. He accepted that he could not. Despite his access to the office account of the firm at all material times, the Respondent claimed not to have become aware of the various purported expense claims paid to Mr X until informed of them by the Applicant's investigator in February 2014. His written responses to various supplementary questions assert that he had no knowledge of any entitlement of Mr X to claim expenses, and that "this expenditure was not brought to my attention" while he was at the firm. Despite his access to the office account of the firm at all material times, the Respondent claimed not to have become aware of the £360,000 payment to M Ltd until informed of it by the investigator in December 2012.

25.21 Mr Levey submitted that the professional misconduct in respect of allegation 1.6 arose as follows: The acceptance and use of the Axiom monies by the firm gave rise to a breach of Principles 2 and 6 on the part of the Respondent, for the following reasons. First, the Respondent was reckless and/or careless in his failure to undertake any due diligence on Axiom prior to the firm applying for, receiving and/or expending the funds. Second, although sole Director at all material times up to about 23 October 2012, the Respondent was reckless and/or careless as to whether the firm

had complied with the terms of the LFA (and, just as importantly, if not, why not, and why the Investment Managers had purportedly accepted such a scenario). The Respondent had no idea if the terms had been complied with. The terms of the LFA were, amongst other things, intended to protect the interests of the Axiom Fund Master and of the investors in the Axiom Fund (the ultimate investors in the Axiom Fund Master). In particular: the LFA required the firm to provide the Investment Manager with documents and other information as a condition of drawing down. The Respondent had no idea whether the firm had complied with these requirements, as he accepted in his interview. Self-evidently, he did not know why (assuming this were the case) such requirements were not complied with, or the basis for any purported acceptance of non-compliance by the Investment Managers. The firm had not paid the monies received into a client account. The Respondent was aware from his access to the firm's bank accounts that the Axiom funds were received into and disbursed through the office account. Third, the Respondent was reckless or careless as to the fact that the LFA, pursuant to which the monies were purportedly advanced, did not reflect the purpose for which the firm intended to use and/or in fact used the monies (as evident, amongst other things, from payments out of the office account), contrary to stipulations in the LFA intended to protect the interests of the Axiom Funds and of the ultimate investors. Further, as sole Director and Principal, he should have queried some of the larger payments out of the office account to satisfy himself they were proper and appropriate, and had he done so he would have realised that the payments to Tangerine in New Zealand, to M Ltd and to Mr X for purported expenses were not permitted under the LFA, and were not legitimate expenses for the firm to be funding in any event. The Respondent could not therefore properly cause or permit the firm to accept and use the monies received without carrying out inquiries that reasonably satisfied him that the Investment Managers (whose principal was interested in the £300,000 payment to Tangerine and the £360,000 payment to M Ltd) were acting within their actual authority and in good faith in the best interests of the Axiom Fund Master, and that the Axiom Funds and their investors were not being defrauded. He failed to make any, or sufficient, inquiries in this regard (such as disclosing the material facts to the board of directors of the Axiom Funds, and/or obtaining information or confirmation from the Axiom Funds that reasonably dispelled any suspicions concerning the Investment Managers). Fourth, the Respondent thereby recklessly or carelessly facilitated the misuse of the funds received, by failing to ensure they were applied only towards "Eligible Legal Expenses", as defined in and required by the LFA; and recklessly or carelessly risked the firm being a party to transactions in fraud of the Axiom Funds and/or of the ultimate investors, or which involved other serious breach of duty by the Investment Managers towards them (or one of them). Fifth, in all the circumstances, as the Respondent should have known and appreciated, the funding was dubious, and should not have been accepted or used without further inquiry.

25.22 Mr Levey submitted that the Respondent therefore breached Principle 2 and/or acted recklessly; and breached Principle 6. The allegation that the Respondent breached Principle 6 incorporated (amongst other things) the criticisms of his conduct detailed above which asserted that he failed to exercise the degree of competence and care that the public would expect of a solicitor in comparable circumstances. In particular, no reasonably competent and careful solicitor would have signed the LFA without first carefully reading it, and taking such advice and undertaking such due diligence as he reasonably considered necessary. Having taken those steps such a solicitor could not

have believed that it permitted the Axiom monies to be used for general practice funding, or would have failed to ensure that the intended and actual use of the money was in accordance with the LFA. Such a solicitor who read the LFA, and had access to the office account statements, would not have failed to make further inquiries to assure himself of the propriety of continued expenditure of the monies, and of the Investment Managers.

25.23 The Respondent admitted all aspects of allegations 1.4, 1.5 and 1.6.

25.24 The Tribunal had regard to the evidence and to the submissions for the Applicant and the admissions of the Respondent.

25.25 In respect of allegation 1.4, the Tribunal had the evidence of the form upon the basis of which the Respondent had obtained recognition for the firm from the Applicant. The Authorised Officer noted on 30 June 2010 that the Respondent had not practised from July 2006, and had no evidence of experience in a managerial role. This showed the very modest level at which the firm began operating, and that it was in effect a dormant practice. On that evidence alone the Tribunal could find that the information with which the application for funding from Axiom was populated was incorrect in numerous different ways. In interview, the Respondent stated that it was important that funding was drawn down as quickly as possible in order that PII could be brought into effect. Later in the same interview he stated "the information was not on that application form when I signed it, that information is not correct." He was referring to information about numbers of staff. The Respondent went on to indicate whom he suspected had completed the form. He also indicated that the information about how long the firm had been trading was wrong. It was clear from the contents of the interview that the Respondent had not reviewed the completed form, when he informed his questioner that he would have to ask the individuals in question whether they had filled in the information knowing that it was incorrect. The Respondent gave no rational explanation for what he had done. The Tribunal noted that the form submitted in evidence did not have a signature page, but the Respondent admitted that he had signed it, and had not challenged that assertion during the hearing. The Tribunal found the facts of allegation 1.4 proved. It also found proved on the evidence to the required standard that in signing a blank application, and not subsequently reviewing the information completed on it, and by his attitude in so doing the Respondent had been in breach of Principles 2, 6 and 8 and that he had been reckless; indeed all these breaches had been admitted.

25.26 In respect of allegation 1.5, the Tribunal found as a fact that the Respondent signed the LFA as alleged without making any or any adequate enquiries as to its propriety, or that of the investment fund or of the investment managers. The Tribunal had then to consider whether in so doing the Respondent had breached Principles 2, 6 and 8 and acted recklessly. There were certain facts in this matter which affected the enquiries, if any, which the Respondent should have made. The Axiom Fund was not a high street name; it was located offshore; the amount of the proposed advance was very large at £12 million; before agreeing to advance those monies Axiom required very little information from the firm – the application form, the subject of allegation 1.4, consisted of only four pages. All of these facts should have alerted a solicitor that there was something dubious about what was being proposed, and so he should have gone further and made additional enquiries about the investment fund and the

investment manager. Instead, when asked to explain why he did not carry out any due diligence on Axiom at the time he signed the LFA, he compared the situation to a busker receiving money from a donor, and he referred to the firm as a "basket case" which threw into even higher relief the highly suspicious nature of the loan proposal, and the disproportionate amount of the loan being offered. It was obvious that he should have asked himself why Axiom was prepared to lend £12 million to a "basket case". The Tribunal agreed with the points made by Mr Levey in his skeleton; the LFA imposed obligations in respect of interest and fees that the firm could not possibly have anticipated being able to repay within the 12-month stipulated period. The Respondent's response, when queried as to why he did not undertake any due diligence, was effectively that the firm was desperate for funds, and he considered that, as the monies were to be received by bank transfer, no due diligence was necessary. The Respondent took the view that he was just signing on behalf of C Ltd, and so he had no responsibility to carry out due diligence. The Tribunal agreed with the Applicant that, given the particular circumstances of this case, including the astonishing nature of what Axiom was apparently offering, and that the Respondent knew nothing about the fund or the people behind it, the Respondent should have undertaken due diligence. The Respondent believed that the funds being provided were for the purposes of the practice generally, and not just for disbursements incurred in identified and approved claims. He stated in his witness statement: "I believed [Q] when he advised me that the Axiom funding could be applied in the payment of general office expenses. I accepted his explanation with regard to this..." He made similar statements in his Response to the Rule 5 Statement:

> "The Respondent accepts that he can not (sic) rely on the Statements of others that such funds were payable into Office Account and were available and could be utilised in the payment of general office expenses. This is what the Respondent believed until the evidence in the FIR was produced to him. This was also believed to be the view of the firm's senior Management, and an experienced Accountant [JM]."

and

> "at the time of payment the Respondent believed (however wrong), that Axiom funds could be applied in the payment of the firm's general office expenses..."

The Tribunal found that this belief should have set even greater alarm bells ringing, because such a loan constituted a greater risk to the investors; lending money for the maintenance of a "basket case" firm gave a minimal prospect of recovering the loan. The Respondent himself said that the money was needed urgently to pay the PII for a firm which he knew was in the Assigned Risks Pool. Incidentally, the Tribunal noted that the application to Axiom for funding purported to attach the firm's PII certificate, which could not possibly exist. The Tribunal found proved on the evidence to the required standard that when the Respondent signed the LFA, which he admitted he had read, he acted without integrity and acted recklessly because the Respondent shut his eyes to the potential for things to go wrong, and to the potential consequences, and this was evidenced by his description of his attitude at the time. The Tribunal found the allegation proved to required standard on the evidence because of the particular circumstances of this case. The Tribunal also found proved on the evidence to the

required standard that the Respondent's actions in signing the LFA in the circumstances in which he did so, would adversely affect the trust the public placed in him and the profession, in breach of Principle 6, and demonstrated that he was not running his business effectively, employing sound risk management principles, indeed he did not employ any risk management principles in entering into the LFA, and was therefore in breach of Principle 8. The Tribunal found allegation 1.5 proved on the evidence to the required standard; indeed all aspects of it were admitted.

25.27 In respect of allegation 1.6, the Tribunal had regard to the evidence, the submissions for the Applicant and the admissions of the Respondent. The facts were not disputed; the Respondent did cause or permit the firm to accept and use monies received between the dates specified in the allegation in the gross amount of over £4.7 million (taking no account of the firm's liability to repay the 50% Facilitation Fee, interest or the supposed insurance premia.) The Tribunal found proved on the evidence to the required standard that the Respondent was reckless or careless in his failure to undertake due diligence in respect of Axiom as alleged. In terms of the allegation of recklessness and or carelessness as to whether the firm had complied with the terms of the LFA, the Tribunal found proved that the Respondent had left such matters to others. As Mr Levey submitted, it was unclear whether any of the funds drawn down pursuant to the LFA were used for permitted purposes but, as shown by the precise examples given to the Tribunal, it was clear that a large part, if not all, of the funds were used for purposes expressly prohibited by the LFA. Particularly graphic examples were the payment of £300,000 authorised by Mr Q to a New Zealand account held by Tangerine; and the £360,000 paid to M Ltd, not to mention the payments to Mr X for purported expense claims that could bear no connection to any work undertaken for the firm, let alone constitute Eligible Legal Expenses pursuant to the LFA. The Respondent explained in interview that Mr Q had authority and access to make online payments, and asserted that he, the Respondent, kept an eye on them through his own online access, and so he knew or should have known of the inappropriate payments being made. The Tribunal also found proved that the Respondent was reckless as alleged, or careless, as to the fact that the LFA did not reflect the purpose for which the firm intended to use and/or in fact used the monies, and he recklessly or carelessly facilitated the misuse of the funds received by failing to ensure they were applied only towards Eligible Legal Expenses as defined in the LFA, and so risked the firm being a party to transactions in fraud of the investment fund and/or the ultimate investors or which involved other serious breach of duty by the investment managers towards them. In respect of whether the Respondent should have known and appreciated that the transactions pursuant to which the monies received were dubious, and that the money should not have been accepted or used, (allegation 1.6 (e)), the Tribunal did not consider that this aspect of the allegation added anything, and made no finding in respect of it. The Tribunal found allegations 1.6 (a) to (d) proved, and found proved on the evidence to the required standard that thereby the Respondent acted in breach of Principle 2, Principle 6 and behaved recklessly; indeed every aspect of this allegation was admitted.

26. **Allegation 1.7 - The Respondent (when sole Director and Principal of Signey) failed to ensure that the aforesaid £4,778,803 (or any part thereof) was paid into client account, alternatively failed to ensure an office account was opened whose sole purpose was to hold the monies pending their use for an authorised purpose, contrary to Principles 2, 6, 8 and 10 of the SRA Principles 2011 and to rules**

1.2(a), 1.2(b), 6 and 14.1 of the SRA Accounts Rules 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.

26.1 For the Applicant, Mr Levey submitted that this was a rather separate, and not the most serious, allegation; it was a slightly technical point. By the terms of the LFA, monies received from Axiom were effectively required to be paid into a client account, since their purpose was to fund individual client's claims, not the firm generally (clauses 4.2(a)(iii) and 4.4, and the definition of "Client Account" in clause 1.1). It was odd that the agreement required the monies be paid into client account, but they probably should have been in any event. The Applicant's primary case was that, in the circumstances described above, the money should not have been received at all. However, having improperly received the monies, the Respondent should have ensured that the firm paid them into a client account, where they should have been held unless and until they were disbursed for a permitted purpose, thus giving effect to the intent of the Axiom scheme, that law firms would not have to fund Eligible Legal Expenses themselves. This was necessary because the monies were provided to fund Eligible Legal Expenses in respect of each approved claim, and further or alternatively because they were subject to a Quistclose resulting trust (Barclays Bank v Quistclose International Limited [1970] AC 567) and should not therefore have been in office account. The monies were, therefore, client monies within the meaning of Rule 12 (in particular 12.2(c)) of the SRA Accounts Rules 2011). Alternatively, the monies should have been paid into an office bank account whose sole purpose was to receive the monies, where they would not be mixed with other office monies (and/or consequently utilised for general running expenses or dissipated by the account being in overdraft), and proper records should have been kept to ensure that the funding was expended for an authorised purpose. The Respondent, although sole Director and Principal in the period to about 23 October 2012, failed to do any of the above. It was submitted that in allowing the monies to be held in, and disbursed from, the firm's office account as he did, the Respondent acted in breach of rules 1.2(a), 1.2(b), 14.1, 17 and 20 of the SRA Accounts Rules 2011. It was also alleged that he failed to act with integrity, in breach of Principle 2 and/or acted with reckless disregard for the risks to which the Axiom Funds and the ultimate investors were exposed as a result of his misconduct. Breach of Principles 6, 8 and 10 was also alleged.

26.2 The Respondent admitted allegation 1.7.

26.3 The Tribunal had regard to the evidence, the submissions for the Applicant and the admissions of the Respondent. The firm had two office accounts, one each with RBS and HSBC. The Tribunal found as a fact that, on 2 August 2012, two payments were received into the RBS office account No 1 from Synergy (that is Axiom) in the amounts of £1,489,800.00 and £1,203,300.00. This directly contradicted the relevant provisions of the LFA and destroyed the protection which it was intended to give investors by the money being held in a client account. At the very least the Respondent should have put the money into a designated office account, although that would not have satisfied the requirements of the LFA. The Tribunal found proved on the evidence to the required standard that the Respondent had breached the SRA Accounts Rules particularised in allegation 1.7. The Tribunal also determined that in placing these large amounts of money in an office account, in breach of the LFA, the Respondent had acted without integrity (breach of Principle 2) and had

displayed recklessness regarding the safety of the money. Such actions also breached Principles 6, 8 and 10 (the duty to protect client money and assets). The Tribunal therefore found allegation 1.7 proved on the evidence to the required standard; indeed it was admitted.

27. **Allegation 1.8 - The Respondent abrogated his responsibilities as sole Director and Principal of Signey in the period from about 20 February 2012 to about 23 October 2012, and thereby breached Principles 2, 6 and 8 of the SRA Principles 2011, and failed to achieve outcomes 7.1, 7.2, 7.3, 7.4 and 7.8 in the SRA Code of Conduct 2011. Recklessness is alleged, although this is not a requirement for the allegation to be proved.**

27.1 For the Applicant, Mr Levey submitted that the Respondent had no overall control of the business of which he was the only director. He had sold the business to Mr X, remained sole Director and Principal, but let someone else take over its direction. Mr Levey submitted that the Respondent was told in June 2012 that Mr U had left. Still the Respondent did nothing; he continued to participate in a law firm which he knew he had sold to C Ltd, and to Mr U whom he said he had never met, and that Mr U had gone. Mr Levey submitted that a series of extremely dubious payments were made by the firm, a number of which were made after the Respondent was told that Mr U had left. The Respondent failed, in the period from about December 2011 to about 23 October 2012 to exercise (or attempt to exercise) any meaningful control over the firm's activities, and in effect totally abrogated his responsibilities as Director and Principal. Mr Levey submitted that the particulars of the Respondent's relevant failings were as follows: first the Respondent's own statements evidenced a manifest failure to discharge his responsibilities as sole Director and Principal. At interview, he described his role, following the C Ltd sale, as "I was there as a figurehead". He added that matters of recruitment and engagement of consultants were "really none of my business because I was there as I say holding the coats". He explained that he only attended the firm's offices "possibly half a dozen times" in the period February to October 2012, and most of those appeared to have been in the September to October 2012 period. He claimed to have expected that Mr U was to be a co-Director, but he failed to ensure that this putative appointment was formalised, and no "Directors Meetings" with Mr U ever occurred. Nor was there any evidence that, post 20 February 2012, the Respondent attempted to liaise or meet with Mr U in any way, and it is to be inferred that he did not. When asked at interview if he considered he had "effectively managed the business", the Respondent replied:

> "Post [C Ltd], I didn't recognise that as my responsibility completely until the very end really 'cos I always thought there were other people who were supposed to be dealing with it".

In an email of 12 September 2012, the Respondent referred to his "caretaker role", and stated "I have been excluded from all decision making since 'the sale'" (a reference to the C Ltd transaction). In his 26 June 2015 response to the 18 May 2015 EWW letter, the Respondent acknowledged:

> "I should have exercised more control over the operation of the company and … I have been naïve"

He added:

> "With the benefit of hindsight, I acknowledge that as the sole director, I should have resigned immediately following the sale of my shares and now wish that I had."

He concluded:

> "I accept that I have been too trusting in continuing to accept the role of the sole director of the company without exercising the detailed managerial control that was my obligation."

27.2 Mr Levey also relied on the fact that the Respondent signed the Axiom application form in blank, and took no steps to ensure the eventual contents of the document were fair and accurate. The Respondent signed the LFA on behalf of the firm without conducting any or any adequate due diligence as to the propriety of the Agreement, or of the Axiom Funds, or of the Investment Managers appointed by it. The Respondent failed to ensure, or to take any or any adequate steps to satisfy himself regarding compliance by the firm with the LFA, in particular as regards the use of Axiom monies (which the Respondent was on notice were being disbursed for purposes that were not "Eligible Legal Expenses"), the provision of documents as required by Schedule 1 of the LFA (about which the Respondent had no idea and made no inquiries), and the securing of relevant insurance in accordance with the LFA (about which, again, the Respondent had little or no idea, and made no inquiries or confirmatory checks.) The Respondent had no involvement in the firm's Utilisation Requests to the Investment Managers to draw down Axiom funds, and thus took no steps to check their accuracy or the realism of borrowing substantial sums on the specific bases put forward from time to time. A reasonably careful solicitor in the position of sole Director and Principal of a firm reliant on such funding would take steps to monitor that that funding was being properly obtained, and was legitimate to receive and use.

27.3 Mr Levey also relied on the fact that although he had access to the office account, and claimed to have "kept an eye" on that account, the Respondent failed to monitor the operation of that account adequately. Thus, he failed to prevent or put a stop to use of the Axiom monies for general practice expenses, contrary to the LFA. Further, he failed to notice or make inquiries about substantial, obviously improper, payments (that is, the £300,000 to Tangerine in New Zealand; the £360,000 to M Ltd; and the various reimbursements of purported expenses to Mr X), and thereby failed to prevent such improper payments. The Respondent neither saw nor sought management accounts for the firm until October 2012, before which the sole accounting information available to him was the bank statements.

27.4 Mr Levey relied on the fact that the Respondent ceded control of, or involvement in, all recruitment decisions to others, as he accepted in his interview. In particular, the Respondent did not participate in any meaningful way in the recruitment of Mr Q as financial controller of the firm, the recruitment of the CEO, who acted as such from early September 2012 or so, or the recruitment of Mr H, the barrister, or the numerous solicitors who joined the firm during 2012. The Respondent confirmed that he did not "hire" the CEO, nor ask him to serve as the designated COFA. The Respondent did

not even know who had appointed Mr Q. In consequence, the financial management of the firm was left in the hands of people the Respondent had not vetted or appointed, and whom he did not know, who had themselves been appointed by people the Respondent could not identify and/or had not vetted or met. No reasonably careful solicitor would conduct themselves in this manner.

27.5 Furthermore the Respondent took no steps to investigate or satisfy himself as regards the quality of the cases which the firm was instructed on, and which were the basis (in whole or in part) upon which Axiom funding was applied for and extended. By way of example: a fundamental element of the firm's business model was to proceed with the financial irregularity cases. The firm received Axiom funding to the value of £1,203,300 (excluding Facilitation Fee) on 2 August 2012 for 900 financial irregularity cases. At the instigation of the CEO, a review of financial irregularity cases was carried out by two solicitors working for the firm, and a written report produced on 2 October 2012. This report made grim reading, in particular:

- Only 242 cases out of the 900 allegedly received could be identified.
- 114 of those would have to be closed immediately, as limitation had already expired, or there had been partial disclosure of the commission (and so no liability). This included 28 cases where the limitation period had expired while the files had been with the firm. The reviewers considered there was a serious risk that the firm had been negligent on these cases.
- 128 files were referred back to the team because they did not contain sufficient information to assess whether there was a viable claim. These cases were already at least two years old. No enquiries had been made with the clients to ascertain whether the firm remained instructed, and the team appeared to have carried out the limited amount of work done on the files without the clients' instructions.
- Little work had been done on any of the files, including cases where the last recorded activity was a letter sent in March 2012 promising improvements in service.
- The team was not supervised properly, and did not understand their work. The reviewers were surprised by the team's lack of ability and initiative. There was a general sense of apathy in the Department, and a distinct lack of interest or willingness to learn and accept direction, and on the whole the team was felt to be resentful of attempts to help them.
- The quality of the work done was deficient.
- The hourly rate being charged for paralegals was inflated.
- Potential fees for the firm were described as negligible, both in principle and amount.

27.6 By the time the file review was available, substantial Axiom funding had been received, and liability incurred by the firm. These were, however, matters which it was the Respondent's responsibility to get to grips with far earlier. Mr Levey noted

that this audit report appeared only a month before the Respondent took £30,000 from the firm as an ex gratia payment recognising the "enormous contribution" he had made to it. Mr Levey submitted that the firm was on its knees, and the CEO was trying to work out if it was viable. The Respondent submitted that these claims had potentially been identified beforehand, but they had not started to be run until February or March 2012 when the then owners of the firm put in the team to progress them. Mr Levey submitted that the firm was not viable, but then the Axiom money was received and these became real cases, but no effective work was done on them, and the solicitors auditing the work recommended that the firm negotiate itself out of the cases. Mr Levey submitted that there were only two employment cases, and the rescue plan for the firm was based on the healthcare cases.

27.7 Mr Levey also relied on the Respondent's failure to make any or any adequate inquiries as to the ownership, management and control of C Ltd prior to the Agreement to sell his shares in the firm to C Ltd. When the C Ltd transaction was raised with him by the CEO, in late September 2012, the Respondent could not recall C Ltd's name, or Mr U's surname, as evidenced by emails dated 23-24 September 2012. The Respondent failed to take any steps to notify the Applicant, or to ensure or confirm that the Applicant had been duly notified, of the change of ownership/control of the firm in consequence of the Agreement with C Ltd. The Respondent had no involvement whatever in the various specific funding applications (after signature of the LFA) submitted by the firm to the Investment Managers, as he admitted at interview.

27.8 It was submitted that this allegation overlapped with and underpinned each of the other allegations of misconduct, and the Applicant relied on each of those as evidencing the Respondent's disregard for and abrogation of his responsibilities as Director. In consequence of the above matters, it was alleged that the Respondent failed to act with integrity, in breach of Principle 2, and/or acted with reckless disregard for the obvious risks inherent in failing to discharge his responsibilities as sole Director and Principal. He also was in breach of Principles 6 and 8 and failed thereby to achieve any of the Outcomes stated at 7.1 (you have a clear and effective governance structure and reporting lines), 7.2 (you have effective systems and controls in place to achieve and comply with all the Principles, rules and outcomes and other requirements of the Handbook, where applicable), 7.3 (you identify, monitor and manage risks to compliance with all the Principles, rules and outcomes and other requirements of the Handbook, if applicable to you, and take steps to address issues identified), 7.4 (you maintain systems and controls for monitoring the financial stability of your firm and risks to money and assets entrusted to you by clients and others, and you take steps to address issues identified), and 7.8 (you have a system for supervising clients' matters, to include the regular checking of the quality of work by suitably competent and experienced people) of the SRA Code of Conduct 2011.

27.9 The Applicant accepted that the Respondent took a little more interest in some aspects of the firm's affairs during September and October 2012, in particular following the involvement of the Serious and Organised Crime Agency in relation to an attempted transfer of £1,250,000 to S Ltd. The Applicant also accepted that the Respondent acted appropriately in ensuring that, what appeared to have been a wholly unjustified payment for the benefit of Mr X, was not, in the event, made. The Applicant's case

was that this is "too little too late" to comprise a full and proper discharge of responsibility as sole Director and Principal, and that substantial damage had already been caused by the Respondent's earlier abdication of responsibility.

27.10 The Respondent admitted allegation 1.8. While maintaining his admission, the Respondent submitted that he thought he had sold the business to a solicitor. From June 2012 when he was told that Mr U had disappeared, and a consortium consisting of a professional manager – the CEO - and another solicitor at the firm, Mr A, were putting a group together to buy the firm for the benefit of the firm and the staff, the Respondent said that he would "hold the coats", and he stayed in post for that purpose. It was indicated that, if he stayed, he would receive a bonus of £30,000 and that understanding carried forward to the later situation whereby Mr Y bought the firm in place of the consortium. The Respondent submitted that he was allowing a progression for a proper management system to take the firm forward. The Respondent clarified that he was not being equivocal about his admissions, but simply giving an explanation of what was going on and why events happened.

27.11 The Tribunal had regard to the evidence, the submissions for the Applicant and the admissions of the Respondent. The Tribunal found as a fact that the Respondent received a payment of £1,000.00 a month for his continued role as a Director of the firm and, as he said in his witness statement, he had a commitment of about one day a month. He considered he was staying on as a non-executive director. In his email of 11 September 2012 to the CEO, he referred to "my caretaker role". It was submitted for the Applicant that, in his response to the allegations, the Respondent drew attention to the following; that his sole directorship "arose through the deception of others"; and that during his period of being the sole director, a management structure was implemented, which included nomination of a CEO (from June/July 2012) and COFA and of Mr A (another member of the consortium) as COLP. The Tribunal agreed that the Respondent's claim that his sole directorship arose "through the deception of others" was at odds with his signing of the C Ltd Agreement, which expressly provided for him to remain as Director for the 12 months from 20 March 2012, his not enquiring as to whether, or ensuring that, any other Director was subsequently appointed, and his continuation as sole Director until October 2012, followed by his negotiation and receipt of the fee of £30,000 in respect of his services as Director. The implementation of a management structure, as the Respondent acknowledged in his Answer, did not discharge his obligations, and in any event the CEO and Mr A were not appointed until after the Respondent had already committed the firm to the Axiom funding pursuant to the LFA. It was and remained a small firm in which its sole Director ought to have maintained "overarching responsibility" for its actions. The Respondent described himself as a figurehead, a caretaker, a non-executive, and coat holder, and the Tribunal found proved to the required standard on the evidence of his own statements that the Respondent abrogated his responsibilities as sole Director and Principal of the firm during the period alleged, and that he thereby breached Principles 2, 6 and 8 and did not achieve the outcomes particularised in allegation 1.8.

28. **Allegation 1.9 - The Respondent accepted a payment of £30,000 from Signey when resigning as Director (and transferring his shares in Signey to Mr Y) which payment was improper because (a) it would (in part if not in whole) require to be paid out of monies received from the investment fund, in further breach of the**

Litigation Funding Agreement, and/or (b) the Respondent had no coherent or justifiable basis to accept the same, and/or (c) the natural inference is that the payment was expected and understood to buy the Respondent's silence (in the sense of not reporting - to among others the Applicant - events at Signey during 2012). The Respondent thereby acted in breach of Principles 2 and 6 of the SRA Principles 2011. Dishonesty is alleged, although this is not a requirement for the allegation to be proved.

28.1 For the Applicant, Mr Levey submitted that allegation 1.9 arose at the end of the Respondent's involvement in the firm; this was the only place where Mr Levey could show that the Respondent had received Axiom funds. He was given a £30,000 payment. Clause 4.4 of the agreement with C Ltd provided:

> "The Vendor agrees to continue to act as a Director for a period of 12 months from 1st March 2012 on a fixed term contract of £12,000.00, which shall be paid by monthly instalments in arrears on the 15th day of each calendar month, the first payment to be made on the 15th March 2012. He shall not be required to attend the offices of the Company except for the monthly board meetings, and or on other occasions which he considers, at his absolute discretion, necessary. In the event that the Purchaser shall at any time require his resignation, the bringing into effect of such resignation triggers the payment of the balance for compensation for loss of office previously referred to…"

The payment was, the Respondent said, an acknowledgement of all his hard work, but on his own case he had not done any work; he was just a figurehead attending one or two days' a month. Mr Levey questioned, in a situation where the Respondent was expressly told that he had no need to turn up at the office save for Board Meetings, and was still being paid £1,000 per month, what the £30,000 bonus was for.

28.2 Mr Levey submitted that the Respondent accepted that he read the LFA, which made it completely clear that the Axiom money was only to fund litigation. Mr Levey emphasised that this was a worthless law firm; it could not even afford its PII premium. The payment came out of the Axiom Fund monies; the money could only come from there because the firm was not making any money at the time. This was investors' money. The firm was massively in debt at the time. Mr Levey referred the Tribunal to details of the £4,778,803 monies received by the firm from Axiom by way of drawdown. Mr Levey submitted it was not possible to say what the firm's liability was at any moment in time, but one could say that no money was ever repaid to Axiom and, by August 2012, £3m or £4m was owed. According to projections prepared by an accountant, Mr JM, the firm would not make any money for four or five years. Mr Levey submitted that the Respondent was told that if he stayed on he would get a bonus, but he questioned for what; on the Respondent's own case he was not a litigator and the firm only undertook litigation. The Respondent was just sitting tight and allowing the situation to continue. The Respondent said that the firm had a business plan, relating to healthcare cases, which would enable it to trade out, but Mr Levey drew attention to accounting projections before the Tribunal which showed that the firm would not be making a profit until February 2015.

28.3 Mr Levey submitted that the attempted payment to S Ltd, and the attendance of the police, should have set alarm bells ringing particularly when the Respondent stopped the payment. In the circumstances Mr Levey questioned how the Respondent could have believed a month later that it was acceptable for him to receive £30,000 of Axiom money. A trial balance with an accounting date of 31 October 2012, where the report had been run on 29 November 2012, showed a relatively small amount of fee income in the amount of £24,078.33. The document showed that the firm was going through large amounts of money, all of which came from Axiom, and as the Respondent said in his interview there was no other money in the firm. The payments included staff wages and national insurance, temporary staff and consultancy costs, IT costs, referral fees and Mr Z's loan account. The bank statements for the office account showed all the payments which been made.

28.4 Mr Levey submitted that the Respondent was desperate to get out of the firm at the time of the blocked transfer of monies to S Ltd, and was just holding on while what he described as the consortium of individuals organised itself to buy the firm. Mr Levey drew attention to an exchange of emails between the CEO and the Respondent, while the latter was on holiday in the USA, in September 2012. The CEO updated the Respondent about independent legal advice which he and the COLP, Mr A, had taken following the visit from the police. The CEO's e-mail showed uncertainty about the nature of the attempted payment to S Ltd. Apparently Mr Z had indicated that it might be something to do with arrangements for converting to an ABS, of which the CEO was unaware. There was a reference to Mr X saying he was aware of the details, that S Ltd was involved in the initial rescue package of the firm earlier in the year, and that the reason he was aware of the details was that part of the monies related to his consultancy fees for the past nine months at £50,000 per month. The CEO had not had sight of any written agreement providing for such. The CEO also expressed concerns about the competence of Mr Q, whom he felt appeared to lack understanding of the accounts rules, and whom he said was heard telling fee earners just to put "any old number" on bills. The CEO also referred to concerns which had been raised with him and the COLP about the role of Mr Schools and the Fund, having regard to notice published by the Applicant of proceedings before the Tribunal, and Mr Schools' involvement with other firms and other related matters. The CEO advised the Respondent that, amongst other things, Mr Q's service contract should be terminated because of performance issues, and the fact that he was too close to the funder; that he should be removed from the bank mandate, and that a forensic accountant should be appointed to carry out a full audit of the firm, and due diligence of the Fund to ensure there was full compliance.

28.5 In an e-mail of 11 September 2012, the Respondent replied to the CEO. The Respondent referred to having been excluded from all decision-making since "the sale" and said:

> "On completion I executed transfer(s) of the shares, and understood that whilst I was remaining Director, I would only be the sole director until others could be appointed.
>
> I don't have any papers with me so may not get names right.

I understood [X's] fund was providing the ongoing funding for the financial cases that we had already signed up and funding for new sources of work…

I have never heard of [S Ltd].

I have no knowledge of any agreement engaging them as Consultants.

I have no hesitation in authorising you and [A] as Cofa and Colp to take such steps as are needed to deal with this. (Providing I am not assuming any personal liability over this) if existing arrangements with [Z's company, M] have to be reviewed, and the accountants replaced, then it has to be done.

I do not have any financial information. Have never seen anything of the current Business Plan.

However I find it hard to believe that [the firm] can afford £50K a month for consultancy fees.

If there is a current liability of £1.3m to [S Ltd], + current post March 2012 funding, + pre March 2012 funding, and ongoing needs, it begs the question as to how the Co can be feasible?…

It does seem that unless funding is in place to meet liabilities as and when they fall due, the Co cannot continue trading and arrangements should be made to protect clients (and staff), and transfer the case load to a firm or firms that can take them on. The putting of the Co into administration would also seem inevitable. This is all I can say because I have not been given any information."

28.6 Mr Levey also referred to an e-mail from the Respondent to the CEO dated 24 September 2012, in which he said: "from memory a company called "Cressbrook"?? acquired Signey Law Ltd…" This was not the name of C Ltd.

28.7 Mr Levey submitted that this was the background to the Respondent asking for and accepting payment of £30,000. He said that the firm was not viable, and that he needed to see the business plan, and it was produced to him. In an e-mail of 27 February 2017, the Respondent informed Russell-Cooke for the Applicant that Mr JM's report confirmed the financial viability of the firm and its ability to repay all of the Axiom funding from the healthcare cases. However the profit and loss projection, which Mr Levey submitted the Respondent saw before leaving the firm, showed a deficit at October 2012, and that even if the projections were achieved the firm would not make any profit until February 2015. It included provisions that Axiom would not be paid off until May 2015 and assumed further draw downs. This meant that when the Respondent left the firm it was projected to be losing money for at least another two years. The only other income generating work aside from healthcare was employment law, which was projected to generate fees ranging from £1,000 in October 2012 up to £15,000 in February 2014. Mr Levey submitted that the firm was hopelessly indebted. In an e-mail dated 13 October 2012 from the CEO to Mr X, the CEO referred to the Respondent wanting his £30,000. He referred to a meeting the previous day which had gone through cash flow projections. It had been

explained that on a 50% success rate on the healthcare cases, which was very pessimistic, the firm would struggle in around 18 months time, but at between a 65% to 70% success rate the work would be viable.

28.8 Mr Levey referred the Tribunal to the minutes of the Directors Meeting held on 23 October 2012, which included:

> "[Mr Y and Mr P] acknowledged the enormous contribution that [the Respondent], as the Company founder, had made in the establishment of the Company, and in addition to 3 months salary in lieu of notice, the Company agreed to make an immediate ex gratia payment in the sum of £30,000."

Mr Levey submitted that the Respondent had not made any contribution to the firm still less an enormous one. It was not as if this was a very successful firm with a lot of goodwill that he was giving up on. Mr Levey submitted that the inference was that the payment was to silence the Respondent so he would not give the game away about what was going on, and he could not honestly have believed he was entitled to these monies. On or about 23 October 2012, the Respondent transferred all his shares in the firm to Mr Y, and resigned as Director. A term of this transaction was that he would receive £30,000 from the firm for loss of office. The sum in question was duly paid to him in early November 2012, as confirmed in his response of 12 March 2014 to the Applicant's supplementary questions, which described it as an "ex gratia payment".

28.9 Mr Levey submitted that it was not proper for the Respondent to accept the £30,000, for the following reasons. The payment would necessarily (in part if not in whole) come out of Axiom monies. The Respondent was aware of this. (When asked at interview how the S Ltd payment would have been funded, he stated "there was no other money ... it would have been paid out of the Axiom pot, yeah".) Such a payment was not an "Eligible Legal Expense" for the purposes of the LFA, and the Respondent would have had no basis for thinking that it was or that such payment out of Axiom monies was otherwise justifiable. In his Agreement with C Ltd, the Respondent had agreed to continue as Director for up to 12 months from 1 March 2012, at a rate of £1,000 per month (clause 4). Only four months remained at the time of his resignation on or about 23 October 2012. Accordingly, the Respondent had no proper basis for accepting a payment of £30,000, which was substantially in excess of the approximately £4,000 outstanding under the Agreement with C Ltd. Given that the Respondent had already been paid in respect of his "caretaker" role for the period from February 2012, he would receive three months' notice payment for no work, and he had already sold the beneficial interest in his shares for £1.00, and confirmed in interview that there was no consideration for the subsequent transfer of the shares to Mr Y, there was no rational or genuine basis on which a value of £30,000 could be ascribed to his alleged "enormous contribution". The Respondent well knew and appreciated this. In an e-mail of 14 October 2012 to Mr X he stated:

> "I raised my reservations to you in my e-mail on Friday, and to some extent your e-mail yesterday reinforces my decision that my continued position as Director is untenable."

Mr Levey submitted that this e-mail was sent a couple of weeks before the Respondent took the payment. The Respondent had long been desperate to exit the firm. Further, as stated in his Response to Supplementary Questions (6 March 2014), he "wanted to be relieved of [his] Directorship at the earliest opportunity".

28.10 Mr Levey submitted that in all the circumstances, the natural inference was that the payment was expected and understood to buy the Respondent's silence (in the sense of not reporting events at the firm during 2012 to among others the Applicant), so that the new owner and the Investment Manager could carry on without undue interest or inconvenient inquiry from the firm's regulator.

28.11 It was submitted that the Respondent failed to act with integrity, and thereby breached Principle 2 of the SRA Principles 2011, and that he breached Principle 6.

Submissions for the Applicant in respect of dishonesty regarding allegation 1.9

28.12 Mr Levey relied on the two limb test for dishonesty in the case of Twinsectra v Yardley [2002] 2 AC 164. The test for dishonesty (on the basis of the current authorities) required both an objective and subjective element and thus a person might be found to be dishonest if the conduct would be considered dishonest by the ordinary standards of reasonable and honest people, and the solicitor was aware at the relevant time that his conduct was dishonest by such standards: Bryant v Law Society [2009] 1 WLR 163. It was submitted that the Respondent's conduct was dishonest by the standards of reasonable and honest people, and he would have known that this was so as an experienced solicitor, in light of his knowledge of the relevant circumstances, and that he was acting dishonestly by those standards. He knew that the £30,000 payment did not fall within the terms of the LFA he had read; he knew that the sum in question far exceeded his entitlement under the C Ltd Agreement; and he knew that there was no proper or justifiable reason why the firm should pay him such a sum to exit the company, in circumstances where he had long been desperate to do just that. Motive was not a necessary ingredient for finding dishonesty (Williams v SRA). A person might act dishonestly by failing to make enquiries in circumstances in which an honest person would. In Royal Brunei Airlines v Tan [1995] 2 AC 378 at 389G Lord Nicholls said "Nor does an honest person in such a case deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather not know, and then proceed regardless", which was approved in Twinsectra and Bultitude v Law Society [2004] EWCA Civ 1853. Further or alternatively, the Respondent's conduct was reckless because he unreasonably ran the risks described above.

28.13 Mr Levey submitted that in view of the Respondent's election that he would not give evidence and offer himself for cross-examination, the Tribunal should draw adverse inferences. The Respondent had informed the Tribunal that he did not wish to give evidence because he anticipated that Mr Levey would concentrate on the minutiae of the case, and the Respondent was not prepared to put himself through that experience. Mr Levey confirmed that he had explained to the Respondent the Tribunal's Practice Direction no. 5, drawn from the Iqbal case, where Sir John Thomas had said that ordinarily the public would expect a professional man to give an account of his actions. Mr Levey also rejected the suggestion of his approach to cross-examination,

and said that he would have dealt fairly and squarely with the issue of dishonesty concerning the Respondent taking £30,000, which was the main allegation in issue.

The Respondent's Submissions in respect of Allegation 1.9

28.14 The Respondent submitted that the CEO was a very highly qualified and respected practice manager, and served as the firm's COFA. He and Mr A (a solicitor), the COLP, were putting a team together to take the firm forward. The payment of £30,000 had been mooted with the consortium back in June or July 2012, to give them time to get organised. The Respondent's reward for allowing that time was to receive a termination payment. The Respondent submitted that the healthcare cases would prove to be very profitable for the firm. They were not really litigation, but rather administrative matters, where the firm would just have to put papers together and submit them, prompting either a complete denial or payment. The claims were against local authorities for the return of care fees paid by claimants in circumstances where such care should have been funded by the relevant local authority. The valuation of the firm, undertaken soon after the Respondent sold it, showed that it was in good health because of these claims bought into the firm through the LFA. By July 2012 there were 666 such claims, and in October 2012, the firm had nearly 2,500 claims. It was thought that the work could generate up to £16m to £20m in fees at £8,000 per case. This was a view taken not just by the Respondent, but by the consortium of individuals which was supposed to be taking the firm over from him in June/July 2012. The Respondent could not explain, in answer to the Tribunal's query, how cases which involved very little work beyond completing and submitting a form, could generate fees in the region of £8,000 each.

28.15 In respect of the Minutes dated 23 October 2012, the Respondent submitted that these related to a meeting between himself Mr Y and others. Both he and Mr Y went to the meeting with their own set of pre-prepared draft Minutes, both versions of which were signed. The version which the Respondent had prepared included reference to the £30,000 payment and to the enormous contribution which he had made to the firm. At the meeting, the Respondent appointed the other individuals as Directors and then resigned. The statutory books had already been handed over to AB, and the Respondent walked away relieved because he had been under pressure since he returned from the United States. The pressures related to the abortive payment to S Ltd, and his misgivings about the CEO and the consortium, whom he regarded as engaging in delaying tactics in respect of the sale.

28.16 The Respondent clarified for the Tribunal that the consortium consisted of the CEO, a professional manager with the ability to organise a professional setup of the firm, alongside Mr A, who was either head of operations at the firm or about to be, and two other individuals whose names he could not remember, but whom his witness statement named. The Respondent also expected the CEO to include other members of the firm in the consortium. In the event the CEO was made redundant in November 2012, after Mr Y assumed a managerial role.

28.17 The Respondent submitted that the £30,000 payment would be made when the other parties decided to make it. He supposed that, if they had decided not to do so, he could not enforce it, because there was no compromise agreement. He assumed payment had been made on 1 November 2012, because that was the date on the

cheque. Mr Y asked him to go into the office to meet with HSBC bank representatives to assist with the alteration of the bank mandate. They discussed other things as well. The bank representatives pointed out that Mr Y and Mr P were not on the mandate, and so the only person who could sign the £30,000 cheque was the Respondent. It was he who introduced the subject of the payment into the discussions on 1 November 2012, as he expected to walk away with a cheque, or denial that he would receive one, or an explanation as to why he would not. He had written out the cheque and signed it because he was at that date the only authorised signatory. The Respondent did not think that it was in any way dishonest to receive the cheque.

28.18 The Respondent's understanding of the financial position of the firm at the time he received the cheque was that it was excellent. He referred to the financial documents prepared by Mr JM, which Mr Levey had discussed. The Respondent referred to an e-mail which he had sent to Russell-Cooke on 27 February 2017 where under the heading "JM" he stated:

> "I am unable to locate his financial forecast.
>
> JM was a former Financial Manager (possibly FD?), at [P Solicitors), and had been recommended by [solicitors who had advised the firm when concerns arose about the abortive payment to S Ltd] to be engaged to carry out an audit, appraisal, and financial projection.
>
> His report confirmed the financial viability of the firm and its ability to repay all of the Axiom funding from Health Care cases (£20m, which were fees earned on a 25% basis from non-litigation claims)
>
> This distinguished [the firm] from the Panel Firms who were never going to be able to (sic) repay and would eventually become insolvent."

28.19 The Respondent suspected that the financial projections before the Tribunal had been prepared after he had left the firm. He had discussions with Mr JM about obtaining interim reports. The Respondent clarified that he was able to say that the firm was in excellent shape because of discussions he had had with Mr JM before then. The accounts included provision for the abortive payment to S Ltd, and future payments, and so suddenly the firm would be £2 million better off. The accounts did not include recovery of the payment made to M Ltd. If the Respondent had still been in post he would have been "screaming" about that payment. The Respondent submitted that when he saw the accounts it struck him that the forecast for employment work was £1,000 a month in income. This fee income was generated by a staff member who had asked the Respondent to have his salary increased to £100,000 a year (by e-mail while the Respondent was on holiday in the USA). If he had seen these accounts, the Respondent would have been "on the ceiling" at such a request. The Respondent accepted that the JM projections showed a £6 million deficit as at October 2012, but the healthcare cases against local authorities were expected to bring in £20 million in fees. He had not been directly involved in those claims, but the process had been explained to him, and it was not anticipated that the firm would have to issue proceedings; it was a matter of compiling paperwork to support the claims, some of which were worth over £100,000. The Respondent knew that because, after he had left the firm, he received notification of a complaint from the Legal Ombudsman

about a claim which had gone wrong. The firm had made the claim to the wrong authority and it had become time barred as at September 2012. If that had not occurred the claim would have amounted to £66,000.

28.20 The Respondent submitted that he was quite annoyed that no one from the Applicant had bothered to obtain a copy of these accounts. He had been given a copy by Mr A. He also was concerned that the Applicant had not interviewed Mr JM. The Respondent emphasised that the firm had £2m cash on account as working capital. He agreed that this was money which had been advanced by Axiom. If he had seen the JM forecasts he would have had mixed emotions in respect of accepting the £30,000 especially because of the demand for a salary payment of £100,000 a year from the CEO and Mr A. The Respondent submitted that JM had told him that the healthcare claims were a goldmine. JM was in a position to know this because of his previous experience in a large legal practice, although he was not a lawyer. The Respondent submitted that while Mr JM estimated recovery at 65%, the firm expected it to be higher.

28.21 The Respondent submitted that the decision to instruct O Solicitors for independent legal advice was reflected in the e-mail of 11 September 2012 from the CEO to the Respondent, which referred to "the events of Friday and subsequent investigations". As to the comments which the Respondent had made in his reply to that e-mail, including his question as to how the firm could be feasible, the Respondent submitted that he just did not understand what was going on. If S Ltd had a valid claim for £50,000 a month, and an entitlement to £1.3 million, he would not be happy about the company going forward. He still believed then that Axiom and Tangerine were properly authorised companies, that they were acting properly, and he had no idea that this was not the case. He confirmed that his views changed in light of conversations with Mr JM, because he was producing forecasts. The Respondent submitted that he was focused on S Ltd. As it turned out the firm could manage, even if it had to pay that amount. He had not seen the JM projections at that stage. The Respondent submitted that he seemed to be the only person who was saying he did not see why the S Ltd invoice should be paid.

28.22 As to his stating in an e-mail to Mr X that his position was untenable, the Respondent submitted that this was not because of the firm's financial position, but because the day before he sent the e-mail he had been "nose to nose" with Mr X, and did not see that his confrontation with Mr X allowed him to continue in the firm. He saw that the firm was profitable, and thought it would trade through, and would do so even more successfully without the payments to S Ltd. He had not appreciated that the forecasts which showed a deficit of £5.875 million in September 2012, reflected loan charges, including to S Ltd, of around £2.4 million.

28.23 The Respondent denied dishonesty in respect of allegation 1.9 and he rejected the part of the allegation which asserted that he had taken the money to buy his silence. He submitted that was an allegation about which there was absolutely no evidence. He had engaged with the solicitors acting for the Axiom Receivers, and provided them with the information that he had about the firm, Mr Schools and about Axiom. In respect of the payments to M Ltd, about which there were e-mails around Christmas 2012, when the matter had been drawn to his attention and he had contacted Mr Y and asked to what it related, and Mr Y explained it. (The invoice related to a purported

CPD activity which supposedly took place abroad.) In June 2012 the Respondent had had discussions with the CEO about continuing professional development requirements, and he thought that something could be done internally and that everyone would make their own arrangements. He told Mr Y that he was happy to assist him in going to the police about the matter. The Respondent also emphasised that there was no suggestion that he knew that Mr H had left under circumstances where he had expressed extreme disquiet about what was happening at the firm, as set out in his witness statement:

> "I very quickly concluded that the Firm was not one I wanted to remain involved with as I suspected it was part of a sham or a front for money laundering operation. In fact, I expressed this view to... and indicated that I would be leaving the Firm with immediate effect. I also telephoned... (my recruiter) on or around 6th September 2012 and told him about my concerns."

Determination of the Tribunal in respect of Allegation 1.9

28.24 The Tribunal had regard to the evidence, the submissions for the Applicant and the admissions of the Respondent, and the Respondent's submissions in respect of those parts of allegation 1.9 which he denied. The facts of this allegation were not disputed. The Respondent accepted that the money which he had received in the sum of £30,000 had come from Axiom funding.

28.25 In respect of allegation 1.9 (a), it was alleged to be improper for the Respondent to accept the payment because it would require to be paid in part or in whole from money received from the Axiom fund in breach of the LFA. The Tribunal accepted that the Respondent genuinely believed that Axiom money was office account money, but he knew that his payment would have to come from the Axiom funding because on his own case that was the only money in the firm. The Tribunal therefore found that it was improper for the Respondent to take the money, whatever his beliefs about the future prosperity of the firm. Moreover, his stated beliefs were totally implausible and hard to accept in the face of his 11 September 2012 e-mail to the CEO. The Tribunal found proved on the evidence that the Respondent lacked integrity and acted recklessly in taking the payment. Allegation 1.9 (a) was therefore found proved on the evidence to the required standard; indeed it was admitted.

28.26 In respect of allegation 1.9(b), that the Respondent had no coherent or justifiable basis to accept the payment, the Respondent had produced his own minutes of the Directors meeting held on 23 October 2012, which Minutes had then been signed by Mr Y and Mr P, and which referred to them acknowledging the enormous contribution that the Respondent had made as company founder, and which provided that, in addition to three months salary in lieu of notice, the company agreed to make an immediate ex gratia payment in the sum of £30,000. In his response to the Rule 5 Statement, the Respondent submitted that an ex gratia payment to an outgoing employee, particularly a senior employee or director, was not unusual and was recognised by HMRC as accepted practice. He stated that he had founded the company and had largely not received any remuneration until February 2012. He said that the figure of £30,000 had been mooted in discussions with the CEO on behalf of the consortium. He also asserted that the October 2012 projections, produced by the accountant JM, showed the firm was viable and profitable, had cash of over £2m, and the healthcare claims

would produce £20 million in revenue, with which the firm would have been able to repay all the Axiom lending. He also refuted that the payment of £30,000 was to buy his silence. In interview, the Respondent was asked if he saw any management information in terms of any financial reports or statistics on how much had been drawn down from the Fund and he replied "no". In his email of 11 September 2012 to the CEO, the Respondent said that he had been excluded from all decision-making since the sale (to C Ltd). He went on to analyse the firm's position and questioned that, if there was a liability of £1.3m to S Ltd, how the firm could be feasible, and said that unless funding was in place to meet its liabilities when they fell due, the firm could not continue trading, and putting it into administration seemed inevitable. He concluded "This is all I can say because I have not been given any information". The following month he took the payment of £30,000 from the firm. In interview the Respondent described the firm as a "basket case" when Axiom was about to invest in the firm in February/March 2012. The Respondent maintained that the healthcare cases, received subsequent to that date, would be extremely profitable. The Tribunal found this belief to be without credibility (see below). In taking the ex gratia payment he knew that he had done no work and the Tribunal could not see how he justified his entitlement to the payment of £30,000. It was more plausible that he saw the payment as the price of his resignation (which he was in any event happy to give). The Tribunal determined that it was proved on the evidence to the required standard that the Respondent had no coherent or justifiable basis to accept the payment. The Tribunal therefore found allegation 1.9 (b) proved on the evidence to the required standard; indeed it was admitted.

28.27 In respect of allegation 1.9(c), the allegation that the payment was to buy the Respondent's silence, the Respondent submitted that there was no evidence of that and this was just an ordinary termination of office payment. The Tribunal could see some evidence that this was a payment designed to get rid of the Respondent as a Director; provision had already been made for that by his signing a resignation letter which was held by the other parties, and the meeting at which he revived the question of a termination payment was part of a chain of events which led to his signature being removed from the bank account. The Tribunal could find no evidence that supported the assertion that this was a payment to buy silence. The other Directors had come to the meeting on 23 October 2012 with their own version of the minutes, which indicated that the minutes had been prepared with a very conscious and specific purpose. They recited that the Respondent advised that arrangements had now been concluded with the transfer of his entire shareholding in the company to Mr Y; that the Respondent resolved that Mr Y and Mr P's nominee be appointed as Directors with immediate effect, and that the Respondent then resigned his position of Director. Mr Y's version of the minutes made no mention of the ex gratia payment. This suggested that the initiative and motivation for the payment came from the Respondent and not those who might see some benefit in buying his silence. When it came to writing the cheque for the payment, the other Directors had presumably not appreciated or forgotten that they were not yet on the bank mandate, and so the Respondent signed the cheque. The Tribunal did not find allegation 1.9(c) proved on the evidence to the required standard.

Determination of the Tribunal in respect of the Dishonesty and Allegation 1.9

28.28 The Tribunal considered the allegation of dishonesty in accordance with the two limbed test in the case of Twinsectra. The Tribunal had concerns that the Respondent chose to make submissions rather than giving evidence and offering himself for cross-examination. He had expressed this to be because he considered that Mr Levey would concentrate on the minutiae of the allegations which he disputed. This approach enabled him to make certain assertions in his submissions which could not be properly challenged on behalf of the Applicant. In spite of having the Tribunal's Practice Direction derived from the case of Iqbal explained to him, both by the Tribunal in open court and by Mr Levey, the Respondent persisted in failing to give an account of himself as a professional person as was expected of him. The Respondent stated that he understood the implications of the Iqbal case, but his submissions risked straying into giving evidence. The Tribunal considered that, when faced with these allegations, especially that of dishonesty, the Respondent should have exposed himself to the rigours of cross examination. The Tribunal was left with earnest submissions which were without the force of evidence. The Respondent did adopt his witness statement, but there were inconsistencies with other evidence. The Tribunal had no opportunity to explore these inconsistencies because of his failure to give evidence, and the Tribunal considered that this demonstrated lack of insight on his part. The Tribunal considered in all the circumstances that it was appropriate to draw an adverse inference from the Respondent's election. It therefore attached lesser weight to the submissions which the Respondent offered in respect of the disputed allegations.

28.29 In respect of allegation 1.9(a), the Tribunal found that the Respondent genuinely but erroneously believed that it was acceptable to use the Axiom funding for the purposes of the practice, including to make a termination payment to himself. He should have made sure that he understood the terms of the LFA and he did not. The Tribunal found breaches of Principles 2 and 6 and recklessness proved on the evidence to the required standard as was admitted, but in the light of the Respondent's genuine belief, it did not find dishonesty proved because the subjective element was lacking.

28.30 In respect of allegation 1.9(b), this was a situation of the Respondent taking £30,000 from a company very swiftly after participating in an e-mail exchange which showed that he was aware that the firm was in a financially distressed state, and that he could see no rational alternative to it going into administration, and where he had expressed doubt about its ability to pay consultancy fees of £50,000 a month and was expressing disquiet about the level of salaries being demanded. Against that one could only set what the Tribunal found to be his fanciful idea that the firm would reap "jam tomorrow" from the healthcare cases, in circumstances where JM, an accountant, did not project that the firm would make any profit for two years, even on the basis of financial forecasts which themselves appeared highly optimistic. The Tribunal also noted that JM had been called upon, in the context of a visit by the police to the firm, and had done a "quick and dirty" forensic analysis of its profitability, which the Respondent said he did not see. It was incredible that, when the firm was around £5m in debt, JM would say to the Respondent that it was in good financial health and had a "goldmine" of cases in the pipeline. The Tribunal rejected the Respondent's submissions on this point as implausible and inconsistent with other contemporary evidence. While this was not the subject of any allegation, the Tribunal also

considered that, for the Respondent to have created a document in the form of his version of the Minutes, that purported to express the purpose of the payment as being in recognition of his enormous contribution, completely lacked credibility for the following reasons. The company was, as he well knew, on its knees, and on his own evidence he had not done any work for the company, and not been involved in its management, since he had sold his shares to C Ltd. Furthermore, the money must come from funds which had been borrowed from elsewhere. In his witness statement, the Respondent said:

> "The discussions with the... Consortium had talked of the £30,000 ex gratia payment on my resignation.
>
> When I met with [Mr Y and Mr P] on the 23 October, at what turned out to be my exit meeting, they were fully aware of this proposal and seemed happy to have this incorporated in the minutes of the Directors meeting appointing them as Directors"

The Tribunal did not find this account to be credible for the additional reason that the two named individuals arrived at the meeting with their own version of the draft minutes which made no reference to the Respondent's contribution or to the £30,000 payment. The Respondent's version of the Minutes was an attempt to justify his taking the money when no such justification existed. The Tribunal determined that by the standards of reasonable and honest people, to take the money in those circumstances would be considered to be objectively dishonest. As to the issue of subjective dishonesty, the Respondent preferred his own interests. The Respondent was aware that the firm was insolvent, and yet he went to the 23 October 2012 meeting with the intention of obtaining the payment. His Minutes did not reflect what he was now saying, that he had only held on as a Director to smooth the way to new owners. Also, when he went to the meeting designed to change the bank mandate on 1 November 2012, and wrote and signed the cheque making the payment to himself, he had already resigned as a Director of the firm. His explanation that he signed the cheque because there was no one else on the bank mandate demonstrated his eagerness to get the money. He signed for and on behalf of a company of which he was no longer a Director, and he showed great determination to obtain the money at all costs. He could have waited until the mandate has been altered and the new Directors were in a position to sign the cheque. The Respondent had talked about being under pressure and wanting to leave the firm, but his calculated actions in preparing the Minutes and signing his own cheque were not those which the Tribunal considered to be those of an honest man. In all the circumstances prevailing at the time, an honest man would want someone else to make the payment to him, rather than be seen to be feathering his own nest. The Tribunal did not consider that the explanation that he gave in his witness statement about an ex gratia payment as a common feature of commercial life, and that he had received similar payments on two previous occasions, and had been involved directly or indirectly in such payments, was relevant to or consistent with the facts of this particular payment. His oral submissions at the hearing were inconsistent with contemporary documents and unpersuasive, and his version of the Minutes was particularly difficult to justify. The Tribunal found dishonesty proved to the required standard on the evidence both objectively and subjectively in respect of allegation 1.9(b).

28.31 In respect of allegation 1.9(c), the Tribunal did not find the allegation proved at all and so the question of dishonesty did not arise.

Previous Disciplinary Matters

29. None.

Mitigation

30. The Respondent referred the Tribunal to the matters set out in his statement. He had been found dishonest and accepted that he would be struck off. He felt that he had been unwillingly kept on the Roll for four years for the purpose of these proceedings by the Applicant. Striking off would be a relief in some ways. He had learned during the hearing that other solicitors had recorded telephone conversations, and were suspicious of fraudulent activity at their own firm, and were fully aware that he was carrying on at his firm, and thought that he had sold it to Mr U, but he was not told about these suspicions. Clearly something was going on; Mr U did not appear at the firm, but Ms D (Mr U's colleague) did. The Respondent felt that he had been completely duped. Thirty-five years previously he might have been on top of his game and seen it, but he did not. At the time, he thought he was one step away from full retirement, and now he would be paying the price. The day he resigned from the firm was the day he decided he did not want anything to do with law firms again, and that position had been on hold for four and a half years. As to his financial means, the Respondent and his wife were retired and had pensions, life savings and a property and in the fullness of time could meet the costs. In terms of whether there were any exceptional circumstances which might prevent him being struck off, the only matter he could think of was the duplicity of regulated persons involved within the firm, Mr Schools and Mr U, and now he thought Ms D and the CEO, and to the very smallest extent another staff member who kept information away from him.

Sanction

31. The Tribunal had regard to its Guidance Note on Sanctions and to the mitigation offered by the Respondent, and to his admissions which the Tribunal considered had been properly made. The Tribunal assessed the seriousness of the Respondent's misconduct. In terms of the motivation for his actions; on his own admission his firm was a "basket case" and he needed the Axiom funding to rescue it or create a viable business model. He had the opportunity to sell the practice and make a success of his life. Mr Z wanted to recover referral fees which his company was owed by the firm, and was concerned that it should be kept going. The Respondent did not want to continue, and was given the opportunity to offload the firm on favourable terms; he was to receive £12,000 for a year for doing nothing. Mr U would then be allowed to slide in, and the Respondent could leave. He had the opportunity to make some easy money. Ultimately he left the firm some 7 months later another £30,000 richer. As to whether the Respondent's actions were planned or spontaneous, his decision to sell the firm was not the product of years of planning but was opportunistic. He was a sole practitioner of a regulated law firm and was therefore in a position of trust. He chose to relinquish control and to remain a Director with all the legal obligations that went with it, but without exercising proper responsibility. The Respondent was in direct control of the circumstances in which he offloaded the firm to C Ltd; he was the only

person who could exercise control but he chose not to do so. He abdicated responsibility for the firm; although the perpetrators of the mischief in this matter were others, he allowed them the opportunity to do what they did. He presided over a regulated entity where misconduct took place. The Respondent was a highly experienced solicitor but he had no experience of the management of a practice. He had been in-house for much of his career, although the Tribunal had not been told precisely what his work consisted of. However he had been qualified for a very long time, and should have known what his weaknesses were. He should have known that it was inappropriate to sign a blank document, and displayed caution about the Axiom transaction and understood his limitations; all of these features were expected of an experienced solicitor, even one who lacked management experience. The Respondent became involved in a quite scandalous multi-million pound loss to investors worldwide. The Tribunal understood that individual losses ranged from £15,000-£250,000, which inevitably involved considerable reputational harm to the profession. As to the question of harm generally, the Respondent had made proper admissions across nine allegations in a range of linked matters, all of which involved the total abdication of responsibility for what was going on in the firm. The misconduct involved harm to the investing public and its confidence in the profession. It was reasonably foreseeable that what did happen would occur; the misappropriation of money in all sorts of inappropriate directions. There were egregious examples of money flowing to others, for example in payment for a bogus CPD course; an attempt to siphon off over £1 million to S Ltd, and significant sums being paid for Mr X's personal expenses, supported by receipts and vouchers which were plainly nothing to do with the firm or the stated purposes of the LFA. There was considerable financial harm in terms of losses to the Axiom fund and its investors. There was also considerable harm to the reputation of the profession. The Respondent was a solicitor with a reckless disregard for any financial oversight of the firm. The Respondent had failed to engage, and as a result an unqualified financial controller of unknown origin could sign for unlimited payments from the firm's bank account into which the Axiom funds had been paid. If the Respondent had sold his shares and immediately left the firm without taking a penny he would not have found himself before the Tribunal, however he hung on and lent his name and thereby credibility to what was happening, and afforded the opportunity for the misappropriations to occur. The situation was aggravated because dishonesty had been alleged and proved. There had been repeated misconduct by omission, and a deliberate and conscious disengagement from what was going wrong at the firm. This was considerably ratcheted up when the consortium came on the scene, in respect of which the Respondent described himself as holding their coats, because the CEO was not a lawyer. The Tribunal considered that the Respondent must have known that his conduct was in material breach of his obligations. He had been through the process of applying for authorisation, and knew there were regulatory requirements. The internal audit showed that there had been serious shortcomings in the way cases were conducted before the Respondent sold his shares. One could only speculate about the impact on the reputation of the profession, but there had been a high-profile liquidation of the Axiom Fund. In terms of mitigating factors, the Respondent was duped by sophisticated individuals, and he was not the beneficiary of the large sums of money which were disbursed. The Tribunal noted that not a penny of the money lost had been paid back to the Fund. What happened derived from a single set of circumstances but it occurred over a period of months from February to October 2012. The Respondent was chastened by what happened, but did not show any particular insight into his shortcomings. He did

not appreciate the extent to which he was the author of his own misfortune. He decided to step back, entered an unwise transaction to secure that objective, and let the consequences flow over him whilst continuing to take the money. He said he withdrew the additional ex gratia payment at the time of his resignation as the company was in good health, but his submissions were wholly unsatisfactory. He showed a complete lack of appreciation of the financial situation the firm faced. He said that his conversations with JM led him to believe that the firm was in excellent shape. His faith in the fees anticipated to flow from the healthcare cases was unrealistic. There was no rational basis for his maintaining that the firm would turn the corner and make millions of pounds. The Tribunal gave the Respondent credit for the fact that he recognised that he was facing the ultimate sanction, but his attitude was tinged with victimhood – he felt that he had been the victim of other regulated persons, and he sought to deflect the product of his misconduct onto them. He cooperated with the Applicant, but he did not wish to concede either lack of integrity or any dishonesty, part of which latter allegation was found proved. He admitted all the facts and carelessness at the stage of submitting his response, but the denial of the underlying issues of lack of integrity, recklessness and all aspects of the allegation of dishonesty, were maintained until the Tribunal hearing commenced, and so the credit he could be given was rather limited. His personal mitigation consisted of the fact he was retired and was no longer working. He had not offered any financial information to mitigate any payments which might be awarded against him.

32. The Tribunal considered that the Respondent's misconduct, including as it did lack of integrity, recklessness and dishonesty was far too serious for no order, a fine or a restriction order. The Tribunal considered whether the Respondent should be suspended or struck off. After full consideration it determined that his misconduct was graver than that which merited a suspension. There was the problem of public perception, and the damage to the reputation of the legal profession, and the fact that the Respondent had derived a personal benefit of £30,000. He was unable to present any truly exceptional reasons which would mitigate sanction. Although he had been duped, he was the primary author of his own proven misconduct because the consequences he suffered flowed from a reckless disregard for his responsibilities and from his dishonesty. The actions of others were not material to his misfortunes. Even without the dishonesty, the misconduct in allegations 1.1 to 1.8 was at the high end of gravity; there had been a consistent display of lack of integrity and recklessness, which was admitted. The finding of dishonesty put the sanction beyond any doubt.

Costs

33. For the Applicant, Mr Levey applied for costs in the sum of £53,857. The matter had been set down for three days hearing and he submitted that there was a lot of paperwork. This was a dishonesty case which was not straightforward, and also it was one of the Axiom cases. He submitted that the amount of costs claimed was in line with the costs already seen in other cases, and possibly somewhat on the low side. The Respondent submitted that the amount of costs claimed was "eye watering" and he had no idea if it was normal for a QC to draft the Rule 5 Statement, as had been done here. He submitted that the Applicant was aware that he was not practising and that he did not have the support of office staff. He would have hoped that there would have been more engagement with him regarding an outcome and then the matter would not have taken two or three years to process. He submitted that the way the

matter had been conducted seemed a large hammer to beat down on him. Mr Levey submitted that when the Rule 5 Statement had been drafted Mr Tabachnik was not a QC. He submitted that it was a comprehensive and extremely helpful document, which formulated the allegations very clearly. A huge amount of work had gone, not only into drafting, but in going through all the documents and accumulating all the necessary knowledge. There had been a case management hearing on 1 June 2017. It had been postponed from April 2017 because the Respondent was on holiday. The target date to conclude the matter had always been 2 August 2017 and the Applicant had submitted that it would be very tight to get the matter heard in August and that its QC was not available. The Respondent pressed for a hearing in August to get it dealt with, and so the Applicant had to find alternative counsel. Mr Levey suggested that the trial costs were not a factor of a QC having dealt with the matter and this was in fact the first Axiom matter which had not been prosecuted by a QC. Two counsel had prepared the case, and this had been done specifically because the Respondent was in person. He had made a lot of admissions, and it had kept the cost down to use a very junior counsel to assist. While Mr Levey was conscious that the Respondent was in person and had made admissions, this was a complex and contested dishonesty case. The Respondent could have made full admissions and agreed to be struck off, and this would have led to the matter being short-circuited a long time ago. In his witness statement the Respondent denied he lacked integrity and was equivocal regarding his admissions; the allegation of lack of integrity and that of dishonesty were the most important points of the case. The Applicant therefore had to proceed on the basis that they were both disputed. Mr Levey submitted that it was in the public interest for the matter to be prosecuted. There should be no reduction in fees because they had already been heavily negotiated down, and were capped by the Applicant. His fees were agreed regardless of how long the hearing lasted and he received no refresher for the second or third day. Mr Levey submitted that if Mr Paul had not been engaged in the matter counsels' fees would not be a lesser amount; the fees would be apportioned between them. There was an element of 5.7 hours for the instruction of new counsel. Mr Levey clarified for the Tribunal that fees claimed for the QC drafting the Rule 5 Statement were 40 hours. There were also solicitors' fees to review and comment on the draft - 9 hours No internal costs were claimed for the Applicant. Mr Levey invited the Tribunal summarily to assess the costs. The Tribunal was not prepared to allow the costs claimed for the instruction of new counsel at £991.50. It also determined that the claim for payment for two counsel during the hearing was inappropriate, and to reflect that, and the hearing taking two rather than three days, it would deduct £5,000 from the combined brief fee. The Tribunal considered that it was immaterial how counsels' fees had been arrived at between counsel and the Applicant. It also reduced the amount claimed for a solicitor partner to prepare the exhibit to the Rule 5 Statement, and was not prepared to allow the claim to update the costs schedule. The Tribunal assessed costs at £44,860 in total including VAT.

Statement of Full Order

34. The Tribunal Ordered that the Respondent, Geoffrey Martin Signey, solicitor, be Struck off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £44,860.00.

Dated this 14th day of September 2017
On behalf of the Tribunal

E. Nally
Chairman