The Tribunal's Order against the Fifth Respondent only was subject to appeal to the High Court (Administrative Court) by the Fifth Respondent. The Fifth Respondent's appeal was dismissed by Mr Justice Linden on 23 January 2020.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11659-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

RICHARD EMMETT	First Respondent
LINDSAY EMMETT	Second Respondent
MATTHEW STOKES	Third Respondent
MARY HUNTER	Fourth Respondent
DAVID RAE	Fifth Respondent
DALE STEPHENSON	Sixth Respondent

Before:

Mr J. C. Chesterton (in the chair)
Mr M. N. Millin
Dr S. Bown

Date of Hearing: 25 June – 2 July 2018

Appearances

Edward Levey, barrister of Fountain Court Chambers, Fountain Court, Temple, London, EC4Y 9DH, instructed by Paolo Sidoli, solicitor of Russell-Cooke Solicitors, 2 Putney Hill, London, SW15 6AB, for the Applicant.

The First Respondent attended and represented himself and the Second Respondent.

The Second Respondent did not attend but was represented by the First Respondent.

The Third, Fourth, Fifth and Sixth Respondents did not attend and were not represented.

JUDGMENT

Allegations against the Solicitor Respondents

1. **Allegation 1 – Respondents 1-4**
They failed to maintain proper and effective control of the Firm and/or permitted others to exercise de facto control over the management and running of the Firm and its finances. By so acting they breached Principles 2, 3, 4 and/or 6 and failed to achieve Outcome 7.4 of the SRA Code of Conduct 2011 ("SCC 2011").

2. **Allegation 2 – Respondents 1-4**
They caused or permitted the Firm to become engaged in a pattern of excessive and reckless borrowing. By so acting they breached Principles 2, 3, 4 and/or 6 and failed to achieve Outcome 7.4 of the SCC 2011.

3. **Allegation 3 – Respondents 1-4**
They caused or permitted the Firm to use monies borrowed from the Axiom Fund to be (a) used to pay the Firm's general expenses, overheads and running costs; and/or (b) paid away for purposes unconnected with the running of the Firm, and in either case this was improper in the sense that the payments were not in accordance with the strict terms of the Litigation Funding Agreement. By so acting they breached Principles 2, 3, 4 and/or 6 and failed to achieve Outcome 7.4 of the SCC 2011.

4. **Allegation 4 – Respondents 1-4**
They each received (whether directly or indirectly) and/or retained monies which the Firm had received from the Axiom Fund in circumstances in which it was improper for them to do so. By so acting they breached Principles 2, 3, 4 and/or 6 and failed to achieve Outcome 7.4 of the SCC 2011.

5. **Allegation 5 – Respondents 1 and 2**
They caused or permitted the Firm to purchase the single share of ATM Solicitors Limited (a company owned by [TS]) ("**ATM Solicitors**") for the sum of £3,000,000 without carrying out any or any proper due diligence into ATM Solicitors and/or by improperly utilising monies from the Axiom Fund in order to fund the acquisition. By so acting they breached Principles 2, 3, 4 and/or 6 and failed to achieve Outcome 7.4 of the SCC 2011.

6. **Allegation 6 – Respondents 1-3**
They caused or permitted the Firm to be owned by a non-regulated individual or company. By so acting they breached Principles 2, 3, 4 and/or 6 and failed to achieve Outcome 7.4 of the SCC 2011.

While it was not necessary for dishonesty to be proved in order for misconduct to be established, the Applicant alleged that the Respondents acted dishonestly in respect of Allegations 4, 5 and 6, insofar as those Allegations were made against them. In the alternative the Applicant alleged that the Respondents had acted recklessly.

Allegations against the non-Solicitor Respondents

These Allegations were contained at paragraph 135 of the Rule 5 Statement. For the sake of clarity the numbering is continued sequentially in this written Judgment.

7. **Allegation 7 (paragraph 135.1 of the Rule 5 Statement) – Respondents 5 and 6**
They exerted an inappropriate level of control over the management and running of the Firm and its finances to the exclusion of the solicitors who were supposed to be running the Firm, contrary to Principles 2 and/or 6 of the SCC 2011.

8. **Allegation 8 (paragraph 135.2 of the Rule 5 Statement) – Respondents 5 and 6**
They caused or permitted the Firm to become engaged in a pattern of excessive and reckless borrowing, contrary to Principles 2 and/or 6 of the SCC 2011.

9. **Allegation 9 (paragraph 135.3 of the Rule 5 Statement) – Respondents 5 and 6**
They caused or permitted the Firm to use monies borrowed from the Axiom Fund to be (a) used to pay the Firm's general expenses, overheads and running costs; and/or (b) paid away for purposes unconnected with the running of the Firm, and in either case this was improper in the sense that the payments were not in accordance with the strict terms of the Litigation Funding Agreement, contrary to Principles 2 and/or 6 of the SCC 2011.

10. **Allegation 10 (paragraph 135.4 of the Rule 5 Statement) – Respondents 5 and 6**
They each received (whether directly or indirectly) and/or retained monies which the Firm had received from the Axiom Fund in circumstances in which it was improper for them to do so, contrary to Principles 2 and/or 6 of the SCC 2011.

11. **Allegation 11 (paragraph 135.5 of the Rule 5 Statement) – Respondent 5**
He became the owner of the Firm even though he was not a solicitor and not otherwise regulated by the SRA, contrary to Principles 2 and/or 6 of the SCC 2011.

Although it was not a necessary part of its case, the Applicant alleged that by acting as alleged in relation to Allegations 7-11, the Fifth and Sixth Respondents had acted dishonestly.

Preliminary Matters

12. Absence of Respondents 2-6

12.1 The Second Respondent did not attend and was represented by the First Respondent. She had confirmed to the Tribunal in writing that he had authority to represent her.

12.2 The remaining Respondents (3-6) did not attend and were not represented. Mr Levey applied to proceed in the absence of all of them.

12.3 The Third Respondent had played no role in proceedings until the working day before the hearing. He had stated that he suffers ill-health and would be unable to attend as he was medically unfit. He had stated that he had a hip replacement in December 2017, but was assaulted in January 2018, resulting in its dislocation. He was unable to walk more than 200yards and it was impossible to travel to London. He had placed no medical evidence before the Tribunal and he had not sought an adjournment. He had not applied to participate by video-link and no adjustments sought to enable his participation. On the morning of the hearing he had emailed the Applicant and stated:

"I will not be participating in the hearing of this case. I have been interviewed at some length by your client and the responses I gave were candid. I have no reason to believe that a repetition of my position in person will make any material difference to the outcome".

12.4 The Fourth Respondent had admitted all the Allegations against her including dishonesty. Mr Levey submitted that in those circumstances, given that nobody wished to cross-examine her, there was no need for her to be present if she did not wish to be. She had submitted a short document in mitigation and the Tribunal was invited to conclude that she did not wish to participate further.

12.5 The Fifth Respondent had also engaged very late in proceedings. He had told the Tribunal in an email dated 21 June 2018 that he was recuperating from surgery to his leg and could not travel to London. He had not sought an adjournment. The Fifth Respondent had submitted medical evidence in the form of an email from his consultant. The Fifth Respondent had also stated that he was the subject of an investigation by the Serious Fraud Office (SFO)and stated that he should not attend as a result. Mr Levey noted that the First Respondent had applied to adjourn the hearing on similar grounds (SFO investigation) and that had been refused by the Tribunal.

12.6 The Sixth Respondent had engaged with the proceedings and this included filing a certificate of readiness in which he had confirmed he would not be attending.

The Tribunal's Decision

12.7 The Tribunal considered the representations made by Mr Levey and the communications from the absent Respondents. They were all aware of the date of the hearing, as was evidenced by their communications to the Tribunal. Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules ("SDPR") was therefore engaged. Although no party had sought an adjournment, the Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22(5) which states:

"In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:

(i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
(ii) ...;
(iii) the likely length of such an adjournment;
(iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
(v) ...;

(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
(vii) ...;
(viii) ...;
(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
(x) the effect of delay on the memories of witnesses;
(xi) ...;"

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

> *"...It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".*

Leveson P went on to state at [23] that discretion must be exercised:

> *"having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account".*

12.9 The Tribunal was satisfied that the Second Respondent had authorised the First Respondent to represent her. This had been the case throughout the proceedings. There was therefore no reason why the hearing could not go ahead without her being present in person.

12.10 The Third Respondent had raised substantial medical complaints without any medical evidence in support. His engagement with the proceedings had come very late and had been followed by email on the first day of the hearing confirming that he would not be attending. He had not sought an adjournment nor any adjustments and if he had sought an adjournment it would not have complied with the Tribunal's Policy/Practice Note on Adjournments. The Tribunal was satisfied that he had voluntarily absented himself and granted Mr Levey's application to proceed in his absence.

12.11 The Fourth Respondent had indicated that she did not propose to attend. She had made no application to adjourn and nobody wished to cross-examine her. The Tribunal was satisfied that she had concluded that her attendance would serve no useful purpose and had voluntarily absented herself. The Tribunal granted Mr Levey's application to proceed in her absence.

12.12 The Fifth Respondent had emailed to say he would not be attending and had provided an email from his surgeon. He had not applied for an adjournment or any adjustments. He had engaged late and had raised a similar point concerning the SFO investigation that the First Respondent had. The First Respondent had applied for an adjournment approximately two weeks before the hearing which the Tribunal had refused on the grounds that there were no imminent criminal proceedings and so no muddying of the waters of justice. It had therefore not been in the interests of justice to delay matters and that remained the position.

12.13 The Tribunal was satisfied that he had voluntarily absented himself and granted Mr Levey's application to proceed in his absence.

12.14 The Sixth Respondent had engaged and had indicated that he would not be attending. The Tribunal was satisfied that he had voluntarily waived his right to attend. He had not applied for an adjournment and it was clear to the Tribunal that he would attend any adjourned hearing. The Tribunal granted Mr Levey's application to proceed in his absence.

13. Late service of documents (Respondents 3, 5 and 6)

13.1 The Third, Fifth and Sixth Respondents each served additional material in the week before the hearing. The Tribunal noted that this was in breach of the standard directions and accordingly considered as a preliminary issue whether such material should be admitted.

13.2 Mr Levey told the Tribunal that he did not object to any of the material being adduced. It would be a matter for the Tribunal what weight should be attached to it.

13.3 The First Respondent, after being given an opportunity to review the material, confirmed he also had no objection.

13.4 The Tribunal was concerned that in each case the material was served in breach of the Standard Directions. However no objection had been taken to its admission and the Tribunal was satisfied that it was in the interests of justice for the Respondents to be able to inform the Tribunal of their position, albeit very late in the proceedings. In due course the Tribunal would have to consider how much weight to attach to these statements and submissions.

13.5 The Tribunal permitted the additional material to be admitted into evidence.

14. Article 6 point raised by Sixth Respondent

14.1 The Sixth Respondent filed two responses to the Allegations. The first was served in October 2017 ("the first Answer") and the second was served a few days before the hearing in June 2018 ("the second Answer").

14.2 In his first Answer the Sixth Respondent raised a number of complaints about the way in which the case been brought. In his answer he stated:

"I believe the decision of the SDT not to allow me more time to prepare this defence shows clear bias not only to the SRA but to the other Respondents who have been aware of the tribunal for years now and have had a great deal of time to prepare a considered response in a manner that hasn't been rushed and have had all that additional time to properly look through the evidence".

14.3 The Sixth Respondent had gone on to state that he did not have the financial means to pay for legal representation and he had not had the time to read through the documentation sent to him. He therefore expected *"there to be huge gaps in my response and the evidence I provided"*. He also explained that he had been working full-time during this period and therefore only been able to work in his defence as evenings and weekends whilst also attending to his family responsibilities.

14.4 The Sixth Respondent submitted that the Tribunal and the Applicant had breached his basic human rights by not allowing him more time to prepare his defence, particularly in light of the fact that the papers had not been sent to his correct address.

14.5 Mr Levey told the Tribunal that the issues with the service of the Rule 5 bundles had all been superseded. The Applicant had got those to him and he had served an Answer. There were then issues with the hearing bundle. The Applicant had tried to serve them on him at his address. The Applicant's view was that he had been evading service, but this was also superseded by his further statement and correspondence.

The Tribunal's Decision

14.6 The Sixth Respondent had been served on 2 September 2017 and he had made an application to vary the Standard Directions to allow him additional time to comply on 14 September 2017. This had been granted by the Deputy Clerk and the Sixth Respondent had complied. He had not sought further extensions and the Tribunal had allowed him to file further submissions out of time. The Tribunal was independent of the Applicant, and indeed of any Respondent. The Tribunal found nothing in the argument that the Sixth Respondent could not have a fair hearing and rejected the Article 6 submissions.

Factual Background

15. The Firm

15.1 The Allegations arose out of the Respondents' involvement in, and management of, the Firm. The Firm had been known as Emmetts Solicitors, which was a partnership. In July 2009 the First and Second Respondents incorporated a limited company, Emmetts Solicitors Limited. On 1 March 2010 Emmetts Solicitors Limited purchased the net assets of the partnership for £650,000, including a cash payment to the First and Second Respondent of £526,349 with the balance being a settlement of liabilities owed by the First and Second Respondents to Emmetts Solicitors. On 1 September 2011 Emmetts Solicitors Limited changed its name to Ashton Fox Solicitors Limited. In this Judgment, unless otherwise stated, all references to "the Firm" include Emmetts Solicitors (the partnership), Emmetts Solicitors Limited and Ashton Fox Solicitors Limited.

15.2 On 6 April 2011 the Firm had purchased ATM Solicitors from TS for £3,000,000.

15.3 In the period from 14 December 2011 to 12 July 2012 the Firm was owned by Cliffcot Investment Limited. On 31 January 2013 the Firm entered administration.

15.4 The information obtained by the Applicant from Companies House showed the Directors of the Firm as being as follows:

Director	Period of office
First Respondent	14 July 2009 to 1 January 2012
Second Respondent	14 July 2009 to 1 August 2011
TS (former solicitor, now struck off)	6 April 2011 to 25 July 2011
Third Respondent	19 August 2011 to 12 July 2012
Fourth Respondent	1 January 2012 to 26 July 2012
PS (former solicitor, now struck off)	12 July 2012 onwards
GL	12 July 2012 onwards

15.5 At the time of the first SRA inspection on 6 February 2013 the Firm was situated at Unit 4, Millennium City Business Park, Preston, Lancashire. It employed around 80 members of staff including nine assistant solicitors.

16. <u>The Axiom Fund ("the Fund")</u>

16.1 The Fund was an investment fund established in the Cayman Islands for the purpose of providing funding to panel law firms to for the conduct of cases. In the Offering and Supplemental Offering Memoranda, investors were told that the monies would be lent to fund panel firms to carry out litigation on a 'no win no fee' basis. Investors were told that the panel firms had been vetted as had the cases which were being funded. The Fund expected 90% of the cases to be successful.

16.2 The Fund was managed by Synergy and Synergy Isle of Man ("Synergy"). These were companies of which TS was either the owner and/or the director.

16.3 Monies were lent pursuant to Litigation Funding Agreements. The Firm signed two such agreements, the Panel Solicitor Services Agreement ("PSSA") dated 21 May 2010 and the Precedent Litigation Funding Agreement ("PLFA") dated 27 April 2012. Between 21 May 2010 and 16 October 2012 the Firm received 71 payments from the Fund totalling £29,496,425.50. The Fund had also lent monies to ATM Solicitors, prior to its purchase by the Firm, in the sum of £6,237,700.

17. <u>PSSA</u>

17.1 This was signed by the First Respondent on behalf of the Firm.

17.2 The key terms of the PSSA were as follows:

- Under Clause 9.1, the Firm was permitted to borrow a maximum of £2,100 for each individual case.

- Clause 9.2(a) stated that: "The Panel Solicitor will only authorise amounts derived from the Finance Facility ("Loan monies") to be used to pay authorised Fees and Expenses (as set out in the Fee table at Schedule 2) and that Loan monies shall not be used for any other purposes".

- 'Fees and Expenses' were defined in Clause 2 as follows; "Fees and expenses approved by the Loan Manager that have been incurred by the Solicitor in connection with the legal action to recover a clients [sic] damages, including but not limited to audit fees, insurance premiums, Enquiry Agents fees, Agent sign-up fees, court fees and the finance fees as set out in the fee table within the Solicitors Operation Manual".

- Schedule 2 contained a drawdown table which is set out below. This table demonstrated that the Firm received £950 each time it borrowed £2,100. The balance was made up of fees to Synergy and the Fund.

- Under Clause 10.1 and Schedule 1, the Firm undertook to observe the terms of the Operational Standards set out in the Operational Manual. This set out the steps to be followed by the Firm at each stage in order to ensure that cases were vetted at the outset and that litigation was conducted properly.

- The Firm undertook that within two business days of the receipt of the loan monies, the funds would be transferred into an account nominated by Synergy.

17.3 The drawdown table was as follows:

Audit Report (Synergy IOM) - £460
Insurance Arrangement Fee (Synergy) - £50
Enquiry Agent (Synergy) - £130
The Investment Manager (Synergy) - £300
Court Fees and Wip (Solicitors) - £950
Administration (Axiom) - £210
Total - £2,100.

18. <u>PLFA</u>

18.1 This was signed by the Third Respondent on behalf of the Firm.

18.2 The key terms of the PLFA were as follows:

- Under Clause 2 the monies were to fund "Eligible Legal Expenses", which were defined in Clause 1.1 as follows; "'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".

- Clause 2.2(c) stated that "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)".

- The monies were also to fund insurance premiums for Financial Guarantee Insurance ("FGI"). This was a policy the Firm was required to obtain to cover sums owed by the Firm to the Fund.

- Under Clause 4.2(a)(3) the Firm was required to pay the funds into a client account.

- Under Clause 3.2 the Firm was required to provide Tangerine, (a company of which TS was either the owner or Director and in respect of which DR had an interest), the loan manager, with details of the relevant Legal Expenses for which the money was requested and all related invoices.

- The Firm was required to provide Tangerine with certain documents including; a copy of any Conditional Fee Agreement for the client; a copy of the Legal Funding Facility Application Form for the client; a copy of the written Advice as to the client's prospects of success; and a copy of the Legal Expenses Insurance in relation to the claim.

- Under Clause 4, the Utilisation Request for each drawdown had to specify the client account into which the funds were to be paid and contain copies of relevant invoices for Eligible Legal Expenses.

18.3 In October 2012 the Fund collapsed and on 12 February 2013 Grant Thornton were appointed as receivers of the Fund. The Firm's administrators reported that the Firm was indebted to the Fund in the sum of £60,858,000.

19. <u>The use of the Funds</u>

19.1 It was not disputed that the Firm became dependant on Axiom funding. Therefore any expenditure incurred by the Firm came from monies derived from the Fund. The FIO established that monies derived from the Fund were used to pay the following:

- Salaries
- Introducer fees
- Insurers
- Consultancy fees
- Call centre
- Credit loan companies
- A property company in Dubai

- Other firms of solicitors
- Training providers
- TS, members of his family and companies owned by or associated with him - £14,733,997. This included his personal trainer (£66,000) and his mobile telephone bill (£35,428.12).
- A barrister instructed by or on behalf of TS

19.2 The Respondents received monies derived from the fund as follows:

- The First and Second Respondent, including companies in which the First Respondent had an interest - £1,977,642. This comprised £1,132,441 paid to them directly and £845,201 to companies in which the First Respondent had an interest. This included the cash payment of The First and Second Respondent had received a cash payment of £526,349 received when they had sold the net assets of the partnership to the limited company. It also included the £150,000 they had received in cash when they sold their share to Cliffcot in December 2011 as well as a surplus of £290,972 that could not be explained and salaries of £165,118.

- Third Respondent - £300,000.

- Fourth Respondent - £300,000.

- The Fifth Respondent, companies owned by him or associated with him - £590,940.24.

- The Sixth Respondent - £54,865.98 by way of salary.

20. Allegations 1 and 7

20.1 This Allegation related to the First and Second Respondents for the period 6 April 2011 to 14 December 2011 and to the Third and Fourth Respondents from 14 December 2011 to 26 July 2012. It related to the Fifth and Sixth Respondents across both periods.

20.2 The Applicant's case was that the First and Second Respondents did not have effective control of the management of the Firm in the material period. The Fifth and Sixth Respondents, together with TS, were said by the Applicant to have had significant control over the Firm. This Allegation was denied by the First and Second Respondents.

20.3 In respect of the Third and Fourth Respondents, the Applicant's case was, again, that they did not have effective control or management of the Firm in similar circumstances. This Allegation was partially denied by the Third Respondent and fully denied by the Fifth and Sixth Respondents. It was admitted by the Fourth Respondent.

20.4 The evidence relied upon by the parties in support of their respective positions is set out below as part of their submissions in respect of this Allegation.

21. Allegations 2 and 8

21.1 The Applicant's case was that the Firm engaged in borrowing that was excessive and reckless in that the sums incurred were so large as to there being no prospect of it being

repaid. This was denied by the First, Second and Third Respondents and admitted by the Fourth Respondent. It was denied by the Fifth and Sixth Respondents. The evidence relied upon by the parties in support of their respective positions is set out below as part of their submissions in respect of this Allegation.

22. Allegations 3 and 9

22.1 The Applicant's case was that the Firm's use of Axiom monies was improper as it was not in compliance with the PSSA or PLFA. This was denied by the First, Second, Third, Fifth and Sixth Respondents but admitted by the Fourth Respondent. The evidence relied upon by the parties in support of their respective positions is set out below as part of their submissions in respect of this Allegation.

23. Allegations 4 and 10

23.1 The Applicant's case was that the receipt of Axiom monies by the Respondents personally was improper.

23.2 *First and Second Respondents*

23.2.1 Between 26 April 2010 and 19 December 2011 the Firm made 62 payments totalling £1,132,441.16 to the First and Second Respondents as set out above.

23.2.2 Between 23 July 2010 and 2 November 2011 a total net sum of £527,144.29 was paid to Bracewells Law. The First Respondent was a Director of Bracewells Law from 1 April 2010 until 1 January 2012 and he held a 40% share in the company between 2 January 2011 and 1 January 2012.

23.2.3 Between 26 April 2011 and 22 December 2011 a total net sum of £248,807.11 was paid to Market Me Call Centres Limited ("Market Me"). The First Respondent was a Director of Market Me from 25 January 2011 to 19 December 2011 and held a 50% share from 25 January 2011.

23.2.4 Between 15 November 2011 and 16 December 2011 two payments totalling £69,250.00 was paid to Castlehill Auditing Limited at a time when the First Respondent owned a 33.3% share in it.

23.2.5 On 19 December 2011 the First and Second Respondents received £150,000 in respect of the sale of their shares in the Firm to Cliffcot. The Sale and Purchase Agreement stated that the consideration was £625,636.18. This included the repayment of their Directors' loan of £263,130.04 and repayment of a loan to Payday Credit Limited, a company owned by them. The FIO noted that payments had commenced in June 2011, six months in advance of the sale.

23.2.6 The First and Second Respondents did not dispute that the payments were received using Axiom-derived funds but denied they were improper.

23.3 *Third and Fourth Respondents*

23.3.1 The Third and Fourth Respondents each received £200,000 on 14 June 2012. The Third Respondent received a further payment of £100,000 on 13 July 2012 and the Fourth Respondent paid herself a further £100,000 on 18 July 2012.

23.3.2 The Third and Fourth Respondents did not dispute that the payments were made using Axiom-derived funds. The Third Respondent denied they were improper. The Fourth Respondent admitted they were improper.

23.4 *Fifth and Sixth Respondents*

23.4.1 The Fifth Respondent and companies associated with him received a total of £590,940.24. This included 13 payments totalling £45,122.76 between 6 May 2011 and 11 May 2012 for expenses. It also included 16 payments totalling £216,000.00 to Cliffcot, of which he was a 100% shareholder, between 17 June 2011 and 22 August 2012. It further included 9 payments totalling £329,817.48 between 1 March 2012 and 28 June 2012 to Norton Accord Limited at a time when he was a 10% shareholder. The Fifth Respondent denied that any payments he or his companies had received were improper.

23.4.2 The Sixth Respondent received a salary of £54,865.98 between April 2011 and August 2012.The Sixth Respondent denied that these payments were improper.

24. Allegation 5

24.1 The Applicant's case was that the use of Axiom-derived funds to purchase ATM was improper. ATM was also a Panel Firm receiving funding from Axiom.

24.2 The draft accounts of ATM for the year ended 30 April 2011 showed debts to the Fund of £12,787,535 and a total debt of £13,172.556. The work in progress (WIP) was valued at £12,381,600 based on a calculation of £2,400 per case.

24.3 The Sale and Purchase Agreement was dated 6 April 2011. The seller was TS and the buyer was Emmetts Solicitors Limited. The consideration was specified as £3.5m but in fact only £3m was paid.

24.4 On the same day a Remuneration Agreement was signed between Emmetts Solicitors Limited, TS and the First and Second Respondent. Under the Clause 1 of this agreement it was agreed that the First and Second Respondents would each receive remuneration of £120,000 per annum and TS "or his Nominee" would be paid £240,000 per annum.

24.5 In addition, Clause 2.1 stated:

> *"From the date of this agreement until such time as [TS] has received the full amount of the Purchase Price under the Asset Purchase agreement, Richard Emmett will receive a sum equivalent to 8% of the WIP drawn down by Emmetts Solicitors Limited under the terms of the Buyer's Axiom Funding Agreement".*

24.6 Clause 2.2 stated:

> *"From the date that [TS] has received the full amount of the Purchase Price under the Asset Purchase Agreement until termination of this agreement, Richard Emmett will receive a sum equivalent to 8% of the WIP drawn down by Emmetts Solicitors Limited under the terms of the Buyer's Axiom Funding Agreement and [TS] will receive a sum equivalent to 12% of the WIP drawn down by Emmetts Solicitors Limited under the terms of the Buyer's Axiom Funding Agreement".*

24.7 Clause 2.4 stated that the payments referred to under Clauses 1 and 2 were not dependant on the parties being Directors.

24.8 The First and Second Respondents did not dispute that the Firm purchased ATM using Axiom-derived funds but denied that it was improper.

25. Allegations 6 and 11

25.1 The Applicant's case was that the First and Second Respondents' disposal of their interest in the Firm and the Third Respondent's acquisition of it had resulted in the Firm being owned by a non-regulated individual or company. On 14 December 2011 a Deed of Trust was signed between the Fifth Respondent who was the sole shareholder of Cliffcot, and the Third Respondent. Under this agreement the Fifth Respondent agreed to transfer the entirety of his interest in Cliffcot to the Third Respondent. Cliffcot would then proceed with the purchase of the Firm. Clause 5 stated:

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

25.2 The First, Second and Fifth Respondents denied this Allegation. The Third Respondent admitted it to the extent that it was a matter of record but denied any dishonesty.

Live Witnesses

26. James Carruthers - Forensic Investigation Officer ("FIO")

26.1 Mr Carruthers confirmed that his witness statement, his two interim Forensic Investigation Reports ("FIR/FIRs") and the final FIR were true to the best of his knowledge and belief. Mr Carruthers told the Tribunal that his understanding of the term 'Work in Progress' – "WIP" - was time that a Firm had recorded for work done that had not yet been billed. Mr Levey asked Mr Carruthers if he had seen any evidence that the figures for the WIP of the Firm were consistent with the conventional understanding of the term. Mr Carruthers replied that he had never seen any time recording or any documentation.

26.2 Mr Levey asked Mr Carruthers who the investigator had been that the First Respondent had referred to in his answer in respect of a previous visit. Mr Carruthers explained that it was not an investigator but it had been a practice standards adviser who at that time would have been based in a different department. In the correspondence from that visit was Axiom funding mentioned.

26.3 In cross examination Mr Carruthers was taken through the figures in some detail and it was put to him that there was a gap of 8,000 cases. He was asked if he knew where these cases had gone. Mr Carruthers did not know and stated that his figures had been based on the office bank statements showing the amount of funding received. He did not regard the gap in cases as extraordinary in the context of the Firm overall. He agreed that it would cause a problem for the Firm to have a gap of that size.

27. First Respondent

27.1 The First Respondent confirmed that his witness statement and his answer were true to the best of his knowledge and belief and he adopted them as his evidence in chief. There were two points of clarification. Firstly he accepted that the individual who had visited previously was not an investigator. Secondly he stated that there had been a Financial Guarantee Indemnity ("FGI") policy in place although he was unable to locate it at present. While he was not 100% certain, he believed that the premium was paid from the £950.

27.2 In cross examination the First Respondent accepted that the previous visits had not involved him being asked about the proper way in which Axiom monies could be used. Although he had held a discussion with the practice standards adviser about Axiom funding and had showed her a copy of the PSSA, he accepted that it was not the thrust of her investigation and she had not done a detailed assessment of that.

27.3 In respect of the FGI, the First Respondent confirmed that that insurance would not cover any uplift and that it was limited to covering the Firm's own costs.

27.4 The First Respondent accepted that the Firm was entirely dependent on Axiom funding to get its cases to a conclusion. There was no other source of income that was sufficient to carry the costs to conclude the cases.

27.5 *Payments to TS*

27.5.1 The First Respondent told the Tribunal that TS had been a director from April 2011 until 25 July 2011. He had never been an employee of the Firm. He told the Tribunal that there was an agreement for him continuing to do some work for the Firm and he was paid for that work but he did not know if this was a formal agreement in writing. Mr Levey asked the First Respondent what work TS was doing. The First Respondent explained that his consultancy related to funding and bulk management of casework as well as introducing various claims introducers. There was an agreement to pay for this work. Mr Levey asked him if this was part of the remuneration agreement. The First Respondent said that it was an oral agreement which he had agreed to following TS ceasing to be a director.

27.5.2 Mr Levey asked the First Respondent for his explanation for the Firm using Axiom funds to pay for TS's personal trainer. The First Respondent told the Tribunal that the personal trainer was not exclusively TS's, but had been used by others in the company including himself. Any payments over £5,000 were flagged for the First Respondent's attention. These payments had never been flagged to him and he agreed with Mr Levey that it was an excessive amount. He was aware that payments were being made but he did not know how much they were and if he had known then he would have stopped them.

27.5.3 Mr Levey asked the First Respondent how, given that he was a director at the time, he could say that he had not lost proper and effective control of the Firm when he accepted that if he had known about the payments to the personal trainer he would have stopped them. The First Respondent denied that he had lost control and stated that he had a system whereby any payments over £5,000 was referred to him. This was a proper system although it had failed to an extent because it was a regular payment under the limit. The First Respondent stated that to the extent that the system failed, he was not in control of that system. The First Respondent's position was the same in respect of TS's mobile phone bill. The First Respondent agreed that the Axiom funds should not have been used for these purposes on the basis that the Firm should not have been paying for these items, but he maintained that the Axiom funding could be used as the Firm wished. For example it would have been proper for the funds to be used to pay his own mobile phone bill.

27.5.4 The First Respondent confirmed that every time he drew down £2,100, Synergy received £940. This was a company of which TS was a director. The First Respondent accepted therefore that TS benefited very significantly every time the Firm drew down funds. Mr Levey suggested that it was "a little odd" that TS was also paid £240,000 to introduce the Firm to claimants. He suggested that TS was getting money on both sides of the transaction. The First Respondent agreed that TS had made a lot of money from each aspect. He further agreed that it was in TS's interests to introduce claimants to the Firm because that allowed the Firm to borrow which in turn allowed TS to make money through his companies. Mr Levey asked the First Respondent what, therefore, with the value that TS was bringing that generated fee of £240,000. The First Respondent explained that TS was introducing the relationship with the case management companies. These relationships were not simple and they would only provide work to certain firms.

27.5.5 He told the Tribunal that the Firm had relationships with approximately seven case management companies. In addition to this work TS was giving general advice on the management of litigation. Mr Levey asked the First Respondent what he meant by this term, given that TS had no access to office computers, no email, telephone or office provided by the Firm. The First Respondent defined TS's role as providing management advice. This included advice as to types of computer system that the Firm could use. He described the advice as general strategic advice.

27.5.6 The First Respondent accepted that this was not a "good use" of the Firm's monies, describing it as a high rate for the services provided.

27.6 *Fees to Synergy*

27.6.1 The First Respondent agreed with Mr Levey that Synergy *"had done very well"* out of this relationship. From the £2,100 drawn down, the Firm received £950 and Synergy received £940, with a further £210 going to Axiom. Mr Levey asked the First Respondent what the benefit had been to the Firm in return for a fee totalling £1,150. The First Respondent replied that it was the opportunity to run a large number of litigated cases of a similar kind and thereby recover significant money. He believed it would be much higher than £2,500 per case. The first case that was settled was for £7,100 in respect of costs.

27.7 *Payments to the Fifth Respondent*

27.7.1 The First Respondent confirmed that under his consultancy agreement the Fifth Respondent received £12,000 per month. He had also received £45,000 by way of expenses. Mr Levey pointed out that the consultancy agreement was dated 12 October 2011 but that he had been supplying services since March 2011. The agreement itself made reference to April 2011. Mr Levey asked the First Respondent where the Fifth Respondent's job description and responsibilities was written down. The First Respondent stated that there was no such document and confirmed that as a director he had been paying the Fifth Respondent £12,000 a month without a written agreement. The Fifth Respondent was attending the office very regularly and was managing the business, doing the job of Chief Executive Officer (CEO).

27.8 *Purchase of ATM*

27.8.1 The First Respondent confirmed that it was not disputed by him that TS had received £3 million for the Firm to practice ATM. He further confirmed that while initially a payment was received from a different source, namely Nobles, the balance of £1.7 million was derived from Axiom funds. Nobles was a company owned by TS and it was a loan that was repaid using Axiom monies. The First Respondent accepted that the Firm had borrowed £6 million to buy ATM for £3 million on the basis that for every £1 borrowed, just over £2 had to be repaid to Axiom.

27.8.2 Mr Levey asked the First Respondent whether he now accepted that this had been a reckless transaction. The First Respondent accepted that it was, however at the time the anticipation was that the amounts that could be recovered would exceed the amount borrowed.

27.8.3 Mr Levey put to the First Respondent that almost all the cases that were being acquired as a result of the purchase of ATM or consumer cases, which the First Respondent confirmed was correct, and further that following the ruling by HHJ Waksman, the majority of those had limited prospects of success. The First Respondent disputed the latter point and maintained that many of them had arguable points.

27.8.4 The First Respondent told the Tribunal that he had looked at the accounts of ATM but had not instructed accountants, auditors or consultants. He had formed a view about the purchase but acknowledged that he had never purchased a firm for £3 million before.

27.8.5 Mr Levey asked the Respondent whether it was still his position that he denied engaging in excessive and reckless borrowing in light of the fact that he had not engaged any professional assistance with the valuation of ATM, had purchased a £3 million firm even though it was in debt to the Fund in the sum of £13 million and in doing so had saddled the Firm with an additional £6 million of debt, repayable at a high rate of interest. The First Respondent maintained that his perception was that the amount recovered would be substantial and would have had commercial benefit and he therefore maintained his denial of this Allegation.

27.9 *The Remuneration Agreement*

27.9.1 Mr Levey asked the First Respondent about the 8% that he would receive as part of the £950 drawdown. The First Respondent stated that this was intended as a cap on additional payments. He stated that additional payments would be received from the firm including the purchase of goodwill. He explained that 8% was therefore the maximum. Similarly the 12% of the TS was also a cap designed to protect cash flow. Mr Levey put to him that the agreement did not say that. The First Respondent maintained his position. Mr Levey put to him that if he took 8% and TS took 12% this was hugely depleting an already small sum by 20%. The First Respondent maintained that this was perfectly sufficient to run the cases based on the principle of economies of scale. In response to a question from the Tribunal, the First Respondent confirmed that he was the person who had prepared the remuneration agreement.

27.9.2 The First Respondent accepted that the business model only worked as long as Axiom did not call in the funds. As a matter of law they had the right to do that although the Respondent believed it was unlikely *"to the bounds of impossibility"* that they would have done so. He accepted that it would be extremely prejudicial to the Firm's clients if the Firm collapsed, and that had it happened, 17,000 clients would have been left without legal representation. However the First Respondent maintained that it was extremely unlikely to have occurred and the whole purpose of the funding arrangement was to give clients access to justice. He accepted that he had not done any due diligence into Axiom's capital. Mr Levey put to the First Respondent that if Axiom had run out of money this would have caused significant difficulties. The First Respondent acknowledged this but stated that the same applied to any lender from whom the Firm was borrowing.

27.10 *Purchase of Emmett's solicitors*

27.10.1 The First Respondent confirmed that before the Axiom funding was arranged the Firm was making a profit in the region of £80,000. Mr Levey put to him that he had purchased his own partnership for £650,000. The First Respondent stated that he had done so based on the advice of accountants as assets needed

to be purchased for proper consideration. The First Respondent had not exhibited that advice. Mr Levey put to him that the goodwill was just an asset of the company and could have been purchased for £1. The First Respondent maintained that he had been looking at it from a tax point of view. He agreed with Mr Levey that the result had been that the Firm incurred £1.3 million of debt. Mr Levey put it to the First Respondent that he had not documented the sale in a written agreement. The First Respondent agreed that if he had done so he would have produced it.

27.11 *Bracewells*

27.11.1 The First Respondent confirmed that he had been a director and shareholder in Bracewells. He confirmed that the Firm had sent £527,000 to Bracewells, explaining that this was in respect of the funding of the cases that are being given to them by the Firm. He therefore accepted that when this money was transferred this was Axiom funds. It was put to him that he had therefore saddled the Firm with a £1.1 million liability. The First Respondent denied this, stating that Bracewell's had agreed to take on responsibility for the repayment of the loans. This had been a stop-gap measure to ensure that staff were kept occupied at Bracewell's. Mr Levey asked the First Respondent what he had received in return from Bracewell's. The First Respondent replied that they took over responsibility for the repayments. Mr Levey asked what the Firm got, having given Bracewell's assets in the form of files and £527,000. The First Respondent confirmed that the Firm got nothing. Mr Levey put to him that this had been reckless. The First Respondent stated he was not sure whether it was reckless, that was for others to determine, but he accepted that it should not have been done.

27.12 *Payday Loans*

27.12.1 Mr Levey asked the First Respondent why the Firm had lent over £200,000 to Payday Loans when it (Ashton Fox) was a firm of solicitors. The First Respondent stated that it had been agreed by Synergy that the money could be paid for that purpose. It has been made so that the First Respondent could set the company up and the First Respondent accepted that the money was derived from Axiom funding. He agreed that £217,000 had been lent, incurring a liability of £450,000. Mr Levey put to the First Respondent that this was not a proper use of the money. The First Respondent stated that it was office account money that had been loaned to a director of the Firm, i.e. him, and it had been paid back though as it turned out with further Axiom monies.

27.13 *Payments to marketing companies*

27.13.1 The First Respondent agreed that £330,000 had been paid to Norton Accord. This was a company owned indirectly by TS. It was a call centre which the Firm had paid to find new cases.

27.13.2 Market Me was a company owned by the First Respondent which he confirmed had received at least £248,000. He told the Tribunal that it was part of an attempt to reduce the acquisition cost of cases. He did not dispute that by

lending this money, he had incurred liability to the Firm of £500,000. Mr Levey asked the First Respondent why the Firm had not simply employed people to make the phone calls if the intention was to save cost. The First Respondent replied that he had not thought it appropriate to involve the Firm in this way. The First Respondent denied that it was just another way of getting Axiom monies out of the Firm. Mr Levey submitted that on no basis did this constitute funding of WIP and it was in fact simply trying to keep the carousel going. The First Respondent stated that it was general funding secured against WIP and so it could be used for that. He denied that it was keeping a carousel going, it was reducing the cost of purchasing the cases. The First Respondent agreed with Mr Levey that it was not a proper use of money but explained that the reason he said that was that office monies should not have been used as the Firm was not a lending company. However under the PSSA the money was office money of the Firm and could be used for any proper purpose.

27.14 *Control of the Firm*

27.14.1 The First Respondent agreed with Mr Levey that his business model was founded on the premise that the cases that were accepted were good quality cases. If the cases were not very strong the model would not work and would collapse very quickly. The First Respondent confirmed that the Fifth Respondent had started making changes that he did not like. He told Mr Levey that his comments in his interview of 18 April 2013 were all correct. The Fifth Respondent had removed due diligence processes, something with which the First Respondent disagreed. Despite disagreement about the changes, which involved bringing the due diligence in-house, the changes went ahead. Mr Levey put to the First Respondent that he had treated the Fifth Respondent as a director. The First Respondent denied this. Mr Levey reminded the First Respondent that he had stated in his interview *"but they were also directors really as well"*. This had been a reference to the Fifth Respondent and TS. The First Respondent stated that the reason he now partially resiled from that was that he had refused to sign a further funding agreement. There had been some issues where he and the Second Respondent had said 'no' and others where they could appreciate the argument even if they didn't agree with it. Mr Levey reminded the First Respondent that he had described himself as having been *"outvoted"*. The First Respondent stated that he had listened to the Fifth Respondent and TS on certain matters and not on others. The First Respondent maintained that he and the Second Respondent had retained overall control of the company. He had used the wrong word when he said *"outvoted",* it was influence not a vote.

27.14.2 Mr Levey put to the First Respondent that he could not reasonably have relied on what the Fifth Respondent told him as it was in the Fifth Respondent's interests that the Firm borrowed as much as possible. The First Respondent did not agree with this. He stated that the Fifth Respondent had no standing and the fund was TS and DK. If they could not rely on them they could not rely on anyone.

27.14.3 The First Respondent was referred to the section of his interview where he had indicated that he could not dismiss the Fifth Respondent as it could upset the Firm's key funder. The First Respondent stated that he had in fact excluded the Fifth Respondent from the office for a time but he did not believe that he would have withdrawn funding. He accepted that it had been a very challenging period from a control point of view. Mr Levey put to him that his position had been untenable because he had to keep the fund satisfied. The First Respondent denied that it was untenable but repeated that it had been very challenging. He agreed that he wanted to maintain good relationships with both the fund and with the case providers.

27.15 *Departure from the Firm*

27.15.1 The First Respondent denied the suggestion by Mr Levey that he had sold his shares in the Firm to the Fifth Respondent and TS. He stated that it was arranged by them but he was not selling it to them. He was not aware that the shares would ultimately end up being owned by TS. He was referred to an email in which he had stated that TS would be the ultimate beneficiary of the shares and it was put to him that he was not telling the truth. The First Respondent stated that he did not recall that and that his understanding was that the shares were going to the Third Respondent. He described the email as *"incorrect"*.

27.15.2 The First Respondent told the Tribunal that he and the Second Respondent had spoken with the Third Respondent and discussed the price. He confirmed that there was no business advice or valuation. Mr Levey asked him how he knew that the £675,000 figure did not undervalue the Firm. The First Respondent stated that he thought that it was probably less than the shares were worth, but the reasons for the sale were because they had wanted to leave for some time. This was as well as the stresses and tensions referred to above. Mr Levey pointed out that at the time of the sale there was a £42 million liability to Axiom. The First Respondent replied that the assets counterbalanced this. The correct estimate WIP based on 17,000 cases at £2,500 was £44 million.

27.15.3 Mr Levey asked the First Respondent if he was suggesting that the SRA would have permitted the transfer of his shares to an unregulated company had they been aware of it. The First Respondent replied that he did not know. He was minded to say no, save for the fact that counsel's opinion had reflected the fact that the Fifth Respondent had no voting rights. Mr Levey asked the First Respondent to assist the Tribunal as to why he had received an additional £150,000 when he had already received £230,000. This was more than he was meant to have received. The First Respondent told the Tribunal that he could not explain this.

27.15.4 The First Respondent accepted that he had transferred the shares in the *"hope and expectation"* that they would *"end up"* in the hands of a solicitor but that he had no legal say or control to ensure that that was what happened. He denied selling the business knowing full well that it had a very large number of financial problems.

27.16 *PSSA*

27.16.1 The First Respondent confirmed that he was aware that the fund was a separate legal entity from Synergy. The monies therefore belonged to Axiom and not to Synergy. The First Respondent confirmed that he had done no due diligence on the fund although he had met the fund promoter. The PSSA provided that the Firm could only speak with the investment manager.

27.16.2 Mr Levey took the First Respondent to the section of the agreement which stated that the funds were for expenses which "have been" incurred. The First Respondent told the Tribunal that this clause had to be read in the context of the whole agreement. If that had been the intention of the agreement, which it was not, the £950 would have to been drawn down later or alternatively paid into client account as it would be client monies.

27.16.3 Mr Levey referred to the agreement requiring a designated office account for receipt of the funds. The First Respondent explained that it was the office account which had been designated and therefore the main office account was the designated account. Mr Levey suggested that the Firm could have had one general office account and one office account which was ring fenced from the Axiom funding. The First Respondent stated this had never been the intention of the agreement.

27.16.4 Mr Levey asked the First Respondent if it was his position that, notwithstanding clause 9.2 specifying that the funds shall not be used for any other purpose, that they could be used for anything at all. The First Respondent stated that it could be used for anything as long as it was approved by the loan manager. The loan manager had made quite clear that it could be used for the purposes that it had been. Mr Levey reminded the First Respondent that he had earlier accepted that using the money to fund Payday Loans was, from the point of view of the Firm, improper. Mr Levey therefore suggested that this was a breach on the face of the agreement. The First Respondent stated that the agreement allowed for general office use and the expectation was that the funding would grow the Firm. The payments to the loan company was not doing that and therefore should not have been made. However the First Respondent denied that it was a breach.

27.16.5 Mr Levey asked the First Respondent what, if that was the case, was the difference between this arrangement and a general practice loan beyond the fact of the cases being tied to the funding. The First Respondent stated that it was specialist lending with the funds being borrowed against the cases. Mr Levey put to the First Respondent that this was obviously not what was intended by the agreement. The First Respondent disagreed with this assessment. If the only purpose was to pay fees after they would have been incurred the purpose of the loan would have been redundant. Mr Levey put to the First Respondent that the risks were obvious, the First Respondent had turned a blind eye to the risks and had not carried out a proper enquiry because he was benefiting so significantly from the arrangements. The First Respondent denied each of these propositions. The First Respondent

accepted that he had been taking hundreds of thousands of pounds and TS had been taking millions of pounds. However he denied any lack of integrity.

Findings of Fact and Law

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

29. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of all parties.

The Tribunal's General Approach

Integrity

30. When considering the question of integrity, the Tribunal applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

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

31. Wingate and Evans and Malins had continued a line of authorities that included SRA v Chan [2015] EWHC 2659, Scott v SRA [2016] EWHC 1256 (Admin), Newell-Austin v SRA [2017] EWHC 411 (Admin) and Williams v SRA [2017] EWHC 1478 (Admin).

Dishonesty

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

> *"the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ..... When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that*

the defendant must appreciate that what he has done is, by those standards, dishonest."

33. Where the Tribunal was required to consider an allegation of dishonesty, it applied the test in Ivey and in doing so adopted the following approach:

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

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

Recklessness

34. Where recklessness was alleged, the Tribunal applied the test set out in R v G [2003] UKHL 50 where Lord Bingham adopted the following definition:

> *"A person acts recklessly…with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur and it is, in the circumstances known to him, unreasonable to take that risk."*

35. This was adopted in the context of regulatory proceedings in Brett v SRA [2014] EWHC 2974 (Admin).

Absent Respondents

36. The Tribunal considered carefully all matters raised by the absent Respondents in their witness statements and submissions. The Tribunal drew no adverse inferences from the fact that they had not given evidence. The Tribunal did note, however, that by their absence, their accounts could not be tested in cross-examination. The Tribunal took this into account when deciding how much weight to attach to their evidence. Clearly the Tribunal was not able to attach as much weight to their evidence as it might have done had they made themselves available for cross-examination.

37. **Allegation 1 (Respondents 1-4) - They failed to maintain proper and effective control of the Firm and/or permitted others to exercise de facto control over the management and running of the Firm and its finances. By so acting they breached Principles 2, 3, 4 and/or 6 and failed to achieve Outcome 7.4 of the SRA Code of Conduct 2011 ("SCC 2011").**

Applicant's Submissions.

37.1 Mr Levey submitted that in respect of the First and Second Respondents, they had effectively admitted to the SRA that, between 6 April 2011 until 14 December 2011, they did not have effective and proper control of the management of the Firm. The First Respondent had told the FIO in interview on 18 April 2013 that when the Fifth Respondent commenced working for the Firm he made changes to the way the Firm was run that had the effect of systematically removing quality control measures.

Meanwhile the Sixth Respondent had taken the role of "finance manager" and been added to the bank mandate in May 2011. When the First and Second Respondents had objected to the changes they had described themselves as being *"out voted"*. Mr Levey referred the Tribunal to the interviews with the First and Second Respondents.

37.2 In the interview of 18 April 2013 the First Respondent had described the Fifth Respondent as *"effectively the eyes and ears"* for TS.

37.3 In the interview of 4 February 2014 the First Respondent had referred to the situation amounting to *"a bit of hijacking I guess"*. He had told the FIO that it would have been difficult to dismiss the Fifth Respondent because it would not be in the interests of the Firm to upset its key funder.

37.4 Mr Levey submitted that the Fifth and Sixth Respondents had exercised significant control over the employees of the Firm and they were responsible for removing existing staff and hiring replacements, including the Firm's financial accountant, who was replaced by the Sixth Respondent, who held no accounting qualifications. This had been done against the wishes of the First and Second Respondents.

37.5 Mr Levey referred the Tribunal to minutes of a Finance Meeting that had taken place on 20 April 2011. The minutes had been circulated by the Fifth Respondent and they contained a reference to the Sixth Respondent's role. Under the heading 'Roles and Responsibilities' the following had been recorded:

> *"DS to process and manage day to day finances across Emmetts Solicitors including all banking"*.

37.6 It also confirmed that the Sixth Respondent would become the Company Secretary.

37.7 The Group Update for April/May 2011 had been written by the Fifth Respondent, who had also offered the Third Respondent a job on 6 April 2011.

37.8 Mr Levey additionally referred the Tribunal to an email dated 30 May 2011 in which the Fifth Respondent had sent out the Operations Meeting Agenda. On 11 September 2011 the Fifth Respondent exchanged emails with TS in which he (Fifth Respondent) asked TS some questions about the drawdown positions in the coming months and asking whether the likely repayments that would be made by the Firm would be acceptable to the Fund.

37.9 Mr Levey further referred the Tribunal to an email dated 19 December 2011 from the Fifth Respondent to the Sixth Respondent, copying in the Third Respondent, in which he referred to having *"a plan for the finance account part of the business"* that he wished to discuss with the Third Respondent. He told the Sixth Respondent that *"I am grateful that you take care of the bank account and control all payments out"*. He also stated to the Sixth Respondent *"I support your thinking around getting budgets from departmental heads…"*.

37.10 Mr Levey submitted that these, and the other exhibits, demonstrated the extent of the loss of control by the First and Second Respondents.

37.11 In respect of the Third and Fourth Respondents, TS, the Fifth and Sixth Respondents continued to exert considerable influence over the management and running of the Firm. As a result the Third and Fourth Respondents had no proper or effective control, which eventually led to a breakdown of relations in late May 2012.

37.12 The Firm recorded all of its telephone calls and the Third Respondent had passed the recordings to the SRA who had transcribed them. Mr Levey referred the Tribunal to transcripts of telephone calls between the Fifth and Sixth Respondents on 11 June 2012 and 12 June 2012. In the 11 June call the Sixth Respondent had said to the Fifth Respondent:

> *"So what, he [Third Respondent] thinks he can just ask for whatever. This is the point I want them to understand and I don't know whether I should say it. If they want to be an independent law firm, they can no longer. If they want to be independent, the fund isn't gonna sit here and support them so that they can manage the cash flow, the fund will say this is how much you have. If you have an issue with cash flow Mat and Mary, go out and get a director's loan from the bank for a million quid in your own name".*

37.13 The telephone conversation of 12 June 2012 included AW, the Fund administrator as well as the Fifth and Sixth Respondents. In the course of this conversation the Fifth Respondent had said:

> *"But, you know, the bottom line really is we're using every single card in our deck and if somebody looked at that, then them cases have been double funded. Now that's Ashton Fox's call and I know that [J's] rung me and had a chat with me about it this morning and I just said well this has got to make some sense, but I come back to the point, you know, that they've got to make allowances as to how their gonna fill their schedule on an ongoing basis".*

37.14 Mr Levey invited the Tribunal to consider the entirety of these phone conversations and submitted that this demonstrated the extent of the Fifth and Sixth Respondents' control over the Firm and the corresponding lack of it on the part of the Third and Fourth Respondents.

<u>First and Second Respondent</u>

37.15 The First Respondent referred to his evidence and summarised his position and that of the Second Respondent in his closing submissions.

37.16 The First Respondent told the Tribunal that on balance he believed that he managed, *"maybe just about managed",* to maintain effective control of the Firm. He accepted that it had been *"increasingly challenging".* The extent of the control that the First and Second Respondent had was best highlighted by what had happened after he left. Following their departure thousands of cases were transferred to other firms without consideration. Other cases were abandoned. This resulted in a funding gap emerging of between 3,000 and 8,000 cases. This meant that funds were being drawn down without evidence of cases being started. None of these issues had arisen while he was there due to the control that he had maintained. An example of this control, he told the Tribunal

was that he had been presented with an agreement to sign and that he had refused to sign it as it did not reflect funding agreement was for.

Third Respondent

37.17 In his email of 22 June 2016 sent to the Applicant and Tribunal the Third Respondent made a number of submissions. The Third Respondent gave an introductory account of his appointment as Head of Litigation in April 2011 and the unsatisfactory state of affairs he encountered on his arrival. He described what he submitted were the difficulties of working with the First Respondent and described his relief at the departure of the First and Second Respondents.

37.18 In respect, specifically, of Allegation 1, the Third Respondent made detailed submissions, key sections of which are quoted below:

> *"There is little doubt that I exercised minimal control over AFSL in the period of my directorship from its beginning until the departure of Richard Emmett. During that period I did not seek to make any important enquiries that were not related to the litigation AFSL was conducting. My relationship with David Rae felt sound – I trusted him. My relationship with Richard Emmett was almost non-existent as he rarely attended the office and when he did, more often than not, he was more intent on spending time with his aforementioned lapdog, [GP]. In effect, I trusted Richard at the start but his unwavering propensity for procrastination and prevarication slowly eroded any respect or trust that I had formerly had.*
>
> *12. In October 2011, David Rae began making noises that Richard was going to leave in December. It seemed David realised that that was incentive enough for me to remain. I decided to bide my time in the hope and expectation that Richard would leave and I would 'take over'. For that specific period I admit that I did allow others to control AFSL. At the time, I thought it was Richard who was controlling the company.*
>
> *13. Once Richard had left, I did exert more control than formerly. However, to get to the root of the question one must find a satisfactory definition of "control". In January 2012 AFSL had well and truly become beholden to the 'fund'. It had borrowed millions of pounds and had no other significant income stream except monthly draw downs from the 'fund'. If the drawdown facility was withdrawn, AFSL simply could not have survived. That was not just the position in January 2012, it was almost definitely the position as soon as it had created a liability of over, say £1M. In its infancy, Richard had taken on significant numbers of staff who devoted their time solely to 'funded' cases. There was no alternative strategy. The simple truth was that AFSL was going to live or die by the success or failure of the cases it had borrowed money to pursue.*
>
> *14. Richard had signed the first funding agreement and had presumably read it. He therefore knew that the loans had to be repaid within two years of the borrowing. To imagine that this was certain to be the case shows a fundamental flaw in the business model and also demonstrates, on a rudimentary level, that*

there was significant risk that delay would cause AFSL existential problems. Put simply, AFSL's directors could not exert the requisite amount of control after it had made the first couple of draw downs. Unfortunately, it took me until the summer of 2012 to recognise that as reality.

15. In essence, after a couple of months as director, I had a decision to make – resign or wait until the departure of Richard Emmett and try to fix the mess he had put the company into. I chose the latter. I do not regard my decision as dishonest or reckless. At the time, I was convinced it was the right thing to do. Nevertheless, it is a technical breach as it can rightly be said that I "closed my eyes" to the possibility that Richard was leading AFSL down a cul-de-sac.

16. Once Richard had gone, I slowly began to realise the gravity of what I had undertaken. We had significant problems with case quality, ATE, finances of the company and more besides. I, and my co-director (Mary Hunter), tried vainly to right what was a listing ship. We managed to find a new ATE provider and became far more stringent in quality control of cases. Whilst Richard was at the helm, he didn't care about case quality. Indeed, he was hopelessly conflicted because both he and [TS] were taking 20% (between them in a ratio of 2:3) of each month's drawdown. So as far as Richard was concerned, the more AFSL drew down, the more he would be taking out of the company. I didn't realise this until he had gone. It really is no wonder that he was so inclined to give me as little information as he could whilst he remained a director.

17. In the early part of 2012, I spent much of my time have looking for cases that were more secure than the categories we had already funded. I was reasonably confident that the Right to Buy cases were likely to be successful but I was less confident about the other remaining categories. I wanted to bring on Mau Mau claims and PPI claims. Richard had made enquiries regarding the Mau Mau cases but didn't have much idea about how we could actually manage thousands of clients in Kenya. As a result I spent a substantial amount of time in January focusing on new claims categories and getting to the bottom of the ATE position. I visited Kenya to spend time training the claims management staff there and to acquaint myself with the operational imperatives of representing foreign clients.

18. When I returned, I wanted to get a grip on the finances of AFSL. Prior to my departure, I had told both David Rae and Dale Stephenson that this would be at the top of my agenda when I returned. I wanted to see bank statements and contracts by which AFSL was bound. Essentially, I wanted to know what was going out of the company, how much the company needed to survive and how we were going to achieve that survival.

19. It took me 3 months from my return to get close to the truth. In hindsight, I should not have let it take so long but I did. There are various transcripts of telephone conversations in the bundle that clearly show I was not happy to continue the status quo that had been adopted by Richard Emmett. I finally received copy bank statements at the beginning of May 2012. I went through each page and subsequently sought a meeting with Dale and David to go through each of the entries that I did not understand.

20. From January to June 2012, despite my clearly being disgruntled at the constant delaying tactics, I allowed others to control AFSL's finances in the sense that I was not insistent enough in obtaining the information I needed more quickly than I eventually did".

Fourth Respondent

37.19 The Respondent admitted this Allegation in full.

The Tribunal's Findings

37.20 *First and Second Respondents*

37.20.1 The Tribunal considered the interview of the First and Second Respondents on 18 April 2013 when the specific issue of control had been discussed. In that interview the First Respondent had stated:

> *"But then David Rae came in with a wide remit and started making managerial changes and changes to systems and changes to procedures. And one of those was a removal of the processes that were done on the due diligence of cases". He had gone on to state "Now, just to complete the loop on that story, we objected to those processes being removed, but they were removed nonetheless. We were out-voted on that".*

37.20.2 The First Respondent had described the removal of an external audit company. He stated: *"And again, they, over time with David Rae's involvement, were told they were no longer…their services were no longer required, yes, really against our wishes"*. In response to a question as to whether they had any sort of override as directors, the First Respondent stated *"We did but they were also directors really as well. So we…we believed they were I think – probably shadow directors. So we were out-voted on some of this stuff"*. The First Respondent had confirmed that he was referring to TS and David Rae, who he had described as the *"eyes and ears"* of TS.

37.20.3 In that interview the First Respondent had also described the Sixth Respondent, who he described as having *"no accounting qualification"* being put in control of the Accounts Department in place of PS, who had considerable experience. The Second Respondent had also referred to the bookkeeper being replaced, albeit the previous bookkeeper and PS did not finally leave the Firm until after the First and Second Respondent had left.

37.20.4 The Tribunal also considered the interview of 4 February 2014, again with the First and Second Respondents. The First Respondent had denied in this interview that the Fifth Respondent was *"driving the ship"* but he did concede that *"It was a battle and it was a struggle"*.

37.20.5 The Second Respondent had stated:

"We had a very clear view when we took the funding over, we both had a very clear view of how things would work and how we would comply with everything. And that involved, you know, the Distinctive Partnership [external audit company]; it involved the clients being rang up at the beginning and explained what was going to happen. We knew the way we wanted it to work and we were happy with that working. And that's why we put in [CC] in HR you know. We put people in that we trusted and would oversee the teams. So there wasn't much room for movement. It was quite a tight ship. And when that starts getting taken away from you and like I say, you're going to meetings and you decide on a strategy as solicitors altogether and then you find out somebody, who's non-qualified, is advising on the legal aspects….it just doesn't bode well".

37.20.6 In the same interview the First Respondent had described the Fifth Respondent as *"doing the job of a CEO"*. He went on to state: *"But as he came in it turned out, you're right I suppose, that there was a bit of hijacking I guess. That his message wasn't 'support the directors and the management team' and put in the management controls. It was almost 'marginalise the directors; remove the management controls'"*. He had also explained that it would have been difficult to sack the Fifth Respondent, stating that it was not in the interests of the Firm to upset its *"key funder"*.

37.20.7 In their Answer to the Rule 5 Statement the First and Second Respondents had accepted that TS and the Fifth Respondent exercised a degree of control over the Firm and its financial affairs, but maintained that this control was not improper. They further stated that the Sixth Respondent did not have any significant control over the accounts.

37.20.8 They described it as "challenging" to maintain effective and proper control and they believed that the situation was in "danger of becoming untenable" had they stayed. This was consistent with the First Respondent's evidence to the Tribunal in which he had conceded that they had struggled and battled to retain control. He had concluded that despite those challenges, he had retained effective control.

37.20.9 The Tribunal found that it was clear from the contemporaneous documentary evidence referred to by Mr Levey and by the First and Second Respondent's own evidence that the Fifth Respondent had a key role in the management of the Firm.

37.20.10 It was also clear that he was working closely with TS, upon whom the Firm relied to ensure the continued funding from Axiom. The First Respondent had accepted that the Firm was wholly dependent on Axiom for its survival. The Fifth Respondent had, in the First Respondent's own words, been the "eyes and ears" of TS. This was put in stark terms by the First Respondent, who had conceded in his interview that he could not simply dismiss the Fifth Respondent as it would have a potential effect on the Firm's relationship with Axiom. This, by definition, put the Fifth Respondent and TS in a position of control in the Firm.

37.20.11 The First and Second Respondent's position appeared to be that despite being *"outvoted"* and despite a degree of *"hijacking",* they had retained proper and effective control of the Firm. The Tribunal rejected that conclusion. The First and Second Respondents were Directors and were finding themselves outvoted by people who were not Directors but on whom they relied to keep the Firm afloat. This had resulted in fundamental changes to the way in which the Firm operated being implemented against their wishes. The Tribunal found this to be the very definition of a loss of proper and effective control.

37.20.12 The First and Second Respondents had given examples of where they claimed to have remained in control. This included a refusal to sign another agreement and the First Respondent's exclusion of the Fifth Respondent from the office shortly before the First Respondent departed. The Tribunal noted that there was no evidence of the episode involving the refusal to sign an agreement. However even were both of those incidents to have happened, that did not equate to the First and Second Respondents having retained proper and effective control. The Allegation was not that they had lost all control over the Firm, just that such control as they retained was not proper or effective.

37.20.13 The Tribunal was satisfied beyond reasonable doubt that the First and Second Respondents had lost proper and effective control of the Firm and this was manifested in the de facto control being exercised by the Fifth Respondent and TS. The Tribunal found the factual basis of Allegation 1 proved in respect of the First and Second Respondents.

37.21 *Third Respondent*

37.21.1 The Third Respondent took over at a time when the PSSA was already in place and the Firm was in the compromised position that is discussed above in relation to the First and Second Respondents. However the Tribunal noted that he proceeded to sign the PLFA and therefore was responsible for the funding structure continuing on a broadly similar basis.

37.21.2 The Third Respondent described his position as being one in which he and the Fourth Respondent believed they were trying to rectify the problems inherited from the First and Second Respondents. The Third Respondent accepted, in his witness statement, that he had allowed others to control the finances from January to June 2012.

37.21.3 The Tribunal noted that such was the Third and Fourth Respondents' exasperation about their lack of control that matters came to a head in June 2012 and the withdrawals from office account, that are the subject of Allegation 4, were made.

37.21.4 The Tribunal found that the role of the Fifth Respondent continued and was further entrenched following the sale of the First and Second Respondents' shares to Cliffcot. This transaction is dealt with in more detail in relation to Allegation 6 below. However the relevant point for these purposes is that the Third Respondent was holding the shares on trust for the Fifth Respondent. This gave the Fifth Respondent a very significant degree of control. The Firm's

financial survival remained inexorably linked to the continued funding by Axiom, which in turn continued to depend on TS and the Fifth Respondent.

37.21.5 The Tribunal noted examples of this in the documents referred to by Mr Levey. In particular the Tribunal found the contents of the telephone calls involving the Fifth and Sixth Respondents to be relevant as they were contemporaneous and directly addressed the issues of control.

37.21.6 In the telephone conversation of 11 June 2012 the Sixth Respondent asked the Fifth Respondent how he should approach a meeting he was due to have with the Third and Fourth Respondent. The Tribunal found the following remark by the Sixth Respondent to be relevant:

> *"Yeah. I spoke to Mum actually not long before speaking to you and she's gonna get [TS] to ring me and I was gonna ask you as well, but what's been going on, so how do I approach it with them? Are they the directors of the Firm and the decisions they make are the decisions that are final and, if so, if there is that independency now, then why the hell should you and [TS] continue prioritising funding for Ashton Fox? Why should Norton Accord prioritise cases coming here? Can I play Devil's Advocate because they can't have an independent law Firm and still want all the benefits of an unofficial group structure, you know, and if he starts why's 20 grand going to [TS] for [S]. I'm not happy with that. I'm not paying for [TS]'s personal trainer or his mobile phone. What do I say? Do I say well it's [TS's] Firm if he wants to pay it, tough, or is it their Firm? I don't know whose it is and what to say".*

37.21.7 The Sixth Respondent reiterated this point later in the conversation when he told the Fifth Respondent:

> *"So what he [Third Respondent] thinks he can just ask for whatever. This is the point that I want them to understand and I don't know whether I should say it. If they want to be an independent law Firm, they can no longer. If they want to be independent, the fund isn't gonna sit here and support them so that they can manage the cash flow, the fund will say this is how much you have. If you have an issue with the cash flow, Mat and Mary, go out and get a director's loan from the bank for a million quid in your own name".*

37.21.8 The Tribunal found that this was evidence that the Sixth Respondent, together with the Fifth Respondent, was very much in control of the Firm and was making the point, explicitly, that if they lost control to the Third and Fourth Respondents, that Axiom would no longer support the Firm.

37.21.9 The Sixth Respondent subsequently telephoned TS to inform him of the outcome of the meeting. This was at a time when TS was not a director and the Tribunal found that this undermined the Sixth Respondent's case that he had only acted at the instructions of the directors. He also had a conversation with the Fifth Respondent and AW. During that conversation they agreed between themselves that rather than get the Third Respondent to sign-off on

financial documentation, they would simply alter the first page, his original signature appearing on the second page.

37.21.10 The Tribunal found that this was tantamount to forging a signature and the Fifth Respondent's denial was implausible in that regard. It was a very obvious example of the control being exercised by the Fifth and Sixth Respondents and TS and the fact that the Third and Fourth Respondents had not maintained proper and effective control over the Firm.

37.21.11 The Tribunal was satisfied beyond reasonable doubt that the Third Respondent had failed to maintain proper and effective control and had permitted others to exercise de facto control over the Firm. The factual basis of this Allegation was proved beyond reasonable doubt in respect of the Third Respondent.

37.22 *Fourth Respondent*

37.22.1 The Fourth Respondent had admitted this Allegation in full. The Tribunal found this admission to be properly made and found the Allegation proved beyond reasonable doubt on the evidence.

37.22.2 The Tribunal, having found the factual basis of this Allegation proved beyond reasonable doubt, then considered the breaches of the Principles and Rules that were alleged. The Fourth Respondent's admission to this Allegation included the breaches of rules and principles. The Tribunal again found these admissions to be properly made and proved beyond reasonable doubt on the evidence.

37.23 *Outcome 7.4*

37.23.1 It followed as a matter of logic from the Tribunal's factual findings in this matter that where there was a lack of proper and effective control, the Respondents could not have been maintaining systems and controls for monitoring the financial stability of the Firm and risks to money and assets entrusted to it by its clients, or this case others, namely Axiom, nor had they taken steps to address the issues identified. Whilst the Third and Fourth Respondents had taken some steps they had proved wholly inadequate. The way in which the Fifth Respondent had dismantled the quality control measures was one very stark example of this. The Tribunal found the breach of Outcome 7.4 proved in full beyond reasonable doubt in respect of each of the First to Fourth Respondents.

37.24 *Principle 3*

37.24.1 It was clear from the evidence adduced in this case that the loss of control was inexorably linked to a loss of independence as at the various times, the First, Second, Third and Fourth Respondents had been unable to adequately head off the control being exercised by TS, the Fifth and Sixth Respondents. This was because throughout the material period the Firm was wholly dependent on Axiom funding for its survival. The Axiom funding would only continue as long as TS was happy for it to do so. The First Respondent had conceded as

much in his interview he explained the difficulties that would be associated with dismissing the Fifth Respondent. It was also spelt out in terms in the telephone conversation involving the Fifth and Sixth Respondents.

37.24.2 In the case of the First and Second Respondents, they had signed up to a funding arrangement which inevitably involved a surrender of the Firm's independence. The Tribunal recognised that Third and Fourth Respondents had not created that situation and had taken some steps to attempt to regain control from TS and the Fifth and Sixth Respondents. However by signing the PLFA the Third Respondent in fact compounded the problem. The Fourth Respondent's position is that she did not sign or see the PLFA. In her answer to the allegation she did not seek to resile from responsibility for the document as she was a Director and she says she should have seen the document. Both she and the Third Respondent made admissions, that their efforts, such as they were, were inadequate to maintain proper or effective control as alleged. Whilst this issue is addressed further below with reference to the Third and Fourth Respondent collectively when considering Sanction the Tribunal did take account of the Third and Fourth Respondents slightly different factual positions.

37.24.3 The Tribunal was satisfied beyond reasonable doubt that each of the First to Fourth Respondents had allowed their independence to be compromised.

37.25 *Principle 4*

37.25.1 The Tribunal had found that the First to Fourth Respondents had not been in proper control of the Firm and had allowed their independence to be compromised. No Firm or solicitor could be said to be in a position to act in the best interests of their clients in such circumstances. In this case there was the particular factor that because of the nature of the funding arrangement the Firm had to continue borrowing funds in relation to a new case in order to ensure that an existing case could be concluded. If the relationships with TS had ended, or if Axiom had run out of funds, the Firm would have collapsed leaving thousands of clients without representation. The Tribunal was satisfied beyond reasonable doubt that each of the four Respondents facing this Allegation had failed to act in the best interests of each client of the Firm.

37.26 *Principle 6*

37.26.1 The trust the public placed in the First to Fourth Respondents and in the provision of legal services generally required firms to be properly run, the solicitors in that Firm to be independent and for the best interests of clients to be protected. Each of the four Respondents had failed in those requirements through their lack of effective control of the Firm and by permitting others to exercise control over it instead. The Tribunal was satisfied beyond reasonable doubt that each of the four Respondents had failed to behave in a way that maintained the trust the public placed in them and in the profession.

37.27 *Principle 2*

37.27.1 The Tribunal considered whether each of the First to Fourth Respondents had lacked integrity.

37.27.2 The Tribunal had found that in failing to maintain proper and effective control of the Firm and permitting others to exercise de facto control over the management and running of the Firm and its finances each of the four Respondents facing this Allegation had allowed their independence to be compromised, had not acted in the best interests of their clients and had failed to behave in a way that maintained the trust the public placed in them and in the profession.

37.27.3 The consequences of this lack of control formed the basis of the Allegations that followed. The Tribunal's reasoning and findings in respect of those matters are set out below. In particular the improper use of Axiom funds which formed the basis of Allegation 3 was example of the lack of control on the part of each of the four Respondents.

37.27.4 The Tribunal recognised that there was a distinction between the First and Second Respondents, who had lost proper and effective control, and the Third and Fourth Respondents who had permitted that situation to persist. While the Third and Fourth Respondents had not created the situation, they had voluntarily accepted their respective roles and are set out above had exacerbated the situation by signing the second funding agreement.

37.27.5 The Tribunal considered that solicitors were under a duty to take particular care to ensure that they discharge their obligations fully particularly when in positions of seniority in a Firm. In this case each of the four Respondents, albeit in different ways, had completely failed in their duty to maintain proper and effective control of the Firm. The Tribunal was satisfied beyond reasonable doubt that each of them had therefore lacked integrity.

37.28 Allegation 1 was proved in full beyond reasonable doubt in respect of each of the First, Second, Third and Fourth Respondents.

38. **Allegation 2 (Respondents 1-4) - They caused or permitted the Firm to become engaged in a pattern of excessive and reckless borrowing. By so acting they breached Principles 2, 3, 4 and/or 6 and failed to achieve Outcome 7.4 of the SCC 2011.**

Applicant's Submissions.

38.1 Mr Levey took the Tribunal to the Firm's professional indemnity insurance proposal form signed on 12 August 2010 by the First Respondent, which showed that in the year ending April 2010, before the Axiom funding, the Firm's gross fees were £482,000. Mr Levey submitted that this show that the type of work being done was fairly typical for a high street Firm.

38.2 The PII form dated 22 September 2011, signed by the Third Respondent, showed gross fee income of £582,000 in the year ending 2010, £750,000 in the year ending 2011 and an estimate of £900,000 in the year ending 2012. In the period from May 2010 to October 2012, as set out above, the Firm received over £29 million from the fund. The Firm also received £6,237,700 which were monies from ATM, a Firm that had been purchased with debts of £13 million.

38.3 Mr Levey told the Tribunal that the figures in this case were generally not in dispute. When the Firm had borrowed £2,100 it received £950. However it was paying interest on the full amount at the rate of 15%. Mr Levey took the Tribunal to the interview of GL dated 11 March 2013 in which he had described the borrowing arrangement as follows:

> *"…I can describe it as almost being on an escalator that once you're on it, it's very difficult to get off because the whole model seemed to be that you borrow more to keep the escalator running, and obviously you haven't made a recovery on the cases you've got, so you borrow more which seemed absolute madness. And that's why I began to express caution; to say let's try and deal with what we've got and pull our horns in and make as much reduction as we can in expenses to try and put the thing into some sort of reasonably sane, for what [sic] of a better word, financial model. You cannot keep borrowing, as we all know, forever".*

38.4 Mr Levey took the Tribunal to the First Respondent's response to the letter from the SRA dated 8 October 2014. In that letter he had accepted that without funding on new cases, the Firm could not take the existing cases to trial. Mr Levey referred to the following in support of his submission that this meant that the Firm could never get off the escalator:

> *"The firm depended on continued funding to enable cases to reach a conclusion. The Synergy Solution Limited had committed to keep funding the firm until cases had concluded and there was no reason to suggest as at December 2011 that they would not be able to do so".*

38.5 In that response he had later stated *"AFSL [the Firm] was of course dependent on the funding to see cases to conclusion, but it had always been indicated that the funding would continue until the cases concluded and to allow them to conclude".*

38.6 Mr Levey told the Tribunal that the Applicant broadly agreed with the Third Respondent's assessment of the Firm's indebtedness to and dependence on the fund. The Third Respondent had allowed himself to become a Director of a Firm over which he had no control. Mr Levey told the Tribunal that the Applicant accepted that to a certain extent this was foisted on him.

38.7 Mr Levey took the Tribunal to the section of the FIR that dealt with the Firm's finances. This showed that fee income dropped from £615,000 in the year ending 31 December 2010 to £265,000 in the year ending 31 December 2011 and £164,000 in the 10 months to 31 October 2012. The Firm had made a profit of £167,000 in the year ending 31 December 2010. This had become a loss of £25.8m by the year ending 31 December 2011 and £10.8m by October 2010. In the same periods the indebtedness

to the Axiom fund rose from £1.7m as at 31 December 2010 to £61.8m by October 2012.

38.8 The figure for WIP rose from £1.13m as at 31 December 2010 to £18.2m by the end of October 2012. These figures had come from final accounts (year ending 31.12.10), draft accounts (year ending 31.12.11) and Management accounts (period ending 31.10.12).

38.9 Mr Levey submitted that the Firm was signing up claimants with little regard to the quality of their claims. In the 27-month period the Firm took on 23,062 cases. Of those cases, 38 settled with damages being recovered. The total damages and costs recovered was £82,500, an average of £2,115.39 per case. Between May and August 2012 the Firm transferred 8,365 cases to Bracewells Law and Tandem.

38.10 The First Respondent had stated in his Answer that the cases were complex and heavily defended. However the material for investors had implied they were straightforward cases that would be settled quickly.

38.11 Mr Levey submitted that the Firm's business model was such that it was likely that the Firm would collapse. This would cause serious inconvenience and a risk of prejudice to the existing clients of the firm. This could include the stress, delay and inconvenience of having to find a new firm of solicitors to take over their matters.

38.12 Mr Levey had put his case to the First Respondent in the course of cross-examination and the Tribunal had regard to those points when considering the Allegation. It was the Applicant's case that the type of borrowing that the First, Second, Third and Fourth Respondents had been involved in was reckless and excessive and that they had breached the principles set out in the Allegation.

<u>First Respondent and Second Respondent</u>

38.13 The First Respondent told the Tribunal that the funding had been seen as *"an exciting opportunity to offer access to justice to those who could not otherwise bring cases"*. It was also a commercial opportunity and the First Respondent reiterated the position of himself and the Second Respondent that the sums were always intended for office use. The intention was always that the £950 was for general funding that would be treated as office money and would allow the practice to develop. This was in sharp contrast to the PLFA later signed by the Third Respondent. The loan manager was aware of the intended use of funds and had approved this. The Tribunal was invited to consider the agreement in the light of the clearly expressed intention of the parties, which was how the First Respondent had considered it at the time.

38.14 The First Respondent relied on the evidence he had given in support of his case and that the Second Respondent.

<u>Third Respondent</u>

38.15 In his email of 22 June 2018, in respect of Allegation 2, the Third Respondent made detailed submissions, key sections of which are quoted below:

"I do not admit that the borrowing was reckless and fail to see how such an allegation can be proved to the necessary standard. None of the cases were brought to trial as a result of the collapse of all the firms that were funded by Axiom. The only cases that were brought to a conclusion were the Mau Mau cases and I understand that significant and substantial costs were recovered. Had the Right to Buy cases been successful substantial costs would have been recovered. Had they failed, there was adequate insurance in place to repay Axiom (both FGI and ATE). It simply cannot be said that the borrowing was reckless beyond a reasonable doubt."

Fourth Respondent

38.16 The Respondent admitted this Allegation in full.

The Tribunal's Decision

38.17 The Tribunal noted that the funding arrangements were entered into by the First and Second Respondents when they agreed the PSSA. They were continued by the Third and Fourth Respondents who then agreed the PLFA. The Tribunal accepted that the Third and Fourth Respondents came to the Firm when the borrowing structure had already been established.

38.18 The Tribunal considered the breakdown of the £2,100 which the Firm incurred every time it made a draw-down under the PSSA.

38.19 From the £2,100 the Firm only received £950, less than half the amount it was liable to repay before interest was calculated.

38.20 The £950 that was received by the Firm was in theory, intended to cover the cost of running the case. However up to 20% of that was being paid to the First Respondent (8%) and to TS (12%). This left £760. From that the Firm had then paid, on the First Respondent's evidence, £125 to the introducer. That would then reduce the amount to £635. If the Firm issued proceedings then the Court fee would be deducted, which the First Respondent had told the Tribunal would be at least £50, leaving a remaining balance of £585.

38.21 That £585 would have to cover the any expert evidence that may be required as well as the case preparation costs and any other disbursement that may be incurred in order to see the case through to a conclusion. The First Respondent had told the Tribunal that these cases were not straightforward and that they were heavily defended. He had also explained that economies of scale made this viable. The Tribunal recognised that economies of scale can of course make an otherwise uneconomic case profitable in the right circumstances. However economies of scale only worked when a firm was dealing with a large number of simple, similar and straightforward cases that could be processed quickly. This was not the case here and even if these cases had been relatively simple, the figures were very low. The Tribunal found that there was simply not enough money left from the drawdown to come close to being able to run the cases on those sums.

38.22 It therefore followed, and the First Respondent had accepted this in his evidence, that the Firm had to get new cases in to ensure that the existing cases could be funded. This created the 'carousel' effect, which meant that unless the cases settled quickly and for significant amounts, the Firm would have to bring in ever-higher numbers of cases *"just to stand still"*. The First and Second Respondents had been confident that such settlements would occur but the Tribunal found that there was no reasonable basis for such a belief and as such their projections had been purely speculative, particularly when it was noted that the Firm had also given cases away to Bracewells for which they had secured funding from Axiom and paid Claims Companies.

38.23 The result was that the Firm's debt to the Fund grew very rapidly – from £1.7m to £42.4m in a year – and unsustainably so.

38.24 The Firm's purchase of ATM is discussed in more detail below in relation to Allegation 5. However for present purposes the Tribunal noted that this purchase greatly increased the indebtedness to the Fund and that the First and Second Respondents had done no due diligence before proceeding with the purchase.

38.25 The Tribunal was satisfied that the borrowing structure was fundamentally flawed as far as the Firm was concerned. The cases could not be run at the sums involved, causing a carousel effect of more and more cases being required to run the cases they already had. At the same time, for every £950 received, the indebtedness increased by £2,100 before interest payments.

38.26 The First Respondent had conceded, albeit reluctantly, that if the Fund called in the loans or if it ran out of capital and could not advance any further borrowing, the Firm would inevitably collapse. The First Respondent's belief that this would never happen was, again, based on little more than optimism and, like the settlement projections, had no sound basis.

38.27 The result of this borrowing structure was that the Firm was entirely dependent on the Fund for its survival and in the long-term the Firm had no realistic prospect of being able to discharge the debts. The Tribunal was satisfied beyond reasonable doubt that this amounted to excessive and reckless borrowing.

38.28 The Third and Fourth Respondents inherited the PSSA structure when they arrived and the Tribunal recognised that they took some steps to try to regain control of the finances. However they then agreed to the PLFA which operated along similar principles and so the same problems remained and were continued, namely that the money drawn-down was insufficient to run the cases and the Firm remained wholly dependent on the Fund for its survival.

38.29 The insurance policies to which the First and Third Respondents had referred, if they existed, would only have covered the Firm's fees – it would not have covered the debts owed to the Fund. This was clear from the fact that when the Firm collapsed, no insurance policy repaid Axiom.

38.30 The Fourth Respondent had admitted this Allegation and the Tribunal found that admission to be properly made.

38.31 The Tribunal was satisfied beyond reasonable doubt that each of the four Respondents had caused or permitted the Firm to become engaged in reckless borrowing. The factual basis of this Allegation was therefore proved.

38.32 The Tribunal, having found the factual basis of this Allegation proved beyond reasonable doubt, then considered the breaches of the Principles and Rules that were alleged. The Fourth Respondent's admission to this Allegation included the breaches of rules and principles. The Tribunal again found these admissions to be properly made and proved beyond reasonable doubt on the evidence.

38.33 *Outcome 7.4*

38.33.1 It followed as a matter of logic from the Tribunal's factual findings in this matter that where there was excessive and reckless borrowing, such that the Firm was wholly dependent on Axiom funding continuing, the Respondents could not have been maintaining systems and controls for monitoring the financial stability of the Firm and risks to money and assets entrusted to it. Whilst the Third and Fourth Respondents had inherited the situation, they had continued the flawed structure and had permitted the situation to continue. The Tribunal found the breach of outcome 7.4 proved in full beyond reasonable doubt in respect of each of the First to Fourth Respondents.

38.34 *Principle 3*

38.34.1 The Tribunal found that initially the decision to enter into the reckless and excessive borrowing was not a sign of a lack of independence. However as soon as the borrowing agreement had started to take effect, the independence of the First and Second Respondents, and later the Third and Fourth Respondents, was lost. The Firm was in a position whereby it had to borrow as it had lost its independence and it had lost its independence due to the continued reckless and excessive borrowing.

38.34.2 The Tribunal noted that the PLFA was drafted far more specifically as to how the monies were to be used and that the facilitation fee was less. However this did not alter the fundamental dynamics of the borrowing arrangements.

38.34.3 The excessive and reckless borrowing was both a consequence and a cause of the loss of control of the Firm that had been proved in respect of Allegation 1.

38.34.4 The Tribunal was satisfied beyond reasonable doubt that each of the First to Fourth Respondents had allowed their independence to be compromised.

38.35 *Principle 4*

38.35.1 The Firm was in difficulty in ensuring that the clients' best interests were maintained in a number of aspects. The sum drawdown was not sufficient to run their cases and the Firm's ability do so through to conclusion was dependent on the Firm's ability to sign up new cases, on Axiom not calling in the loans and on Axiom having the capital and the desire to continue funding.

The Firm was at risk of collapse should any of the pillars on which it depended were removed. It was not in the best interests of clients to leave the Firm so exposed and where the Directors lacked independence as a result.

38.35.2 The Tribunal was satisfied beyond reasonable doubt that the First to Fourth Respondents had failed to act in the best interests of each client.

38.36 *Principle 6*

38.36.1 The Tribunal had found that the excessive and reckless borrowing was linked to a lack of control and so the factors which applied in relation to Allegation 1 also applied here. The public would expect solicitors not to engage in excessive and reckless borrowing, such that jeopardised the Firm's existence, involved a loss of control and a lack of independence and put clients' interests at risk.

38.36.2 The Tribunal was satisfied beyond reasonable doubt that each of the First to Fourth Respondents had failed to maintain the trust the public placed in them or in the profession.

38.37 *Principle 2*

38.37.1 The Tribunal noted the reference in Williams to a lack of integrity arising when *"…a solicitor fails to meet the high professional standards to be expected of a solicitor".* In Chan the Court had held that subordinating the interest of clients to that of the solicitors' own financial interests. In this case the Tribunal had found that the First to Fourth Respondents had breached Principle 4 and the way in which they had done so was by causing or permitting the Firm's financial arrangements to be characterised by excessive and reckless borrowing.

38.37.2 In the case of the PLFA there was the additional factor that the funds should have been treated as client monies and had not been. The importance of protecting client monies had been spelt out in Bolton v Law Society [1994] 1 WLR 512.

38.37.3 The Tribunal was satisfied beyond reasonable doubt that each of the First to Fourth Respondents had failed to act with integrity when causing or permitting the Firm to engage in excessive or reckless borrowing.

38.38 Allegation 2 was proved beyond reasonable doubt in full in respect of each of the First, Second, Third and Fourth Respondents.

39. **Allegation 3 (Respondents 1-4) - They caused or permitted the Firm to use monies borrowed from the Axiom Fund to be (a) used to pay the Firm's general expenses, overheads and running costs; and/or (b) paid away for purposes unconnected with the running of the Firm, and in either case this was improper in the sense that the payments were not in accordance with the strict terms of the Litigation Funding Agreement. By so acting they breached Principles 2, 3, 4 and/or 6 and failed to achieve Outcome 7.4 of the SCC 2011.**

Applicant's Submissions.

39.1 Mr Levey submitted that the First and Second Respondents had allowed Axiom monies drawn down under the PSSA to be used for general expenses when this was not permitted by the agreement. He made similar submissions in respect of the Third and Fourth Respondents in relation to the PLFA.

39.2 The monies used to purchase ATM were also, in Mr Levey's submission, an improper use of funds. The submissions in relation to ATM are set out below in relation to Allegation 5.

39.3 The other amounts paid away are summarised above. Mr Levey submitted that it was improper for the Firm to have paid these sums as the PSSA and PLFA did not permit the use of funds for general expenses and the PLFA had explicitly excluded such a use.

39.4 Mr Levey took the Tribunal to the terms of the funding agreements, the relevant sections of which are set out above. The PSSA made reference to fees and expenses that *"have been"* incurred and these had to be *"in connection"* with the funded case.

39.5 The insertion of the protection in Clause 9.2, which specified that the funds *"shall not be used for any other purpose"* would not make any sense if, as the First and Second Respondents had asserted, the fund could be used as the Firm saw fit.

39.6 Mr Levey submitted that even if the First and Second Respondents were right about being permitted to pay overheads, which the Applicant did not accept, on reading the agreement it did not permit the Firm to use the funds to pay for motivational companies, personal trainers, CPD providers or TS's mobile telephone bill.

39.7 The insertion of the protection in Clause 9.2, which specified that the funds *"shall not be used for any other purpose"* would not make any sense if, as the First and Second Respondents had asserted, the fund could be used as the Firm saw fit. The Applicant's case was that it accepted that that the PSSA did permit a proportion of the loan monies to be used to fund WIP referable to a particular case. However it did not permit general expenses and overheads.

39.8 Mr Levey submitted that in so far as there was any argument to be had about the limitations of the PSSA, the PLFA was unequivocal. This made clear that the funds could only be used for disbursements and it specifically excluded any other use including for the Firm's fees. There was an entire agreement clause contained within the PLFA. Mr Levey submitted that even without such a clause the Third and Fourth Respondents could not have relied on what they were being told by TS or the Fifth Respondent. He submitted that it would be *"absurd"* for them to assert that a breach of the agreement was acceptable when the people telling them that it was acceptable were the same people who would benefit from the breach.

39.9 Mr Levey told the Tribunal that the Third Respondent had described the use of the funds for general expenses as a technical breach. Mr Levey submitted that it was a flagrant breach as they could not have relied on what they were told by TS and/or the Fifth Respondent.

First Respondent and Second Respondent

39.10 The First Respondent relied upon his evidence both in support of his case and that of the Second Respondent. The First Respondent had accepted in his evidence that the use of funds to pay for items such as TS's mobile telephone bill were not appropriate. However this was not because the PSSA did not allow for it but because the Firm should not have been paying this in any event.

Third Respondent

39.11 In his email of 22 June 2018, in respect of Allegation 3, the Third Respondent made submissions, key sections of which are quoted below:

> *"The Applicant seeks to treat both funding agreements as one and the same – they are not. During the first part of my tenure as director I was consistently denied access to the funding agreement. However, given David Rae's role at Axiom and his close contact with Richard Emmett, I had no cause for concern. It only became a concern when I was not given sight of it until asked to sign a new one on 27th April 2012. Any borrowing made up to that date has to have been done so pursuant to the agreement originally signed by Richard Emmett and described in the bundle as the PSSA. It suits the Applicant to refer to them as one document but they clearly are not. I deny that any funds borrowed under the PSSA were not permitted to be used for general expenses. The Applicant must prove that to be the case. It is also denied that permission did not exist to use funds for general expenses pursuant to the agreement signed by me (and referred to as the PLFA). Each and every party knew precisely how AFSL operated and how reliant it was on the Axiom funding. The fund managers knew, the fund administrators knew, David Rae and [TS] knew. Although use of funds for general expenses was a technical breach of the agreement, the acquiescence of Axiom was affirmation that the funds could be used in the way that they were. It was not dishonest of me to use the funds in the way that they were given all necessary parties knew precisely how the funds were being applied."*

Fourth Respondent

39.12 The Respondent admitted this Allegation in full.

The Tribunal's Decision

39.13 The Tribunal considered this Allegation in two parts:

- Use of monies to pay the Firm's general expenses, overheads and running costs
- Use of monies for purposes unconnected with the running of the Firm.

39.14 In each case the Tribunal considered whether the use of the funds, if proved, were improper in light of the terms of the PSSA and PLFA. The Tribunal noted that the fact of the payments was not in dispute. The only issue for the Tribunal was whether they were permitted under the strict terms of the PSSA or PLFA, which the Tribunal carefully examined.

39.15 *Firm's General Expenses*

39.15.1 The Tribunal noted that the PSSA described "Authorised Fees" as those set out in the Fee Table in the Appendix. This only made a general reference to "WIP". The agreement defined "Fees and Expenses" as those approved by the Loan Manager *"that have been incurred by the Solicitor in connection with the legal action to recover a client's damages, including but not limited to audit fees, insurance premiums, Enquiry Agents fees, Agent sign-up fees, court fees, and the finance fees as set out in the fee table within the Solicitors Operations Manual"*. Although this list was not exhaustive, it made no reference to general practice funding. Clause 9.2 made clear that the funds were to be used for the payment of the fees and expenses *"and the loan monies shall not be used for any other purpose"*.

39.15.2 If the intention was that the funds could be used for general expenses and overheads the agreement would have referred to it. At no time had the First or Second Respondents sought to vary the agreement or make it a term of the agreement. The PSSA had no scope for variation other than by agreement in writing and the First and Second Respondents, as solicitors, would have known this. The 'entire agreement' clause meant that pre-contractual discussions were not relevant once the PSSA had been signed. In any event there was no evidence of the Fund or Synergy approving the use of the funds for general practice funding. The Tribunal accepted that the First and Second Respondents may have taken the view that there was no point in agreeing to the PSSA unless it did allow for that. However the parties to the PSSA clearly contemplated Court fees and other disbursements, hence it being drafted in those terms.

39.15.3 The PSSA referred to WIP in a way which was inconsistent with the usual description of it. The PSSA appeared to indicate a contribution to anticipated WIP. If that was the case then it was effectively money on account, in which case it should have been held in client account. The Tribunal found that WIP could not include overheads. The draw-downs were linked to individual cases which was why the Firm had to get new cases in to be able to generate funding to run the existing cases.

39.15.4 The PLFA was even more unequivocal, in that it stated *"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"*. It also stated that the amount borrowed had to be for that specific case to which it related and could not be used to fund other, i.e. existing, cases.

39.15.5 The Third Respondent had described the use of the PLFA monies for general expenses as a *"technical breach"* and had submitted that Axiom acquiesced in the use of funds for such a purpose. The Tribunal did not agree that it was merely a technical breach. The PLFA specifically excluded such use and as such it was a fundamental breach of a key term. The fact that the Fifth Respondent and TS knew how the funds were being used was no answer to the Allegation that the terms of the agreement had been breached.

39.15.6 The Tribunal found beyond reasonable doubt that the strict terms of the PSSA and the PLFA did not allow for the use of funds for general expenses, overheads and running costs. Therefore the use of funds for those purposes was improper and the factual basis of this part of the Allegation was proved.

39.16 *Use of monies unconnected to the running of the Firm*

39.16.1 The Tribunal had identified the limitations of the PSSA and PLFA above. It followed from those conclusions that if the agreements did not permit the funding of general expenses connected to the running of the Firm, they certainly did not permit the payment of matters that were unconnected to the running of the Firm. The details of the payments made are set out above under the factual background as the fact the payments were made had not been disputed.

39.16.2 The Tribunal rejected the First Respondent's evidence that once the money was received by the Firm, it could be used for any purpose deemed fit. The purpose of the funding was clear and if there was any intention that the funds drawn down under the PSSA be used for matters such as payments to TS, it would have said so. If the First Respondent's evidence was correct on this point it would mean that he had signed a written, binding agreement that bore no relation to the reality of the parties' intentions. Even if that was the case, the Allegation was that the payments were in breach of the strict terms of the written agreement. The Tribunal was satisfied beyond reasonable doubt that these payments were in breach of the strict terms of the PSSA.

39.16.3 As stated above, the PLFA was even clearer in its language, to the extent that the funds had to be held in client account. There was no conceivable way that the PLFA could be read or interpreted in such a way as to suggest that the payments that were made were anything other than prohibited. The Tribunal was satisfied beyond reasonable doubt that the payments made from funds down under the PLFA were in breach of the strict terms of that agreement.

39.16.4 The First-Fourth Respondents had been Directors at various points throughout the period in which the payments were made in breach of the PSSA and PLFA. They were each responsible for the breaches of the agreements and the Tribunal found the factual basis of Allegation 3 proved in respect of each of them.

39.16.5 The Tribunal, having found the factual basis of this Allegation proved, then considered the breaches of the Principles and the Rules that were alleged. The Fourth Respondent's admission to this Allegation included the breaches of the Rules and Principles. The Tribunal again found these admissions to be properly made and proved beyond reasonable doubt on the evidence.

39.17 *Outcome 7.4*

39.17.1 It followed as a matter of logic from the Tribunal's factual findings in this matter that where Axiom funds were being used for expenses that were improper, the Respondents could not have been maintaining systems and

controls for monitoring the financial stability of the Firm and risks to money and assets entrusted to it. The monies had been advanced for a specific purpose and had been used for a different purpose. The First and Second Respondents' case had been that there were systems and controls in place. Even if the procedures existed, these procedures had been breached, thus rendering them effectively useless. The First Respondent had accepted that some of the payments were made without his knowledge as they were under £5,000 and that had he known about them he would have prevented them being made. The Tribunal found the breach of Outcome 7.4 proved in full beyond reasonable doubt in respect of each of the First to Fourth Respondents.

39.18 *Principle 3*

39.18.1 The improper use of funds included payments to the Fifth Respondent and to TS. As discussed above, the Firm's funding arrangements were such that it depended on the Axiom funding continuing in order to keep the firm afloat, which made the Fifth Respondent and TS vital to the Firm's survival. The payments made to TS and the Fifth Respondent were therefore examples of a lack of independence on the part of the Firm's directors. The First Respondent had accepted during his evidence that some of the payments, for example for TS's personal trainer and TS's mobile phone bill, should not have been made. This was the type of scenario that was always at risk of arising where an agreement was signed that made the Firm wholly dependent on the funder.

39.18.2 As the Tribunal had recognised above, the Third and Fourth Respondents involvement began at a time when the First and Second Respondent had already compromised their independence and that of the Firm. However the breaches under the PLFA were even starker than those under the PSSA. The telephone conversations between the Fifth and Sixth Respondents made very clear that if the Third and Fourth Respondents wanted independence that this would have consequences for the future funding of the Firm.

39.18.3 The Tribunal was satisfied beyond reasonable doubt that each of the First to Fourth Respondents had allowed their independence to be compromised.

39.19 *Principle 4*

39.19.1 The First and Second Respondents were using money allocated to cases that were unconnected to the case for which it had been intended. If the Firm had collapsed then approximately 17,000 clients would have been left without representation. This was clearly not in their best interests. The Tribunal had already found that where there was a lack of independence it was difficult to see how clients' best interests could be protected as independence was a key part of discharging that duty.

39.19.2 The Third and Fourth Respondents had been required to pay the monies into a client account. They had not done so and that in itself was a further breach of the duty to act in client's best interests.

39.19.3 The Tribunal was satisfied beyond reasonable doubt that each of the First to Fourth Respondents had failed to act in the best interests of each of the Firm's clients.

39.20 *Principle 6*

39.20.1 The Tribunal considered that the impact on the reputation of the profession of paying monies away improperly would be significant. The public would be appalled that monies advanced to the Firm for a specific purpose had been repeatedly and consistently used for other purposes. The Tribunal was satisfied beyond reasonable doubt that each of the First to Fourth Respondents had failed to maintain the trust the public placed in them and in the provision of legal services.

39.31 *Principle 2*

39.31.1 The Tribunal noted that in Wingate and Evans and Malins, it was held that integrity required a professional person to be *"even more scrupulous about accuracy"* than a member of the general public.

39.31.2 This was clearly inconsistent with using funds for purposes other than that for which they were intended. The First, Second and Third Respondents had signed an agreement that bore no relation to their actual use of the funds. In any event, the payments represented a clear breach of both the PSSA and PLFA.

39.31.3 The monies had been advanced by reference to an individual case and was therefore effectively client money. In the case of the PLFA this had been even more explicit. It was inconsistent with the ethical standards of the profession for such monies to be paid to for general overheads and for matters unconnected with the running of the Firm. The Tribunal found that a solicitor acting with integrity would have ensured that the funds were used only for those purposes permitted in the agreement. If those restrictions had not been suitable for the Firm, the appropriate course of action was to re-negotiate the agreements and/or seek to vary the terms.

39.31.4 This had not been a one-off payment made in error but had been a series of payments of considerable sums of money paid out in breach of the agreement. The Tribunal was satisfied beyond reasonable doubt that each of the First-Fourth Respondents had lacked integrity.

39.32 Allegation 3 was proved in full beyond reasonable doubt in respect of each of the First, Second, Third and Fourth Respondents.

40. **Allegation 4 (Respondents 1-4) - They each received (whether directly or indirectly) and/or retained monies which the Firm had received from the Axiom Fund in circumstances in which it was improper for them to do so. By so acting they breached Principles 2, 3, 4 and/or 6 and failed to achieve Outcome 7.4 of the SCC 2011.**

Applicant's Submissions.

40.1 Mr Levey told the Tribunal that the sums received by the First and Second Respondents were not disputed. Indeed they had been provided to Mr Carruthers by the First Respondent on 12 July 2013. Mr Levey submitted that these figures showed that the First and Second Respondents had sold their shares in a worthless Firm for £625,000. They had received £376,000 directly. These payments had commenced in June 2011 when the shares were in fact sold in December 2011. The correct amount that they should have received under the sale and purchase agreement was £150,000. This was calculated by deducting £263,000 by way of the directors loan, £212,000 to repay the money lent to the company payday credit, leaving a balance of £150,000. It had never been explained as to how it was that payments of £376,000 had been made.

40.2 The loan to Payday Loans had been made by the Firm using Axiom funds. Payday Loans was a company owned by the First Respondent, as he had confirmed in his interview with the SRA dated 18 April 2013. He had further confirmed that the loans received from the Firm to establish the company had been written off as part of the agreement to sell their shares in the Firm. Mr Levey submitted that there was no way that the First and Second Respondent could have understood that the write-off of these loans had been a proper use of Axiom funds, indeed it was obviously dishonest. Mr Levey further submitted that the £650,000 received by the First and Second Respondents which was said to be in respect of the goodwill of the partnership was also a dishonest use of Axiom funds. Mr Levey made the same submission in respect of the salary payments that the First and Second Respondents received, stating that it was an excessive amount of money and in any event not a proper use of Axiom funds.

40.3 Mr Levey told the Tribunal that companies in which the First and Second Respondents had an interest received approximately £845,000 of Axiom funds, as set out above. Mr Levey submitted that once again this was a dishonest use of Axiom funds.

40.4 In respect of the Third and Fourth Respondents, they had each taken £300,000. In each case Mr Levey submitted that it had been improper, albeit the circumstances were different.

40.5 The Third Respondent had given an account in his witness statement. He had withdrawn £200,000 for himself and £200,000 for the Fourth Respondent. The Third Respondent had stated that he never intended to keep it and it was a manoeuvre designed to bring TS and the Respondent to the negotiating table. The Fourth Respondent, who had admitted the Allegation, had stated that that was never the intention and that it represented compensation. Mr Levey told the Tribunal that whatever the intention may have been, both the Third and the Fourth Respondents had in fact kept the money.

40.6 The Third Respondent had stated that it was agreed that he could keep the £200,000 as part of the agreement to sell his shares. Mr Levey told the Tribunal that the Applicant's case was that this was a *"complete sham"*. The Third and Fourth Respondents had given an undertaking to TS not take any more money. The Fourth Respondent had then proceeded to take another hundred thousand pounds to which she had no entitlement. The Third Respondent had stated that there was an agreement to sell his shares for £300,000 and that the additional £100,000 had come from the Sixth Respondent.

Mr Levey again submitted that this was a sham designed to ensure that the Third Respondent "left quietly". Mr Levey submitted that the Third Respondent had discovered that the Firm's funding arrangements were potentially fraudulent and on realising this he had cleared out the office account. He had left enough money for the payment of salaries but little more than that.

40.7 Mr Levey took the Tribunal to a number of emails which he submitted supported the Applicant's case on this point. This included an email of 18 May 2012 from the Third Respondent to the Fifth Respondent, with the Fourth Respondent copied in. Mr Levey submitted that this email indicated concerns on the part of the Third and Fourth Respondents as to a number of matters and seeking information and assurances. On 9 June 2012 the Third Respondent had emailed the Fourth Respondent with a draft of an email to be sent to the Fifth Respondent. This made reference to a lack of information being provided to them on a number of issues and Mr Levey invited the Tribunal to note that this was five days before the withdrawal of the funds.

40.8 The Third Respondent had also prepared a note entitled "issues for discussion 15th of June 2012". This was the day after the money had been withdrawn. Item 1 stated as follows:

> *"My risk – it's never been quantifiable. When I try and quantify, I get lies, hiding of information and denial of information. What is the worst case scenario for me? The fund goes belly up? The RTB cases fail?*
> *WHAT HAPPENS TO ME THEN RE PRACTISING CERTIFICATE AND DIRECTOR DISQUALIFICATION (I USED TO DO DIRECTOR DISQUALIFICATION SO I KNOW THE SCORE)"* [Emphasis not added].

40.9 Mr Levey submitted that these emails and this note indicated that the Third Respondent was concerned for his own position.

40.10 The Fourth Respondent had told Mr Carruthers in her interview on 22 February 2013 that she had told the Third Respondent that she "*definitely wanted some sort of compensation for what they'd put me through*". She had told Mr Carruthers that she had been added to the bank mandate so that she could *"take the rest of my compensation"*. Mr Levey submitted that this demonstrated a misplaced sense of entitlement on the part of the Fourth Respondent. Mr Levey submitted that the Third and Fourth Respondents, like the First and Second Respondents, had acted dishonestly in receiving Axiom funds personally.

<u>First Respondent and Second Respondent</u>

40.11 The First Respondent told the Tribunal that he had received significant sums from the Firm when it was cash-rich and profitable. The Tribunal was referred to his evidence which he relied upon in support of his case and that of the Second Respondent.

<u>Third Respondent</u>

40.12 In his email of 22 June 2018, in respect of Allegation 4, the Third Respondent made detailed submissions, key sections of which are quoted below:

"This allegation is denied in its entirety. The Applicant seeks to interpret at a wholly tendentious level. At the end of May 2012, or more accurately, in early June, it was clear to me that [TS], David Rae and Dale Stephenson were not willing to be subjected to the amount of scrutiny that I deemed necessary. The withdrawals of £200,000 to me and Mary Hunter were not made with the intention of the money being kept. They were made equal so that [TS], Rae and Stephenson understood that the decision was jointly made. The decision was made only in an attempt to make them realise that we would no longer put up with trying to run AFSL without the information we needed. I cannot speak for Mary Hunter and she cannot speak for me. My position is that it was done in an attempt to make them tell us the true nature of what was happening with the funding – to use the vernacular, I wanted to "bring them to the table". In the literal sense, it worked. Unfortunately, it failed to elicit all the information I wanted and, as a result, I decided that I could not continue to be part of AFSL.

24. To extricate myself from the position I found myself in, I had sell the shares I owned and resign my directorship. I negotiated the sale for £300,000 with [TS] and David Rae in a 3 way telephone conversation. During that conversation it was agreed that it was convenient for all if I kept the £200,000 I had and received a further £100,000 on the day of my departure. Nobody was deceived – the new directors, [GL] and [PS], were both aware of the sale as was David Rae and [TS]. The outstanding payment of £100,000 was made after I had resigned from the company and was not made by me. The aforesaid [GL] and [PS] were the directors when the payment was made yet I note that the Applicant has no proceedings contemplated against [GL] for what it alleges would be an "improper" payment.

25. Furthermore, the agreement for the sale of shares contained a clause transferring the liability for the £200,000 payment to the aforesaid [PS].

26. I also deny that I was fixed with the knowledge that any cases had been transferred from AFSL to other firms to be "double-funded". Similarly, I was never knowingly a party to any such transfer".

Fourth Respondent

40.13 The Respondent admitted this Allegation in full including dishonesty.

The Tribunal's Decision

40.14 The Tribunal had determined what constituted a proper use of the Axiom funds when considering Allegation 3. It had found that the PSSA and PLFA did not permit general expenses, overheads or running costs, which would include salary payments or payments to the directors. It had also found that they did not permit use of the funds for purposes unconnected with the running of the Firm. This would include payments to companies in which the Respondents had an interest.

40.15 The payments that were made to each of the First to Fourth Respondents were not disputed on a factual basis. These Respondents accepted that they had received the monies and it was not disputed that the monies were derived from Axiom funds as this was the only source of income for the Firm.

40.16 The First and Second Respondents drew a salary that increased substantially to £120,000 each. This was improper by reason of the Tribunal's finding in relation to Allegation 3. In addition, a cautious solicitor would not triple their salaries at the outset of a new funding scheme. The Tribunal consider that it was a 'sweetener' to encourage the First and Second Respondents to agree to the scheme.

40.17 They had also received £650,000 for the sale of the partnership to the limited company. The Tribunal was not persuaded that the company was worth that amount, but in any event it did not justify the use of Axiom funds for this purpose. The Tribunal accepted Mr Levey's submission that consideration could be as little as £1.

40.18 The First and Second Respondents gained again when they sold their shares in the Firm to Cliffcot. The money they received was again derived from Axiom funds. The payments made to the companies in which the First Respondent had an interest were, again, paid from Axiom monies and as such were improper.

40.19 The Third and Fourth Respondents initially withdrew £200,000 each, followed by a further £100,000 each. The Third Respondent had stated that, in his case, the withdrawal of the £200,000 was an attempt to get TS, the Fifth Respondent and Sixth Respondent around the negotiating table and that he had no intention of keeping it. The Tribunal rejected the Third Respondent's explanation for this as implausible and not supported by the evidence. The fact was that, whatever his later expressed intention, he did retain it, which he explained by telling the Tribunal that it reflected the agreement to sell his shares in the Firm together with another £100,000. This too was unsupported by the evidence and indeed was contradicted by the Fourth Respondent. However, even if the Third Respondent's case was correct, it would still have been an improper use of the funds. Neither the PSSA nor PLFA contained any suggestion that the funds could be used to bring individuals 'to the table' or to pay-off a departing director.

40.20 The Tribunal found the factual basis of Allegation 4 proved beyond reasonable doubt in respect of each of the First-Fourth Respondents.

40.21 The Tribunal, having found the factual basis of this Allegation proved, then considered the breaches of the Principles and the Rules that were alleged. The Fourth Respondent's admission to this Allegation included the breaches of Rules and Principles. The Tribunal again found these admissions to be properly made and proved beyond reasonable doubt on the evidence.

40.22 *Principle 3*

40.22.1 The Tribunal had considered the question of independence with regards to payments being made from Axiom funds when considering Allegation 3. The need for independence included the need to be independent of one's own financial interests. The same factors applied in relation to this Allegation, but

were amplified by the fact that the First to Fourth Respondents had gained personally from the payments that were the subject of this Allegation.

40.22.2 The Tribunal found that First and Second Respondents' judgement had been clouded by the large sums of money they were receiving. This had led them to allow their independence to be compromised.

40.22.3 The Third and Fourth Respondents may, by a wholly improper method, have demonstrated their independence from the Fifth Respondent and TS by taking the £300,000 each, but this arose out of circumstances in which they had allowed their independence to be compromised, as the Tribunal had found and analysed in relation to Allegations 1.

40.22.4 The Tribunal was satisfied beyond reasonable doubt that each of the First to Fourth Respondents had allowed their independence to be compromised by receiving monies which the Firm had received from Axiom.

40.23 *Principle 4*

40.23.1 The Tribunal had set out the link between a lack of independence and an inability to act in the best interests of clients in relation to Allegations 1,2 and 3. This applied in relation to this Allegation too, with the obvious additional element that monies intended to fund clients' cases ended up being paid to the First to Fourth Respondents personally.

40.23.2 The Tribunal found beyond reasonable doubt that each of the First to Fourth Respondents had not acted in the best interests of each client of the Firm.

40.24 *Principle 6*

40.24.1 The Tribunal considered that the public would expect, as a basic, minimum requirement, that solicitors would not appropriate monies intended to fund clients' cases and pay it to themselves instead. The Tribunal found that the public would be shocked to learn that hundreds of thousands of pounds had ended up in the First to Fourth Respondents' possession to which they were not entitled and which had been intended to help fund cases which were of importance to the individual client.

40.24.2 The Tribunal found beyond reasonable doubt that the First to Fourth Respondents had each failed to maintain the trust the public would have placed in them and in the provision of legal services.

40.25 *Outcome 7.4*

40.25.1 The Tribunal considered that a Firm's directors could not be maintaining effective controls while also making improper payments to themselves. The First to Fourth Respondents had circumvented their own controls. The Tribunal had regard to Wingate and Evans and Malins at [113] which stated:

> *"I accept that the investors in Axiom were not [a] client to whom WE Solicitors LLP owed any duty of care. On the other hand, investors stand behind almost every third party funder. The investors put up monies to fund litigation in the expectation that there will be proper safeguards for their funds".*

40.25.2 The Firm was under a duty to maintain controls to protect that money and had, on the Tribunal's findings, failed to do so. The Tribunal was satisfied beyond reasonable doubt that the First to Fourth Respondents had failed to achieve Outcome 7.4.

40.26 *Principle 2*

40.26.1 The Tribunal had found that the First and Second Respondents had paid monies to themselves to which they were not entitled. This would be a serious lack of integrity in any circumstances, but as the Tribunal had noted above, this money had been intended for the purpose of funding client's cases. The Tribunal again noted the observations in Bolton about the importance of client monies. This was in a similar category and the Tribunal was satisfied beyond reasonable doubt that the First and Second Respondents had lacked integrity.

40.26.2 The Third and Fourth Respondents had taken the money out of a misplaced sense of entitlement. Again, this was unequivocally client money of which they were the custodians. As with the First and Second Respondents, the Third and Fourth Respondents had subordinated their client's' interests for their own. The Tribunal was satisfied beyond reasonable doubt that the Third and Fourth Respondents had lacked integrity.

40.27 *Dishonesty*

40.27.1 The Tribunal considered the Respondents' state of knowledge in relation to the receipt of the monies.

40.27.2 The Tribunal had determined that the receipt of the monies were improper. The First and Second Respondents were aware of the terms of the PSSA and they were clearly aware that they were paying themselves significant sums. They had also accepted that they knew that the monies were derived from Axiom. The Tribunal found that even if the First and Second Respondents' construction of the PSSA had been correct that it could fund general running costs and overheads, the First Respondent had paid his own companies, paid for a company that was owned by him and they had both received £650,000 for their goodwill of the partnership. This was not, even on their own construction, authorised by the PSSA. It was certainly not authorised on any sensible construction of the agreement and as discussed above, this represented monies that was intended to fund clients' cases.

40.27.3 The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people.

40.27.4 The Third and Fourth Respondents had also known that the £300,000 that each of them had taken was Axiom funds. They knew the purposes of the monies was to fund clients' cases and the PLFA was crystal clear on that point. It was in that context that they had taken the money. The Tribunal found that even if the Third Respondent's motivation was what he claimed it to be, which the Tribunal did not accept, this would still have been regarded as dishonest by the standards of ordinary decent people. It was not honest to take £200,000 of money that should have been in a client account as a negotiating tactic.

40.27.5 The Fourth Respondent had rightly admitted that she had been dishonest. She had taken the money out of a sense of grievance and entitlement. This would also be regarded as dishonest by the standards of ordinary and decent people.

40.28 The Tribunal found Allegation 4 proved in full in respect of each of the First, Second, Third and Fourth Respondents including dishonesty.

41. **Allegation 5 (Respondents 1 and 2) - They caused or permitted the Firm to purchase the single share of ATM Solicitors Limited (a company owned by [TS]) ("ATM Solicitors") for the sum of £3,000,000 without carrying out any or any proper due diligence into ATM Solicitors and/or by improperly utilising monies from the Axiom Fund in order to fund the acquisition. By so acting they breached Principles 2, 3, 4 and/or 6 and failed to achieve Outcome 7.4 of the SCC 2011.**

Applicant's Submissions

41.1 Mr Levey reminded the Tribunal that it was the First Respondent's case that neither he nor the Second Respondent had done any due diligence before purchasing ATM and had therefore not seen the draft accounts, the details of which are set out above. In those accounts the work in progress was stated as being £12.38 million calculated on the basis of £2,400 per case. That work in progress was transferred to Emmetts Solicitors under the sale agreement. Mr Levey submitted that one of the difficulties with this was that the figure for WIP was not the actual WIP but was based on an assumption. The cases upon which it was based had been decided by a HHJ Waksman as being bad in law. The WIP figure was therefore wholly illusory.

41.2 Mr Levey reminded the Tribunal of the terms of the remuneration agreement that was signed on the same day as the agreement to purchase ATM. Amongst other things, the effect of this agreement was that every time the Firm drew down from Axiom, from the £950, TS received 8% of that money until the purchase price was paid after which time he received 12%. Once the purchase price paid the First Respondent was also taking 8% of that money. Mr Levey reminded the Tribunal that the purchase price was funded by the Firm taking out a loan from Noble Finance Ltd, a company controlled by TS.

41.3 It was the Applicant's case that the purchase price of £3m was a very substantial sum of money for a firm which had made a profit of £167,000 in the year ending 31 December 2010 and would make a loss of £25,801,000 in the year ending 31 December 2011 as well as having approximately £13m of debts.

41.4 The Applicant's case was that the First and Second Respondents could not honestly have believed that £3m represented the true value of ATM Solicitors and they knew that it was improper to use Axiom loan monies to fund the acquisition in any event.

41.5 The Applicant's case was that by purchasing ATM Solicitors and by using the Axiom loan monies to fund the acquisition, the First and Second Respondents acted dishonestly by the ordinary standards of reasonable and honest people.

First Respondent and Second Respondent

41.6 The First Respondent reiterated his case that the purchase of ATM was to acquire the value of the cases and there was a perceived benefit in merging together the two firms. The Tribunal was referred to his evidence which he relied upon in support of his case and that of the Second Respondent.

The Tribunal's Decision

41.7 This Allegation had two elements to it, one was carrying out the purchase without doing due diligence and the other was that it was an improper use of Axiom funds.

41.8 In respect of the first element, the First Respondent had admitted in his evidence that neither he nor the Second Respondent had done any due diligence despite having no experience of this sort of purchase. The factual basis of this part of the Allegation was proved beyond reasonable doubt on the First Respondent's evidence.

41.9 The First and Second Respondents did not dispute that the purchase was made using funds derived from Axiom. This Allegation arose in the context of excessive and reckless borrowing (Allegation 2). The purchase of ATM for £3m resulted in the Firm being burdened with £6m of debt from the purchase as well as the £13m debt inherited. The First Respondent's optimism about the ability of the Firm to successfully settle the cases and repay the money was fanciful. The cases were not straightforward. They were complex and, following HHJ Waksman's ruling, it was difficult to see how settlements could be expected on the sort of scale needed to come close to making the sums add up.

41.10 The Tribunal had already made findings as to what was and was not permitted by the PSSA when considering Allegation 3. This was clearly not permitted under the PSSA and was therefore an improper use of funds.

41.11 The Tribunal found the factual basis of Allegation 5 proved beyond reasonable doubt.

41.12 The Tribunal, having found the factual basis of this Allegation proved, then considered the breaches of the Principles and the Rules that were alleged.

41.13 *Principle 3*

41.13.1 The Tribunal had already found that the First and Second Respondents had allowed their independence to be compromised when causing and permitting the Firm to become engaged in excessive and reckless borrowing when considering Allegation 2. This purchase of ATM was a striking example of excessive and reckless borrowing. The whole purchase had been driven by TS

for his own personal benefit. As discussed above, the more the Firm borrowed the more it had to borrow in order to stay solvent. The Firm was thereby completely beholden to, and under the control of TS as a result. By increasing the Firm's indebtedness by a further £18 million this caused the Firm to be even more heavily reliant on TS.

41.13.2 In those circumstances and in the context of excessive and reckless borrowing overall, the Tribunal was satisfied beyond reasonable doubt that the First and Second Respondents had allowed their independence to be compromised in relation to this purchase.

41.14 *Principle 4*

41.14.1 The Tribunal had examined the link between a lack of independence and the ability to ensure that the First and Second Respondents were acting in the best interests of their clients. For the reasons set out above the Tribunal found a breach of Principle 4 proved beyond reasonable doubt in respect of each of the First and Second Respondents.

41.15 *Principle 6*

41.15.1 The public would expect solicitors to carry out their business with due diligence. On the First and Second Respondent's own cases they had carried out no due diligence before incurring £18 million worth of debt. The Tribunal was satisfied beyond reasonable doubt that in so acting, the First and Second Respondents had undermined the trust the public placed in them and in the provision of legal services.

41.16 *Principle 2*

41.16.1 The Tribunal had already found when considering the question of integrity in relation to Allegation 2, that the First and Second Respondents had lacked integrity when engaging in excessive and reckless borrowing. The Tribunal considered that a failure to carry out due diligence when spending £6 million to purchase another Firm for £3 million, as a result of which an additional £12 million debt was taken on was clearly, at the very least reckless and lacking in integrity. This was inconsistent with a solicitor acting with the care and accuracy that would be expected when engaging in such a transaction. The Tribunal was satisfied beyond reasonable doubt that the First and Second Respondents had lacked integrity.

41.17 *Outcome 7.4*

41.17.1 It was self-evident from the Tribunal's findings that incurring an additional debt of £18 million without having carried out due diligence was the polar opposite of maintaining systems and controls for monitoring the financial stability of the Firm, risks to money and assets entrusted to it by clients and others. The risk in this case was that the whole Firm could become insolvent. The Tribunal found beyond reasonable doubt that the First and Second Respondents had failed to achieve Outcome 7.4.

41.18 *Dishonesty*

41.18.1 The Tribunal considered the First and Second Respondents' state of knowledge. They both knew that the money being used to purchase ATM was derived from Axiom. They were aware of ATMs debts and were also aware therefore of the additional liability that the Firm was taking on. The Respondent had this evidence in front of them from the draft accounts. However they had not done any due diligence. Had they done so, it would almost certainly have advised against proceeding with this purchase. The Tribunal had already found that the First and Second Respondents had lacked independence in proceeding with this purchase. The First and Second Respondents knew that TS had an agenda which was to extricate money from the Axiom funds.

41.18.2 In those circumstances the decision not to do any due diligence could only be put down to a desire not to receive professional advice which would have been likely to advise against the purchase. In other words it was akin to "turning a blind eye".

41.18.3 The Tribunal was satisfied beyond reasonable doubt that not taking professional advice and not undertaking due diligence which might very well have resulted in receiving negative advice in circumstances where the First and Second Respondents intended to proceed regardless, owing to their lack of independence, would be considered dishonest by the standards of ordinary decent people.

41.19 The Tribunal found Allegation 5 proved in full in respect of each of the First and Second Respondents including the allegation of dishonesty.

42. **Allegation 6 (Respondents 1-3) - They caused or permitted the Firm to be owned by a non-regulated individual or company. By so acting they breached Principles 2, 3, 4 and/or 6 and failed to achieve Outcome 7.4 of the SCC 2011.**

While it was not necessary for dishonesty to be proved in order for misconduct to be established, the Applicant alleged that the Respondents acted dishonestly in respect of Allegations 4, 5 and 6, insofar as those Allegations were made against them. In the alternative the Applicant alleged that the Respondents had acted recklessly.

Applicant's Submissions

42.1 The Applicant's case was that in December 2011, the First and Second Respondents wanted to leave the Firm. Instead of finding a solicitor to take over the Firm, they left it to the Fifth Respondent and TS to find someone. The Fifth Respondent and TS identified the Third Respondent and they entered into negotiations with him. A Share Sale and Purchase agreement was subsequently entered into on 14 December 2011 whereby the First and Second Respondents sold their shares in the Firm to Cliffcot for the sum of £625,636. The financial aspect of this transaction relating to the First and Second Respondents is dealt with above in relation to Allegation 4. The effect of the

transaction was to transfer ownership of the Firm to Cliffcot and the Fifth Respondent, neither of whom were regulated or entitled to own the Firm.

42.2 The Applicant's case, which Mr Levey had developed in cross-examination of the First Respondent, was that the First and Second Respondents knew that Cliffcot/the Fifth Respondent were not entitled to own the Firm. The First and Second Respondents were due to be paid large sums of money for their shares and they proceeded with the transaction in any event. In the meantime the Third Respondent knew that the Fifth Respondent was not entitled to own the Firm but he participated in the transaction which was designed to give a false impression that he (the Third Respondent) owned it. In so acting it was the Applicant's case that the First, Second and Third Respondents had acted dishonestly by the standards of reasonable people.

First Respondent and Second Respondent

42.3 The First Respondent reiterated his position that it had been the plan to sell the shares in the Firm from a very early stage in his dealings with TS. He had indicated from early 2011 that it was his intention to leave. In the lead up to the sale the agreement changed over time. It was the First Respondent's view that on the sale of the shares it was for the buyer to ensure compliance with the regulations. The First Respondent referred the Tribunal to the advice of Jonathan Fisher QC. He had provided an opinion to the effect that Cliffcott was entitled to purchase the shares. The First Respondent described what happens to the Firm as "tragic" but the situation that he left in December 2011 was very different to that that arose in June/July 2012. The Firm was viable when the First and Second Respondents had left in 2011 and there was sufficient cash to fund the cases together with the plan to reduce the level of funding over the coming months.

Third Respondent

42.4 In his email of 22 June 2018, in respect of Allegation 6, the Third Respondent made submissions, as quoted below:

> *"This allegation is admitted insofar as it is a matter of record. However, any dishonesty on my part is not admitted. When I realised that ownership of AFSL was by Cliffcot, I thought by becoming the owner of Cliffcot's shares, this would be sufficient".*

42.5 The Third Respondent denied acting dishonestly.

The Tribunal's Decision

42.6 The Tribunal considered the advice of Jonathan Fisher QC, which the First Respondent had referred to in his evidence.

42.7 Mr Fisher's Opinion was based on instructions and two consultations, the details of which the Tribunal had not had sight of. In his Opinion he had stated that the legal title to the shares continued to be held by the First and Second Respondent after the sale and purchase agreement of 14 December 2011, but the beneficial interest was held on trust for Cliffcot.

42.8 The Opinion confirmed that the Third Respondent and the Fifth Respondent had agreed that the Fifth Respondent would transfer his shares, goodwill and interest in Cliffcot to the Third Respondent, on the understanding that the Third Respondent would transfer it all back to the Fifth Respondent when permitted to by statute. This was set out in the Deed of Trust. The Tribunal noted that the express intention of the Deed of Trust therefore to get around statutory restrictions that were in place at the time.

42.9 Mr Fisher stated at paragraph 42 of his advice that:

> *"In the absence of more evidence about the role which Mr Rae played in the business of Cliffcot following 14 December 2011, I am unable to advise definitively on the legality of Ashton Fox's position after that date".*

42.10 Mr Fisher went on to state that "*the Deed of Trust certainly invites the inference"* that the Fifth Respondent would play no further role in Cliffcot. He goes on to state that it was clear from paragraphs 2.1 and 5 of the Deed of Trust that the Third and Fifth Respondents were aware that it would have been improper of him to have an interest in the Firm. He stated:

> *"The Deed of Trust indicates that it must have been the considered intention of both Mr Stokes and Mr Rae to avoid such a situation".*

42.11 Mr Fisher concluded that irrespective of his beneficial interest in Cliffcot, the Fifth Respondent *"did not have the requisite entitlement to exercise, or control the exercise of, voting rights in Cliffcot"* and consequently the arrangements were not improper.

42.12 The Tribunal noted that the focus of Mr Fisher's opinion was the ownership of the shares in the Firm as at 31 January 2013. Further, it did not appear that he had been instructed to advise on the matter with a focus on the regulatory considerations that the Tribunal was required to consider. The Tribunal also noted the paragraphs 64 to 66 contained caveats to the opinion. It was noted in the caveats that there was no share transfer form documenting the transfer of the beneficial interest from Cliffcot to the Third Respondent.

42.13 The Tribunal considered the sale and purchase agreement and the deed of trust.

42.14 The sale and purchase agreement was between 1) the First and Second Respondents, 2) Cliffcot, 3) Payday Credit Limited and 4) the Firm. The First and Second Respondents were the sellers and Cliffcot was the buyer. Clause 2.1 stated that:

> *"On the terms of this Agreement, each of the Sellers shall sell and the Buyer shall buy the Shares with full title guarantee, free from any Encumbrance and together with all the rights that attach (or may in the future attach) to them…".*

42.15 The language was clear; the First and Second Respondents agreed to, and did, sell their shares to Cliffcot. It was not in dispute that Cliffcot was owned by the Fifth Respondent and it was also not in dispute that neither Cliffcot nor the Fifth Respondent were permitted to own a Firm.

42.16 This was confirmed in the Deed of Trust dated the same day, which stated at clause 3 that:

> *"It has been agreed that Cliffcot will purchase the shares business and goodwill of Ashton Fox…".*

42.17 The Deed of Trust then proceeded to stipulate that the Fifth Respondent would transfer his shares, interest and goodwill in Cliffcot to the Third Respondent. As Mr Fisher had identified, clause 5 dealt explicitly with the anticipated change in the law in relation to ownership and management of firms. It was in that context that the Third Respondent agreed to hold the *"former interest of including but not limited to shares, goodwill and assets of David Rae in Cliffcot"* on trust for the Fifth Respondent, they would revert to the Fifth Respondent at his (the Fifth Respondent's) direction.

42.18 The ordinary and obvious meaning of this agreement was that the Third Respondent was holding the shares on behalf of the Fifth Respondent.

42.19 The Tribunal was satisfied beyond reasonable doubt that the First, Second and Third Respondents had each caused or permitted the Firm to be owned by Cliffcot, a non-regulated company. That non-regulated company had been, and would be, owned by the Fifth Respondent. During the period in which the Fifth Respondent was not the legal owner of Cliffcot, he effectively remained the beneficial owner as the Third Respondent was only holding the shares on his behalf.

42.20 The Tribunal found the factual basis of Allegation 6 proved beyond reasonable doubt in respect of each of the First to Third Respondents.

42.21 The Tribunal, having found the factual basis of this Allegation proved, then considered the breaches of the Principles and the Rules that were alleged.

42.22 <u>*Principle 3*</u>

42.22.1 The Tribunal was satisfied beyond reasonable doubt that by selling shares to an unregulated entity, the First and Second Respondents had demonstrated a lack of independence. The sale was being organised and facilitated by the Fifth Respondent and TS. The result of the sale was again of £625,000 to the First and Second Respondents.

42.22.2 The Third Respondent had held the shares in Cliffcot in trust for the Fifth Respondent. The Third Respondent, by virtue of the deed of trust agreement, could not be independent and indeed his lack of control in the Firm that the Tribunal had analysed in respect of Allegation 1 reflected this. The Fifth Respondent had continued to exercise significant control. The telephone conversations between the Fifth and Sixth Respondents that referred to the Third and Fourth Respondents not being able to have an independent Firm were one example of this.

42.22.3 The Tribunal was satisfied beyond reasonable doubt that each of the First to Third Respondents had allowed their independence to be compromised.

42.23 *Principle 4*

42.23.1 The requirement that firms were not owned by unregulated entities was in place for a number of reasons, one of which was to ensure that clients were properly protected. This protection had been circumvented by the deed of trust and as such the First, Second and Third Respondents had each failed to act in the best interests of the Firm's clients. The Tribunal was satisfied beyond reasonable doubt that they had breached Principle 4.

42.24 *Principle 2*

42.24.1 The declaration of trust was, on the face of the document, a device by which the restrictions on a Firm not being owned by an unregulated entity, were avoided. The First and Second Respondents had not been clear as to who they were selling the shares to, but it had been their intention only three days before the sale and purchase agreement, that TS would be the ultimate beneficiary. This was evidenced in the email of 10 December 2011 from the First Respondent to TS enclosing a share sale agreement, disclosure letter and service agreement, in which the First Respondent had stated:

> *"I felt it appropriate to send the agreements to you only in the first instance as the ultimate beneficiary of the shares*".

42.24.2 In an email from the First Respondent to Mr Carruthers on 19 September 2013 he had stated:

> *"In the negotiations leading up to the sale of the shares, it was indicated by [TS] and David Rae that they had not decided definitely who they would wish to transfer the shares to on completion. It was mentioned by them that they were in discussions with Matthew Stokes, and were considering transferring the shares directly to Matthew Stokes or effecting a change in the ownership in another company to facilitate a transfer of the shares to that company. I agreed that I would hold the shares on trust on a temporary basis until they had resolved their position and were in a position to formally facilitate the transfer of the shares".*

42.24.3 It appeared from this email that the First and Second Respondents were unclear as to who they were selling the shares to. However as noted above it had been their expectation that the ultimate beneficiary would be TS. The Tribunal found that the First and Second Respondents should have taken great care to ensure, when selling their shares in the Firm, that their controlling interest went to a regulated person or entity. They had failed to do so and the Tribunal was satisfied beyond reasonable doubt that they lacked integrity.

42.24.4 The Third Respondent had entered into a deed of trust which, as referred to above, was a device aimed at circumventing the regulatory rules. It was not transparent and the Tribunal was satisfied beyond reasonable doubt that the Third Respondent had lacked integrity.

42.25 *Outcome 7.4*

42.25.1 If the Firm was not owned by a regulated entity than it was effectively operating as an unregulated law Firm despite holding itself out as one. The Tribunal was satisfied beyond reasonable doubt that this was inconsistent with maintaining systems and controls for monitoring the financial stability of the Firm as those controls were underpinned by a regulatory system. If that system was circumvented then any controls were redundant and ineffective. The Tribunal was satisfied beyond reasonable doubt that each of the First to Third Respondents had failed to achieve Outcome 7.4.

42.26 *Dishonesty*

42.26.1 The Tribunal considered the state of knowledge of each of the Respondents.

42.26.2 The First and Second Respondents had intended to sell their shares to TS. In the event they had sold their shares to Cliffcot, which was an unregulated entity. They were clearly aware of Cliffcot's status as an unregulated company as they had made reference in the First Respondent's email of 19 September 2013 to a change in ownership in another company to facilitate the transfer of shares in that company. The First and Second Respondents, through their time at the Firm, were fully aware of the role of the Fifth Respondent and TS. The result of the sale was that the First and Second Respondents received a total gain of £625,000, £150,000 of which was to be paid directly. There was therefore a financial incentive to sell the shares. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people.

42.26.3 The Third Respondent had been party to an agreement which, as the Tribunal had found above, was not transparent and was designed to circumvent regulatory requirements. However the Tribunal noted that the Third Respondent did not benefit financially in the way the First and Second Respondents had. The Tribunal could not be satisfied to the requisite standard that the Third Respondent knew that his ownership on trust of the shares in Cliffcot was insufficient to comply with the spirit of the rules. The Tribunal was therefore not satisfied beyond reasonable doubt that his actions would be considered as dishonest by the standards of ordinary decent people.

42.27 *Recklessness (Third Respondent only)*

42.27.1 The Tribunal had found the allegation of dishonesty not proved in respect of the Third Respondent and therefore was required to consider, as an alternative, an allegation of recklessness.

42.27.2 The Tribunal considered whether the Third Respondent perceived that there was a risk that he was causing or permitting the Firm to be owned by an unregulated individual or company. It was clear from the Third Respondent's witness statement that he knew that the Fifth Respondent and Cliffcot were not regulated. He had clearly perceived that there was a risk that if the shares were transferred to Cliffcot that the Firm would be owned by unregulated entity. In

an attempt to address this risk the Third Respondent had participated in the deed of trust agreement. This did not however adequately deal with the problem, it merely made it easier to conceal the problem from the SRA.

42.27.3 The Tribunal, having been satisfied beyond reasonable doubt that the Third Respondent perceived that there was a risk, was also satisfied beyond reasonable doubt that, objectively judged, his actions in seeking to get around the rules was not transparent and was not reasonable in the circumstances. The Tribunal found beyond reasonable doubt that the Third Respondent had been reckless.

42.28 The Tribunal found Allegation 6 proved in full save for the allegation of dishonesty in respect of the Third Respondent, which was not proved and recklessness was proved in the alternative.

43. **Allegation 7 (Respondents 5 and 6) - They exerted an inappropriate level of control over the management and running of the Firm and its finances to the exclusion of the solicitors who were supposed to be running the Firm, contrary to Principles 2 and/or 6 of the SCC 2011.**

Applicant's Submissions.

43.1 Mr Levey relied on many of his submissions in relation to Allegation 1 to demonstrate the involvement of the Fifth and Sixth Respondent in exercising control over the Firm. He took the Tribunal to a number of documents which, he submitted, demonstrated their involvement in the management of the Firm. In the case of the Fifth Respondent, Mr Levey referred the Tribunal to an email dated 21 January 2012 from the Fifth Respondent to LC, in which he asked her to ensure that she had headed paper for Checkmate, TSSL, Tangerine, Axiom and Ashton Fox. Mr Levey submitted that this was one example of the number of different hats being worn by the Fifth Respondent.

43.2 The Applicant's case was that the Fifth and Sixth Respondents together with TS were involved in a dishonest scheme to take control over the Firm so that it could be used as a vehicle to obtain large sums of money from the Fund. This money was then used improperly, including by the payment of large sums of money to themselves and/or to companies owned and controlled by them.

43.3 Mr Levey told the Tribunal that the Applicant fundamentally disagreed with all that the Fifth and Sixth Respondents had said in their responses and witness statements.

Fifth Respondent

43.4 The Fifth Respondent's witness statement was dated 21 June 2016 (presumably intended to read 2018). The relevant parts of his evidence are summarised or quoted below.

43.5 The Fifth Respondent denied that he exercised control over the Firm. He further denied that he had significant management responsibilities including in respect of the Firm's finances. He also denied that he owned the Firm beneficially from 14 December 2011 until July 2012.

43.6 He stated that he had met TS in the first quarter of 2011 and had been introduced to the First Respondent. The purpose of the introduction was to see if Cliffcot could help with the expansion of the Firm. The Fifth Respondent stated that the consultancy agreement, which he exhibited to his witness statement, showed that he was *"wholly independent, acting as a consultant and not a director/owner of the law Firm"*. He stated *"I cannot be held responsible if I was portrayed otherwise nor if staff perceived my position as being anything other than a consultant"*.

43.7 The Fifth Respondent stated:

> *"during the Cliffcot Limited consultancy in Emmetts Solicitors I met a Mr Stephen Wallbank from the SRA who was visiting the Firm to discuss Legal Direct with Richard Emmett and [TS] but I had no cause or reason to understand anything was deeply wrong. There was no suggestion at that time, that I was in any way controlling the Firm and nor could there be"*.

43.8 He further stated:

> *"Whilst there were serious management disagreements it was clear where the power lay in the company. The business model of the company was a matter for the directors. I did not make financial decisions. I was not on the bank mandate and did not authorise or make payments. I had no power or authority to enter into contracts on behalf of the Firm or indeed break any contracts. I did conduct interviews for people who I thought might enhance the business but the ultimate power to hire and fire lay with the directors. I was never in actual control or de facto control"*.

Sixth Respondent

43.9 The relevant parts of the Sixth Respondent's two Answers are summarised or quoted below:

> *"I find it beyond strange that I am being accused of being in cahoots with David Rae (DR) or [TS] to gain de facto control of the Firm given the lack of any evidence to that effect provided by the SRA and particularly where even the SRA evidence shows that TS was never at the office in order to be involved with controlling the firm, TS never attended management meetings where decisions were made about the running and management of the Firm and MH clearly states that she has never even met TS until after she and MS had withdrawn huge sums of Axiom Fund monies for personal use"*.

43.10 The Sixth Respondent denied that he, the Fifth Respondent and TS had exercised considerable influence and control over the management of the Firm. He stated that TS had been a director of the Firm until August 2011 and so there was nothing improper in him taking instructions from him and the other directors. He stated that the Fifth Respondent had always acted with the *"complete agreement and authority"* of the directors. The Third Respondent had retained the Fifth Respondent in his role after he became sole director.

43.11 The Sixth Respondent stated:

> *"I was not in control of the Firm at anytime during my employment. Every single payment I arranged was done with the knowledge and consent of the directors and/or the Head of Accounts".*

43.12 The Sixth Respondent set out the processes in place at the firm for authorising payments.

43.13 He explained that there was a weekly payment run in which members of the accounts department collated all outstanding invoices which were then taken to BS for authorisation. Only once PS authorised the payments could they be made. After PS left the Firm this function was taken over by the Third Respondent. In the case of cheques, this required a cheque request form to be completed by the fee earner and this had to be signed off by a solicitor or what the Sixth Respondent described as *"head fee earner"*. He stated that the Third Respondent would often ask for the cheques to be returned to the accounts department for signing.

43.14 Salary payments were determined by the directors at the start of a staff member's employment. The salaries would only be paid once the human resources (HR) Department had confirmed that everything was correct. Any other payments would be made on an ad hoc basis by the directors or their authorised agents. The Sixth Respondent stated that many of the payments were managed and processed by GP and not himself. He explained that there was a purchase order in place which meant that any expenditure in the Firm had to be authorised by senior management safer smaller amounts which could be authorised by team leaders and solicitors.

43.15 In his second Answer the Sixth Respondent stated that he was not the Firm's Finance Manager and the reiterated that any payments he made were on instructions.

43.16 He also addressed the issue of the telephone calls between himself and the Fifth Respondent, stating:

> *"The phone calls between myself a [sic] David Rae, again I would like to provide context to these calls. At no time during these calls am I shown to be involved in a decision making processes [sic] or controlling the actions of the Firm. Did I have my own opinion about the Firm, my position and what I wanted for my future? Yes."*

He went on to explain that had not envisaged remaining at the Firm for much longer, mainly due to personal reasons.

43.17 In his second Answer he stated that the telephone conversations supported his case that he did not deal with funding or allocation. He stated:

> *"in the conversation I am asking questions about case numbers and amounts and getting confused by the figures. This is as late as June 2012, shortly before I left the company. If I were as involved as the SRA ascertain [sic] in this process then surely at this point I would have understood it?".*

The Tribunal's Findings

43.18 The Tribunal had analysed much of the evidence in respect of this Allegation when considering Allegation 1. It is not repeated here for the sake of brevity.

43.19 The Sixth Respondent had raised a general point to the effect that he was unaware, and had not been made aware, of the SRA Code of Conduct. The Tribunal considered that whether he had been made aware or not, the fact remained that he and the Fifth Respondent were subject to the code of conduct and anyone taking a managerial position in a Firm of solicitors should have made it their business to familiarise themselves with it.

43.20 The Tribunal noted the Fifth Respondent had described himself as no more than a consultant with no influence or control of the level that was being alleged. The Tribunal noted that the Fifth Respondent had served his witness statement very late in the proceedings and that as a result of that, together with his non-attendance for cross-examination, his evidence had not been tested in cross-examination. The Tribunal was therefore able to attach only minimal weight to it. In any event, the Fifth Respondent's contention that he had no influence over the management and running of the Firm was completely at odds with the contemporaneous documentary evidence that had been placed before the Tribunal. It was abundantly clear that the Respondent had, as the First Respondent had described, been performing the role of Chief Executive Officer. He had been involved in decision-making at operational and strategic level as reflected in emails exhibited by the Applicant, and the fact that he had been involved in out voting the First and Second Respondents on key decisions. The Fifth Respondent's case was also undermined by the nature and content of the telephone calls that the Tribunal considered in respect of Allegation 1. The Tribunal rejected the Fifth Respondent's evidence on the basis of the contemporaneous documentation.

43.21 The Sixth Respondent had also told the Tribunal in his written submissions that his role was effectively very junior and that he had been acting on the director's instructions or that of his head of department at all material times. The Tribunal accepted that the Fifth Respondent had a greater level of control that the Sixth Respondent, but it also found that the Sixth Respondent had downplayed the extent of his control and influence. It was clear to the Tribunal from the telephone calls and the meetings that he had been holding that were referred to in those conversations, that the Sixth Respondent was in a position of seniority in the Firm. He was working closely with the Fifth Respondent and TS and that he did not regard himself as subordinate to the directors, in particular the Third and Fourth Respondents. He was actively involved in the making of the payments and his salary reflected a level of seniority greater than that of a cashier.

43.22 The Sixth Respondent had made a number of detailed submissions but had not served a witness statement and had also not attended the hearing. His case, like the Fifth Respondent, could not therefore be tested. The Tribunal rejected the Sixth Respondent's case on the basis of the contemporaneous documentation.

43.23 The Tribunal found that each of the two Respondents had exerted a level of control over the management and running of the Firm and its finances that was inappropriate. They had excluded the solicitors whose job it was to run the Firm and this was therefore an improper level of control. This was particularly the case in respect of the

Fifth Respondent who, as a close associate of TS, had the power to cause the Firm to collapse if he so chose. The Tribunal therefore found the factual basis of Allegation 7 proved beyond reasonable doubt.

43.24 *Principle 6*

43.24.1 The Tribunal had analysed what the public would expect in terms of the management and control of a law Firm when considering Allegation 1. The public would not expect non-solicitors to have an inappropriate level of control, as both the Fifth and Sixth Respondent had. The Tribunal therefore found beyond reasonable doubt that they had breached Principle 6.

43.25 *Principle 2*

43.25.1 In considering whether each of the Fifth and Sixth Respondents had lacked integrity, the Tribunal had regard to the contents of the telephone calls, in particular the manipulation of a document to make it appear that the Third Respondent had signed something which he had not. The Fifth and Sixth Respondents, by virtue of being bound by the code of conduct, had the same duties as the solicitor Respondents to ensure that the Firm was being run properly. Instead the Fifth Respondent had outvoted the First and Second Respondent, the Sixth Respondent had made clear that the Firm could not be independent as the Third and Fourth Respondent appeared to desire and both Respondents had kept the Third and the Fourth Respondents in the dark despite their status in the Firm.

43.25.2 The Tribunal was satisfied beyond reasonable doubt that each of the two Respondents had lacked integrity.

43.26 *Dishonesty*

43.26.1 The Tribunal noted that it had been invited to find dishonesty against the two non-solicitor Respondents when, on the same facts, it had not been invited to make such a finding in respect of the solicitor Respondents. The Tribunal was not comfortable with the distinction and noted that neither the Fifth nor the Sixth Respondent had chosen to attend. However the Tribunal was required to consider the Allegations before it and in accordance with that duty proceeded to consider the allegation of dishonesty in respect of the Fifth and Sixth Respondents, applying the test in Ivey.

43.26.2 The Tribunal considered the Fifth Respondent's state of knowledge as to the material facts. He had been working closely with TS. Once the Firm was locked into the borrowing arrangements it would need extra funding and as a result of this the Fifth Respondent was able to exert an inappropriate level of influence and control. The Fifth Respondent received considerable sums of money as a result of this control and he was aware that the Firm could not survive without Axiom funding, which would not continue if TS did not want to do. The Fifth Respondent knew that he was in a position of considerable influence and control. This was apparent from the content of the telephone calls, in particular the discussion of the Third Respondent's signature. The

Tribunal was satisfied beyond reasonable doubt that his actions in exercising de facto control over the Firm and excluding the solicitors who should have been in control would be considered dishonest by the standards of ordinary decent people.

43.26.3 The Sixth Respondent's state of knowledge was clear. It was apparent from telephone conversations that he knew exactly what the true position was, even if he was not the prime mover. He knew that the Third and Fourth Respondents were being excluded and their ability to manage the Firm was being hampered and he actively participated in that course of action. He too had been involved in the conversation concerning the Third Respondent's signature. The Tribunal was satisfied beyond reasonable doubt that his actions in exercising de facto control over the Firm and excluding the solicitors who should have been in control would be considered dishonest by the standards of ordinary decent people.

43.27 The Tribunal found Allegation 7 proved in full in respect of both the Fifth and Sixth Respondents including the allegation of dishonesty.

44. **Allegation 8 (Respondents 5 and 6) - They caused or permitted the Firm to become engaged in a pattern of excessive and reckless borrowing, contrary to Principles 2 and/or 6 of the SCC 2011.**

Applicant's Submissions.

44.1 Mr Levey relied on many of his submissions in relation to Allegation 2 to demonstrate the involvement of the Fifth and Sixth Respondents in involving the Firm in excessive and reckless borrowing. This reflected their role in the Firm as discussed in Allegations 1 and 7. As part of the allegation of dishonesty, the Applicant relied on the suggestion that the Fifth Respondent had forged the Third Respondent's signature on a document submitted to the Fund administrators in relation to the level of the Firm's borrowings with the Axiom Fund.

Fifth Respondent

44.2 In his witness statement the Fifth Respondent stated:

> *"The suggestion that I entered into reckless borrowing is completely without foundation. The Firm had a long-standing arrangement with Axiom as demonstrated by the SRA case and that pre-dated the Cliffcot consultancy by a considerable period of time. I was not involved in the decision to fund Emmetts Solicitors as it was years before I knew any of those involved".*

44.3 The Fifth Respondent categorically denied the accusation that he had forged the Third Respondent's signature.

Sixth Respondent

44.4 In his first Answer the Sixth Respondent stated:

"At no point was I engaged in any borrowing for the firm, as that was simply not my role and I had no authority or standing to arrange borrowing for the Firm. Borrowing was undertaken by the Firm Directors".

He denied having had any involvement with the Fund or with case generation or case management. The Sixth Respondent argued that the Applicant was using the fact that he was TS's step-son as a way to accuse him of *"...anything they feel suits them without evidence, this is a neat and tidy little trick on their part and is very suggestive without actually proving anything at all or providing any evidence at all".*

The Tribunal's Findings

44.5 *Fifth Respondent*

44.5.1 The Tribunal had identified the ways in which the borrowing was excessive and reckless when considering Allegation 2. The question when considering this Allegation was whether the Fifth and Sixth Respondents had caused or permitted the Firm to become involved in this.

44.5.2 The Fifth Respondent's role within the Firm had been analysed when considering Allegation 7. He was the *"eyes and ears"* of TS and he had a substantial interest in the Firm continuing to borrow, as did TS who made money at all points of the processes.

44.5.3 The Tribunal rejected the Fifth Respondent's case in which he asserted that he had no involvement in the borrowing decisions. As the Tribunal had found in relation to Allegation 7, the Fifth Respondent had significant control of the Firm to the extent that he could not be dismissed for fear of the repercussions that might have on the lending stream from Axiom. The Fifth Respondent was an integral part of the borrowing arrangements.

44.5.4 When the PLFA agreement was signed he was involved with Tangerine, the successor to Synergy, and therefore this was another example of his direct role in excessive and reckless borrowing.

44.5.5 The Tribunal was satisfied beyond reasonable doubt that the Fifth Respondent had caused and permitted the Firm to engage in excessive and reckless borrowing and the factual basis of this Allegation was proved.

44.6 *Sixth Respondent*

44.6.1 The Sixth Respondent's role was also considered in relation to Allegation 7. He clearly had involvement for all the reasons set out in relation to that Allegation. However notwithstanding the level of control the Sixth Respondent had in the firm, he did not have sufficient proximity to the decision-making process in relation to the actual funding and borrowing for the Tribunal to be satisfied beyond reasonable doubt that he caused or permitted it.

44.6.2 The Tribunal found Allegation 8 not proved in respect of the Sixth Respondent.

44.7 *Principle 2 (Fifth Respondent only)*

44.7.1 The Tribunal had found that causing or permitting the Firm to engage in excessive and reckless borrowing lacked integrity for the reasons set out in relation to Allegation 2. In addition the Tribunal noted the close involvement of the Fifth Respondent with the borrowing arrangements themselves. The Tribunal was satisfied that he had a personal interest in the borrowing continuing and was therefore satisfied beyond reasonable doubt that he had lacked integrity.

44.8 *Principle 6 (Fifth Respondent only)*

44.8.1 The Tribunal was satisfied beyond reasonable doubt that the Fifth Respondent had failed to behave in a way which maintained the trust the public placed in the profession. The reasons were the same as those set out in relation to Allegation 2, namely that the public expected those in senior positions in the Firm, as the Fifth Respondent was, to ensure that the Firm's finances were being run in a proper manner.

44.9 *Dishonesty (Fifth Respondent only)*

44.9.1 The Tribunal considered the Fifth Respondent's state of knowledge in relation to the excessive and reckless borrowing.

44.9.2 The Tribunal found that his knowledge of the material facts was complete. He was heavily involved in the Firm's affairs, with TS and with Tangerine. He had a personal stake in the borrowing continuing and this was reflected in the substantial financial benefit he had received. He had been immune from being sacked precisely because of his integral role in the funding arrangements of the Firm. The Tribunal was satisfied beyond reasonable doubt that ordinary decent people would regard it as dishonest for a senior member of a Firm to cause and permit excessive and reckless borrowing of tens of millions of pounds when that individual stood to make substantial personal gain from that, notwithstanding the dire consequences for the firm and its clients.

44.10 The Tribunal found Allegation 8 proved in full beyond reasonable doubt in respect of the Fifth Respondent, including dishonesty. It found Allegation 8 not proved in respect of the Sixth Respondent.

45. **Allegation 9 (Respondents 5 and 6) - They caused or permitted the Firm to use monies borrowed from the Axiom Fund to be (a) used to pay the Firm's general expenses, overheads and running costs; and/or (b) paid away for purposes unconnected with the running of the Firm, and in either case this was improper in the sense that the payments were not in accordance with the strict terms of the Litigation Funding Agreement, contrary to Principles 2 and/or 6 of the SCC 2011.**

Applicant's Submissions

45.1 Mr Levey relied on many of his submissions in relation to Allegation 3 to demonstrate the involvement of the Fifth and Sixth Respondents in permitting Axiom funds to be

used to pay general expenses and overheads and/or for matters unconnected with the running of the Firm. This reflected their role in the Firm as discussed in Allegations 1 and 7. It was the Applicant's case that the Fifth and Sixth Respondent knew that monies which the Firm borrowed from the Fund could not be used to fund the general expenses, overheads and running costs of the Firm and, in any event, that the monies could not be paid away to TS, or to companies owned or controlled by him.

Fifth Respondent

45.2 In his witness statement to the Fifth Respondent had stated that he did not authorise or make payments. The relevant section of his witness statement is quoted in respect of Allegation 7. He had also stated, in relation to Allegation 8, that the funding arrangements with Axiom predated his involvement with the Firm. Although not explicitly referred to in his witness statement, it followed from his positions in respect of Allegations 7 and 8 that his case was that he had not been involved in the misuse of the funds and as such the allegation was denied.

Sixth Respondent

45.3 In his first Answer the Sixth Respondent stated:

> *"I have never had any involvement with the Axiom fund as mentioned, an am not aware of where fund monies went to so I am unable to make comment".*

45.4 He went on to explain that he had only ever been employed within the accounts department and all of his work was undertaken in accordance with the Firm's accounting policies and under the supervision and monitoring of the directors and all the head of accounts. He went on to state:

> *"With regards to payments made in respect of cash received through the Axiom Fund Scheme I had no visibility, nor knowledge of what those funds could or could not be used for. That was a contractual agreement between the fir and the fund and I never saw that agreement nor was I ever advised about it".*

45.5 The Sixth Respondent therefore denied permitting the Firm to use monies to pay general expenses as he did not authorise payments and simply made the payments on instructions. He reiterated that he had never read a copy of a funding agreement and was therefore not aware of its terms.

45.6 The Sixth Respondent reiterated his position in his second answer.

The Tribunal's Findings

45.7 The Tribunal's findings as to what was, and was not, permitted by the PSSA and PLFA are set out above in relation to Allegation 3.The Tribunal had found, when considering Allegation 3, that the payments had been made and that they had been improper as they were not in accordance with the strict terms of the PSSA or the PLFA. The question that remained to be considered was whether these payments had been caused or permitted by the Fifth and/or Sixth Respondents.

45.8 The Fifth Respondent had been performing the role of the CEO and the Tribunal had analysed his level of control and influence when considering Allegations 7 and 8. The Fifth Respondent's case that he did not make financial decisions was inconsistent with the evidence of his telephone calls and his role in making decisions as to a range of matters described in the interviews with the First and Second Respondents. The Tribunal had found that he had caused and permitted the Firm to become involved in the reckless and excessive borrowing that was enabled by the PSSA and PLFA. Again, his evidence lacked weight for the reasons already set out above.

45.9 The Sixth Respondent's role had also been analysed in relation to Allegation 7 and his attempt to minimise his role had been rejected by the Tribunal. He had suggested that the only reason he was before the Tribunal was because he was the step-son of TS. The Tribunal completely rejected that submission. The reason he was before the Tribunal was that he had worked with the Fifth Respondent dishonestly to deny the Directors the proper control of the Firm that they should have had. This had been amply demonstrated by his telephone conversations with the Fifth Respondent. The Tribunal found his family connections were irrelevant to his culpability. What was relevant was the fact that he was operating the banking facility and was on the bank account mandate. He was the finance manager and had a duty to ensure that payments he made were proper. The Tribunal rejected his case that he knew nothing about the terms of the Axiom funding. In the telephone conversation of 11 June 2012 he had told the Fifth Respondent:

> *"If they want to be independent, the fund isn't gonna sit here and support them so that they can manage the cashflow, the fund will say this is how much you have".*

45.10 The Tribunal found that this was an example of a knowledge of the fund that contradicted the Sixth Respondent's case that he was unaware of the terms of the funding and was merely following instructions, with no personal knowledge.

45.11 The Tribunal was satisfied beyond reasonable doubt that the Fifth and Sixth Respondents had caused or permitted the Firm to use monies borrowed from the Fund to pay the Firm's general expenses and to pay for purposes unconnected to the running of the Firm. This misuse of funds included payments to both the Fifth and Sixth Respondents personally, as discussed in relation to Allegation 10 below.

45.12 *Principle 2*

45.12.1 The Tribunal considered that individuals in senior positions of management and influence in a firm of solicitors should take great care to ensure that their actions were consistent with professional ethics. The improper use of monies had occurred in the context of the Fifth and Sixth Respondents having taken an inappropriate level of control as analysed in relation to Allegation 7. The Fifth Respondent was an integral part of the borrowing arrangements and the Sixth Respondent played a key role in effecting the payments. The Tribunal was satisfied beyond reasonable doubt that the Fifth and Sixth Respondents had lacked integrity.

45.13 *Principle 6*

45.13.1 The Tribunal found that the public would expect individuals in senior positions in law firms to act with integrity and probity. The breaches in this case were not minor technical ones or isolated errors. They involved hundreds of thousands of pounds being improperly used over a period of time. The Tribunal had found that the Fifth and Sixth Respondents had lacked integrity. The Tribunal was satisfied beyond reasonable doubt that they had each failed to maintain the trust the public placed in the provision of legal services.

45.14 *Dishonesty*

45.14.1 The Tribunal considered each Respondent's state of knowledge of the material facts.

45.14.2 The Fifth Respondent was acting as the Firm's CEO.

45.14.3 His role in the Firm was so crucial that the First Respondent had admitted that he would be difficult to dismiss. He had, as the Tribunal had found in relation to Allegation 7, deprived the Directors of proper and effective control. This had been exemplified by his implementation of changes against the wishes of the Directors.

45.14.4 His role in relation to the borrowing had been analysed in relation to Allegation 8. He was connected to all the relevant parties and especially to TS. His knowledge of the activities of the Firm was complete. He was aware of the nature of the PSSA and PLFA as it was part of his function to report back to TS and he could not have done this effectively without a thorough knowledge of the borrowing arrangements. He was aware of the payments as many of them ended up going to him or companies controlled by him or TS. His level of control was such that he could have stopped the payments being made had he wanted to but chose not to.

45.14.5 It was with this extensive knowledge of the way in which the Firm was operating financially that he caused and permitted the funds to be used in breach of the funding agreements, in some cases to his own benefit.

45.14.6 The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people.

45.14.7 The Sixth Respondent was in a somewhat different position in that he was junior to the Fifth Respondent. He undoubtedly played an important role and clearly had a degree of knowledge of the funding arrangements that was greater than he had suggested in his submissions to the Tribunal. However his involvement, while significant and vital, was nevertheless one step removed from that of the Fifth Respondent.

45.14.8 The Tribunal could not be sure to the required standard that the Sixth Respondent was fully aware that the payments that were being made were in breach of the funding agreements. In those circumstances the Tribunal was unable to make a finding of dishonesty in respect of the Sixth Respondent.

45.15 The Tribunal found Allegation 9 proved in full in respect of the Fifth and Sixth Respondent, save for the allegation of dishonesty against the Sixth Respondent, which was not proved.

46. **Allegation 10 (Respondents 5 and 6) - They each received (whether directly or indirectly) and/or retained monies which the Firm had received from the Axiom Fund in circumstances in which it was improper for them to do so, contrary to Principles 2 and/or 6 of the SCC 2011.**

Applicant's Submissions.

46.1 Mr Levey submitted that the Fifth and Sixth Respondents had dishonestly received Axiom funds personally.

46.2 The payments made to the Fifth and Sixth Respondents are set out above. The Fifth Respondent, companies owned by him or associated with him had received £590,940.24. This consisted of 16 payments totalling £216,000 to Cliffcot, payments totalling £329,817.48 to Norton Accord Limited and personal expenses of £45,122.76.

46.3 The Sixth Respondent had received £54,865.98 by way of salary.

46.4 The Applicant's case was that the Fifth and Sixth Respondents knew that monies which the Firm borrowed from the Fund could not be used to fund payments to them or to companies owned or controlled by the Fifth Respondent. In receiving these payments they had acted dishonestly.

Fifth Respondent

46.5 In his witness statement, the Fifth Respondent had stated:

> *"The monies received by Cliffcot Limited were contractual and paid during the ordinary course of business. They were paid by the law Firm to the company that I had set up to run my consultancy business through. I was paid in accordance with the days that I worked and at my daily rate, which I agreed would be £1,000 which is in-keeping with daily rates charged by consultants across the legal and financial industry. I have not been part of a dishonest scheme. Solicitors received funding from Axiom under the legal agreements executed by the various directors at different times. I was not involved until April 2011. The various payments from the company, some of which I was aware of, I always understood to be contractual and legal. I reached this view because the solicitors in question explained such to me".*

Sixth Respondent

46.6 In his first Answer, the Sixth Respondent stated:

"The only payments I received from the Firm was salary payments for time worked, this is entirely proper and was expected from any employer working in any industry, business, local authority, government office, retain unit, manufacturing plant etc. across the entire country. I would like to understand how when millions of people get paid for time worked every day, week, month, year across the whole of the UK why my salary was somehow improper? Are the SRA actually saying here that the Firm should have continued on a course of not paying their employees? Which I understand would be illegal".

46.7 The Sixth Respondent denied acting dishonestly, stating that he had *"always made an effort to ensure everything I did in my role was transparent"*. In response to the Applicant's submission in the Rule 5 Statement that he and the Fifth Respondent *"must have known and did know that monies which the Firm borrowed from the Axiom Fund could not be used to fund the general expenses, overheads and running costs of the Firm and, in any event that the Axiom monies could not be paid away to them or to [TS], or to companies owned or controlled by them"*, the Sixth Respondent stated: *"I put it to the SDT that this is a ridiculous remark, especially when considering I have never even read as copy of the agreement between the fund and the Firm. Wait, let me guess, they make this claim on the back of me used to being [TS's] stepson, how convenient for them!"*.

46.8 He reiterated that he denied the Allegation and did not *"for one minute believe that the money was used improperly",* stating again that the payments were not authorised by him.

The Tribunal's Findings

46.9 The Tribunal had found, when considering Allegation 3, that the use of PSSA and PLFA funds for salaries and other payments not connected to the running of the Firm was improper.

46.10 The Fifth and Sixth Respondents had each received a salary which was paid for using Axiom funds, on the basis that this was the Firm's only significant source of income. In addition, companies in which the Fifth Respondent had an interest, namely Cliffcot and Norton Accord, received substantial sums of money which, again were Axiom-derived.

46.11 The Fifth Respondent had stated that all monies he received from the Firm were contractual and paid *"during the ordinary course of business"*. This was no answer to the Allegation however, as even if the payments were contractual, that did not prevent them being improper.

46.12 The Sixth Respondent had asked how the payment of his salary could be improper when *"millions of people get paid for time worked"* across the country. The Tribunal considered that the Sixth Respondent had not addressed the Allegation. It was not being suggested that payment of salaries in general amounts to misconduct – such a proposition would be clearly absurd. What was being alleged however was that payment of these salaries, out of funds that were specifically not be used for the payment of salaries, was improper.

46.13 The Tribunal was satisfied beyond reasonable doubt that the Fifth and Sixth Respondents had received and/or retained monies which the Firm had received from the Fund when it was improper for them to do so.

46.14 *Principle 2*

46.14.1 The Fifth Respondent was in receipt of large sums of monies that had been paid improperly, both directly to him and indirectly to his companies. He was in the role of a CEO and the way in which that role manifested itself is set out in relation to Allegations 7-9 above.

46.14.2 The Tribunal had already found that his involvement in making the payments that were the subject of Allegation 9 had lacked integrity. It followed from that as a matter of logic that when receiving such payments himself, he had again lacked integrity.

46.14.3 The Sixth Respondent had not received payments beyond that of his salary. The Tribunal recognised that he was not a director and had not been responsible for the primary decision to use the monies from the Fund to pay salaries. However he was the Finance Director and, for the reasons set out in relation to Allegation 9, would have known that the payment of salaries was not permitted.

46.14.4 The Tribunal was satisfied beyond reasonable doubt that both the Fifth and Sixth Respondent had lacked integrity.

46.15 *Principle 6*

46.15.1 The public would not expect the CEO and Finance Director of a Firm to pay monies to themselves that they were not permitted to do under the funding agreements. The Tribunal had found that the Fifth and Sixth Respondents had failed to maintain the trust the public placed in the profession in relation to Allegation 9. It followed as a matter of logic that it must apply to this Allegation in circumstances where the improper use of the monies directly and personally benefited these two Respondents. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt in respect of the Fifth and Sixth Respondents.

46.16 *Dishonesty*

46.16.1 The Tribunal considered each Respondent's state of knowledge of the material facts.

46.16.2 The Fifth Respondent's knowledge of what was and was not permitted under the funding agreements was analysed in relation to Allegation 9. His involvement in the use of those funds had also been considered and the Tribunal had found his knowledge to be complete. He had an integral role in the Firm and was a key player in the decision to use Axiom funds for the paying of salaries and other payments that were improper. The result of the making of

improper payments was that he personally gained hundreds of thousands of pounds.

46.16.3 The Tribunal was satisfied beyond reasonable doubt that this conduct would be considered dishonest by the standards of ordinary decent people.

46.16.4 The Sixth Respondent, as discussed in relation to Allegation 9, did not have the same proximity to the decision to use the funds to pay salaries as the Fifth Respondent. The Tribunal noted that he received substantially lower sums and all the payments made to him were in the form of salary payments. The Tribunal could not be satisfied to the required standard that his level of knowledge was such that his conduct would be considered dishonest by the standards of ordinary decent people. The Tribunal did not find dishonesty proved in respect of the Sixth Respondent in relation to this Allegation.

46.17 Allegation 10 was proved in full beyond reasonable doubt in respect of the Fifth and Sixth Respondents, save for the allegation of dishonesty against the Sixth Respondent, which was not proved.

47. **Allegation 11 (Respondent 5) - He became the owner of the Firm even though he was not a solicitor and not otherwise regulated by the SRA, contrary to Principles 2 and/or 6 of the SCC 2011.**

Although it was not a necessary part of its case, the Applicant alleged that by acting as alleged in relation to Allegations 7-11, the Fifth and Sixth Respondents had acted dishonestly.

Applicant's Submissions.

47.1 Mr Levey relied on many of his submissions in relation to Allegation 6 to demonstrate the Fifth Respondent's involvement in allowing the Firm to be owned by a non-authorised entity.

Fifth Respondent

47.2 In his witness statement the Fifth Respondent invited the Tribunal to read the opinion of Leading Counsel, which he exhibited.

47.3 The Fifth Respondent explained that Baker Tilly had been engaged to advise on Alternative Business Structures (ABS). He stated that following discussions with the First Respondent and TS, it had been suggested that Cliffcot could be used as a vehicle for the ABS application.

47.4 He further stated:

> *"The structure of what was to take place was complex and none of the drafting was done by me. However, all involved were fully aware that as a non-solicitor I could not have control over a law Firm".*

47.5 The Fifth Respondent submitted that the contemporaneous documents reviewed by Leading Counsel and summarised by GL at the time confirmed the following:

> *"i. I was never in control or de facto control of the Firm.*
> *ii. I was paid as a consultant and in accordance with the consultancy agreement.*
> *iii. I did not become the beneficial owner of Ashton Fox and there was no intention that I should.*
> *iv. the paperwork was drawn up by professionals upon whom I relied and leading counsel has then reviewed the position and concluded (rightly) that there was no intention to operate in a way that was anything other than legally and therefore honestly. He was instructed to consider the issue of dishonesty and that is why paragraph 48 appears in his Opinion. It concluded there was no dishonesty and no illegality".*

47.6 The Fifth Respondent invited the Tribunal to conclude that there was no basis for the case against him, noting that *"none of the Respondents contend I was in control of the Firm and that a QC has confirmed that I did not hold any interest in the Firm".*

The Tribunal's Findings

47.7 The Tribunal had analysed the factual position in respect of this Allegation when considering Allegation 6. This included the Tribunal's assessment of the relevance of the advice from Mr Fisher QC. As the owner of Cliffcot, the Fifth Respondent became the owner of the Firm when the First and Second Respondents sold their shares to him on 14 December 2011, even though he was not a solicitor or otherwise regulated by the SRA.

47.8 The Tribunal found the factual basis of Allegation 11 proved beyond reasonable doubt.

47.9 *Principle 2*

47.9.1 The extent of the Fifth Respondent's control over the Firm and his involvement in all of its dealings including the sale of the First and Second Respondents shares is set out throughout this Judgment and it is in that context that the Tribunal considered whether the Fifth Respondent had lacked integrity. The Fifth Respondent clearly wished to retain control over the Firm and entrench it. He knew that he could not do this directly as he was an unregulated individual. He therefore involved the Third Respondent in an arrangement that was designed to circumvent the regulations. The Tribunal was satisfied beyond reasonable doubt that in doing so the Respondent lacked integrity.

47.10 *Principle 6*

47.10.1 The Tribunal found beyond reasonable doubt that the Fifth Respondent had breached Principle 6 for the reasons set out in relation to Principle 2 and for the same reasons that the Tribunal had found that the First, Second and Third Respondents had failed to behave in a way which maintained the trust the public placed in the provision of legal services.

47.11 *Dishonesty*

47.11.1 In considering the Fifth Respondent's state of knowledge, as stated in other parts of this Judgment the Tribunal found that the Fifth Respondent's knowledge of all relevant matters pertaining to the Firm was complete. The Fifth Respondent knew that he could not own the Firm and he took active steps to cure that problem. Therefore he arranged for the legal title to pass to the Third Respondent and for the beneficial title to come back to him. The result was that this improved his control of the Firm. This was in the context of significant payments being received by the Fifth Respondent and companies connect to him as a result of his control of the Firm.

47.11.2 The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people.

47.12 The Tribunal found Allegation 11 proved in full including the allegation of dishonesty.

Previous Disciplinary Matters

48. None in respect of any Respondent.

Mitigation

49. First and Second Respondent

49.1 The First Respondent told the Tribunal that he and the Second Respondent recognised that the nature of the Allegations were serious. They had genuinely believed, and been told convincingly, that the funds had been acquired properly. Their aim had been to benefit a large number of claimants who would otherwise have not had access to justice. The First Respondent told the Tribunal that he and the Second Respondent were genuinely distressed that investors in the Axiom funds had lost money and that clients had suffered inconvenience. He told the Tribunal that they had co-operated fully from the outset and had answered all questions that had been asked during the course of the investigation and that the Tribunal.

49.2 The Tribunal asked the First Respondent whether he had said all he wished to, particularly with reference to any exceptional circumstances that he wished to put forward in light of the Tribunal's finding of dishonesty. The First Respondent confirmed that he had said all he wished to.

50. Third Respondent

50.1 The Third Respondent did not specifically present mitigation to the Tribunal, but the Tribunal had regard to the totality of his witness statement and any mitigating factors arising therein.

51. Fourth Respondent

51.1 As noted above, the Respondent admitted all the Allegations against her. These admissions were contained in letters dated 26 June 2017 and 2 May 2018. She made a number of points in mitigation in those letters and in a further letter dated 4 May 2018.

51.2 In her letter of 26 June 2017 she had stated:

> *"I admit the facts set out. I accept the seriousness of the allegations and deeply regret that my conduct has been found wanting by the profession. I accept that I may be struck [off] but suggest that I should be suspended indefinitely. I am not seeking to defend myself but I would ask that the following points are taken into account:*
>
> 1. *I came to Ashton Fox when the funding arrangements were already in place. My role was to bring efficiency and deal with complaints. I had experience in managing volume legal work and dealing with complaints but was not familiar with litigation funding.*
>
> 2. *I never saw the actual funding agreement.*
>
> 3. *I believed that the fund was supplying money for the running of the firm and had been doing so during prior periods when accounts would have been submitted and signed off as compliant.*
>
> 4. *I believed that the SRA had already visited Richard Emmett and would have been aware of the funding arrangements.*
>
> 5. *I at no time was aware that the funds should have been held in client account. I did know that the firm depended on the funding but I was present at many meetings where litigation cases were estimated to realize [sic] enough to repay the funding. There was talk of bonuses for all staff which I had on reason to disbelieve.*
>
> 6. *I worked at Ashton Fox on a daily basis for long hours with Matthew Stokes. Richard Emmett and Lindsay Emmett played no active part in the day to day running of the firm and I worked very hard to bring order to the massive volume of cases being handled by the firm and took our responsibilities very seriously. Louise Emmett [presumably intended to read Lindsay] never attended the office. Richard Emmett ran a call centre and a pay day loan company but did not work for Ashton Fox. I had no idea that [TS] was part of the firm.*
>
> 7. *When I became aware of the level of remuneration taken by the above parties from the firm, I believed that I was entitled to greater remuneration and that is why Matthew Stokes and I paid ourselves additional money. This money was sanctioned by a resolution signed by Matthew Stokes. The money was paid from office account and I would never have taken the money from client account".*

51.3 The Fourth Respondent admitted a lack of integrity and denied, in this letter, dishonesty.

51.4 In her letter of 2 May 2018 she informed the Applicant that having reviewed her earlier letter and the authorities, she now admitted the allegations of dishonesty. She stated that:

> *"I should have done more to check the status of the Axiom funds rather than rely on colleagues and past practice at the firm which I wrongly believed the SRA was aware of".*

51.5 In her letter of 4 May 2018 she had stated: *"Further to my letter of 4 May [presumably intended to read 2 May], I wish to stress that I accept full responsibility for my actions. Both details of the SRA visit to Emmetts and copies of the funding agreements should have been available and I should have insisted on seeing them. Had I done so I would have known that the SRA did not review the funding arrangements as had been indicated to me and also that the funds should have been held in client account. I regret that I did not take the correct actions and admit all the charges against me".*

51.6 The Fourth Respondent had indicated a desire to reach an Agreed Outcome with the Applicant.

52. Fifth Respondent

52.1 The Fifth Respondent did not specifically present mitigation to the Tribunal, but the Tribunal had regard to the totality of his witness statement and any mitigating factors arising therein.

53. Sixth Respondent

53.1 The Sixth Respondent did not specifically present mitigation to the Tribunal, but the Tribunal had regard to the totality of his witness statement and any mitigating factors arising therein. In his Answer of 17 October 2017 he had indicated that he had no desire to return to "go near" a solicitor or a law firm in the future.

Sanction

54. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal assessed the seriousness of the misconduct by considering the culpability of each Respondent, the level of harm caused together with any aggravating or mitigating factors.

55. First Respondent

55.1 In assessing the First Respondent's culpability, the Tribunal accepted that he may have initially believed that the funding scheme would have increased clients' access to justice. However his motivation changed and he was beguiled by the opportunity presented to him by TS that would benefit him in the Second Respondent financially. While there may have been an element of deception in relation to the way in which the scheme was sold to him, he had looked for an exit which effectively involved him

buying his own Firm for £650,000 and selling it again for £625,000. Having possibly initially thought that he could trade his way out of the difficulties in which he had got himself, he had decided to try and get out with as much money as possible. The Tribunal found that this was carefully planned and had resulted in a breach of trust both to his clients and to Axiom. The First Respondent had direct control of the circumstances, evidenced by the fact that he signed up to the PSSA and gave away control. After that he was complicit in all that had taken place up to and including his departure from the Firm. The First Respondent was an experienced solicitor, albeit he had branched into an area in which he had little to no experience.

55.2 In considering the harm caused by the First Respondent's misconduct, the Tribunal found there to be catastrophic damage to the reputation of the profession. Individual investors in the fund had lost between £15,000 and £250,000.

55.3 The matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

> *"34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."*

55.4 The Tribunal found the misconduct to have been deliberate, calculated and repeated and had continued over a significant period of time. The First Respondent clearly knew that he was in material breach of his obligations. The Tribunal found that the First Respondent lacked any insight into his misconduct.

55.5 Matters were mitigated by the fact that he had no previous matters records against him. He had co-operated with the SRA and had engaged with these proceedings. The Tribunal noted that he had presented his case with some skill, courtesy and effectiveness.

55.6 The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the First Respondent. The Tribunal considered that it was important to make clear that solicitors must give minute attention to the terms of any funding agreements that they signed because of the potential for the loss of money, loss to clients and damage to the reputation of the profession.

55.7 The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.

55.8 The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The First Respondent had not advanced any and the Tribunal did not identify any. The Tribunal had regard to the First Respondent's circumstances both at the material time and at the time of the hearing. The Tribunal found there to be nothing that would justify an indefinite suspension. The only appropriate and proportionate sanction was that the First Respondent be Struck Off the Roll.

56. Second Respondent

56.1 The Second Respondent's culpability was the same as that of the First Respondent, albeit the Tribunal recognised that the First Respondent was more proactive than the Second Respondent in effecting the relevant transactions.

56.2 The harm caused by the Second Respondent's misconduct was as damaging as that of the First Respondent's.

56.3 Matters were again aggravated by dishonesty and misconduct that was deliberate calculated and repeated. As with the First Respondent it had continued over a period of time and the Second Respondent knew or ought reasonably to have known that it was in material breach of her obligations. The Second Respondent had also shown no insight, as reflected by her denial of all the Allegations against her.

56.4 Matters were mitigated by the degree of cooperation that she and the First Respondent had given to the SRA. Although she had not attended the Tribunal she had been represented by the First Respondent and through him had presented her case fully.

56.5 The Second Respondent's misconduct was too serious for there to be no order, a reprimand, fine or suspension. For the same reasons that applied in the case of the First Respondent, the only appropriate sanction was a Strike Off. Again, no exceptional circumstances had been advanced and the Tribunal found there to be none. The only appropriate and proportionate sanction was that the Second Respondent be Struck Off the Roll.

57. Third Respondent

57.1 The Tribunal found that whilst the Third Respondent may not have planned to find himself in the situation in which he did, his motivation in removing the £300,000 was clearly personal financial gain.

57.2 The Third Respondent had inherited the borrowing structure set up by the First and Second Respondents. He should not have allowed himself to become involved with the Firm, still less signing a new agreement which had the potential to make the situation even worse. There was again, a breach of trust with respect to the fund investors and to the clients. The Third Respondent had direct control of the circumstances giving rise to the misconduct, particularly at the point when he signed the PLFA. He was more experienced than the First or Second Respondents. There was an element of concealment from the regulator in that the beneficial ownership of the Firm was kept under the radar pursuant to the deed of trust of 14 December 2011.

57.3 In assessing the harm caused, the Tribunal found that this was similar to that of the First and Second Respondent.

57.4 The aggravating factors in respect of the Third Respondent were the same as those for the First and Second Respondent.

57.5 The misconduct was mitigated to a certain extent by the fact that the borrowing structure was a ready in place and there had been some element of deception on the part of others. The Third Respondent had made some limited admissions that demonstrated only partial insight. There had been a very limited degree of cooperation, reflected in the fact that he had engaged with the proceedings at an extremely late stage.

57.6 The Third Respondent's misconduct was too serious for there to be no order, a reprimand, fine or suspension. For the same reasons that applied in the case of the First and Second Respondent, the appropriate sanction was a Strike Off. Again, no exceptional circumstances had been advanced and the Tribunal found there to be none. The only appropriate and proportionate sanction was that the Third Respondent be Struck Off the Roll.

58. Fourth Respondent

58.1 The Fourth Respondent's motivation was also financial gain, in this case for compensation that she believed she was entitled to. She too had breached a position of trust and was an experienced solicitor. She had direct control of and responsibility for the misconduct. The Tribunal recognised that the Third Respondent had played a more proactive role in the signing of the PLFA, but this did not significantly alter her level of culpability.

58.2 The degree of harm caused by her misconduct was similar to that of the First, Second and Third Respondents.

58.3 Matters were aggravated again by dishonesty. The misconduct was deliberate, repeated and had continued over a period of time and the Fourth Respondent knew or ought to have known that her conduct was in material breach of her obligations.

58.4 Matters were mitigated by the fact that, like the Third Respondent, there had been an element of deception. The Tribunal also noted that she did not sign or indeed see funding agreements although she ought to have done. She also had no previous matters recorded against. In assessing her insight the Tribunal noted that she had made early admissions and by the start of the hearing had made full admissions to the Allegations that he faced. She had cooperated with the regulator and with these proceedings.

58.5 Notwithstanding the mitigating factors identified, the Fourth Respondent's misconduct was too serious for there to be no order, a reprimand, fine or suspension. The mitigating factors were not sufficiently strong to make any of those sanctions appropriate. For the same reasons that applied in the case of the First, Second and Third Respondents, the appropriate sanction was a Strike Off. Again, no exceptional circumstances had been advanced and the Tribunal found there to be none. The only appropriate and proportionate sanction was that the Fourth Respondent be Struck Off the Roll.

59. Fifth Respondent

59.1 The Applicant had sought an order under section 43 of the Solicitors Act 1974 ("the Act") in respect of the Fifth Respondent. In addition the Applicant had invited the Tribunal to impose a fine, having made a complaint under sections 34A(2) and 47 (2E) of the Act.

59.2 Section 43 (1) of the Act provides as follows:

> *"Where a person who is or was involved in a legal practice but is not a solicitor—*
> *(a) […] or*
> *(b) has, in the opinion of the Society, occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the Society it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in subsection (1A),*
> *the Society may either make, or make an application to the Tribunal for it to make, an order under subsection (2) with respect to that person."*

59.3 The Tribunal reminded itself that an order under section 43 of the act was not a sanction. It performed a regulatory function and not a punitive function. The Tribunal had found beyond reasonable doubt that the Fifth Respondent had acted dishonestly, lacked integrity and failed to behave in a way which maintained the trust the public placed in the provision of legal services. Those findings arose out of Allegations 7 to 11. The Tribunal was satisfied beyond reasonable doubt that this conduct was of such a nature that it to be undesirable for the Fifth Respondent to be involved in a legal practice in the ways set out in the order. The misconduct had taken place in the course of his role in the Firm. The Tribunal therefore granted the Applicant's application for an order under section 43. This was necessary for the protection of the public and the reputation of the profession.

59.4 The imposition of a fine did amount to a sanction and the Tribunal felt it important to highlight the distinction lest it appear that the Fifth Respondent, or indeed the Sixth Respondent, were being punished twice for the same misconduct.

59.5 In light of the Tribunal's findings in respect to Allegations 7 to 11, it was appropriate that the Tribunal considered the question of sanction. In doing so the Tribunal had regard to the relevant factors identified in the guidance note on sanctions (December 2016) and considered the Fifth Respondent's culpability, the extent of harm caused and any aggravating or mitigating factors.

59.6 The Tribunal considered the Fifth Respondent's motivation for his conduct. It was clear that this was overwhelmingly financial. He was working in association with TS and the Tribunal was satisfied that the overriding objective of TS and the Fifth Respondent was to get as much money out of the Axiom funds, through the Firm, as they could. The misconduct was planned and there had been a breach of trust in respect of the Axiom investors. The Fifth Respondent had been performing the role of CEO and therefore had direct control and responsibility for the circumstances giving rise misconduct. Further, he had wrested proper and effective control from the Directors. He had then engaged in an arrangement whereby he would effectively own the Firm despite not being a regulated individual or entity. This in turn had resulted in the regulator being misled to the true ownership of the Firm.

59.7 The harm caused by this conduct has been set out above in relation to the First to Fourth Respondents. The Tribunal noted that very large sums of money were misappropriated by and to the benefit of the Fifth Respondent and the reputation of

damage to the profession of this being organised and executed by the Firm's de facto CEO was extremely serious.

59.8 Matters were aggravated by the Fifth Respondent's dishonesty and the fact that his actions were deliberate calculated and repeated. It continued over a period of time and the Fifth Respondent clearly knew that he was in material breach of his obligations, as evidenced by the deed of trust device put in place to get around the restrictions on the ownership of the Firm.

59.9 The Tribunal found that there were no mitigating factors. The Fifth Respondent had engaged only at the last possible moment in the proceedings and had denied all the Allegations.

59.10 The only sanction open to the Tribunal was a fine, though the Tribunal noted that had the Fifth Respondent been a solicitor, it would have struck him off.

59.11 The Tribunal considered the level of fine by reference to the Indicative Fine Bands contained within the Guidance Note on Sanction. The Tribunal found the Fifth Respondent's conduct to be significantly serious, putting it in Level 5. The range of fine was £50,001 to unlimited. The Tribunal considered that the Fifth Respondent's conduct was so serious as to put it significantly above the starting point. The Tribunal determined that the appropriate level of fine, having regard to all the circumstances, was £200,000.

59.12 The Tribunal considered the question of Fifth Respondent's means when considering the level of fine and has set out its reasoning below, in the section of the Judgment dealing with costs. The Tribunal saw no basis on which to reduce the fine.

60. Sixth Respondent

60.1 The Applicant had also sought an order under section 43 of the Act in respect of the Sixth Respondent and had invited the Tribunal to impose a fine, having made a complaint under sections 34A(2) and 47 (2E) of the Act.

60.2 The Tribunal again reminded itself that an order under section 43 performed a regulatory and not a punitive function. The Tribunal had found beyond reasonable doubt that the Sixth Respondent had acted dishonestly, lacked integrity and failed to behave in a way which maintained the trust the public placed in the provision of legal services. Those findings arose out of Allegations 7, 9 and 10. The Tribunal was satisfied beyond reasonable doubt that this conduct was of such a nature that it to be undesirable for the Sixth Respondent to be involved in a legal practice in the ways set out in the order. The misconduct had taken place in the course of his role in the Firm. The Tribunal therefore granted the Applicant's application for an order under section 43. This was necessary for the protection of the public and the reputation of the profession.

60.3 In light of the Tribunal's findings in respect to Allegations 7, 9 and 10, it was appropriate that the Tribunal considered the question of sanction. In doing so the Tribunal had regard to the relevant factors identified in the guidance note on sanctions (December 2016) and considered the Sixth Respondent's culpability, the extent of harm caused and any aggravating or mitigating factors.

60.4 The Sixth Respondent's motivation was also financial in that he was being paid a generous salary despite being relatively lacking in experience in the role. However the extent to which he benefited financially was significantly less than that of the other Respondents. The Sixth Respondent's conduct was planned and he was working closely with the Fifth Respondent in helping the Fifth Respondent and TS further their aims in taking control of the Firm and obtaining money from the fund. The Sixth Respondent was in a senior position in the Firm and therefore had direct control and responsibility, particularly for the improper payments.

60.5 The harm caused was similar to that detailed in respect of the other Respondents. As noted above, the Tribunal accepted that the Sixth Respondent was less of a driving force than, for example, the Fifth Respondent.

60.6 The misconduct was aggravated by the Sixth Respondent's dishonesty in respect of Allegation 7. The overall misconduct was deliberate calculated and repeated and had continued over a period of time. The Sixth Respondent was sufficiently aware of what was going on to have known or ought reasonably to have known that his conduct was a material breach of his obligations.

60.7 The Tribunal again found no mitigating factors beyond those identified above. The Sixth Respondent had shown no insight into his misconduct and this was reflected by his denial of all the Allegations and the fact that he appeared aggrieved to have faced any allegations at all.

60.8 As in the case of the Fifth Respondent, the only sanction open to the Tribunal was a fine, though the Tribunal noted that had the Sixth Respondent been a solicitor, he too would have been struck off.

60.9 The Tribunal considered the level of fine by reference to the Indicative Fine Bands contained within the Guidance Note on Sanction. The Tribunal found the Sixth Respondent's conduct to be significantly serious, putting it in Level 5. This was on account of the finding of dishonesty as well as the three findings of lack of integrity. The Tribunal considered that the Sixth Respondent's conduct was less serious than the Fifth Respondent as he was more junior in the Firm and his level of financial gain was considerably less than the other Respondents. The Tribunal determined that the appropriate level of fine was at the lowest end of the Level 5 scale and decided that the appropriate figure was £50,001.

60.10 The Tribunal considered the question of Sixth Respondent's means when considering the level of fine and has set out its reasoning below, in the section of the Judgment dealing with costs. The Tribunal saw no basis on which to reduce the fine.

Costs

Applicant's Submissions

61. Mr Levey presented costs schedules totalling £252,500.32. This included the costs of the investigation as well as the proceedings. Mr Levey told the Tribunal that some of those costs were attributable to all the Respondents and differing amounts with an added in respect of each individual Respondent.

62. Mr Levey noted that the First and Second Respondent had filed a Statement of Means but that it did not refer to their assets. Mr Levey told the Tribunal that if a costs order was not made that the costs would be borne by the profession. He accepted that it may be the case that the costs could not be recovered there without an order from the Tribunal there was no option to attempt to recover them. Mr Levey submitted that each of the Respondents had received tens of thousands of pounds or hundreds of thousands of pounds as a result of the misconduct. Mr Levey accepted that the costs were significant and suggested that the Tribunal, if it was considering sending the matter for detailed assessment, make an interim order for costs based on the minimum that was likely to be awarded. If it was indeed the case that the costs order could not be enforced than there would be no need to send the matter a detailed assessment. Mr Levey invited the Tribunal to make any order on a joint and several basis so as to protect the profession in the event of non-payment by one of the Respondents.

First and Second Respondent's Submissions

63. The First Respondent told the Tribunal that he agreed with Mr Levey that a detailed assessment of costs coupled with an interim order would be the best way forward. He told the Tribunal that the Statement of Means that had been presented on behalf of himself and the Second Respondent did set out the assets and liabilities as well as their income and outgoings. It had been their intention to cooperate as best they could. He told the Tribunal that their assets were outweighed by the liabilities and this was before any financial penalty or costs was taken into account. They had consulted an insolvency adviser and it was their intention to do the best they could for all their creditors. They intended to cooperate fully with the SRA but their position was such that there was likely to be an IVA or possible bankruptcy. The First Respondent told the Tribunal that he and the Second Respondent had adopted the same position throughout and invited the Tribunal to treat them as one party out of five as opposed to two parties out of six for the purposes of costs. He told the Tribunal that they were unlikely to be able to make payment of an interim order outside an IVA or bankruptcy proceedings.

64. In response to a question from the Tribunal the First Respondent explained that of the monies received that derived from Axiom funds, some of it had been lost in the First and Second Respondents' subsequent law Firm which had failed and the rest had been lost in other businesses. The family home was subject to possession proceedings, the car had been repossessed and bailiffs had attended their address. In short, all the money had gone.

65. The First and Second Respondents had served a Statement of Means with documentary evidence showing outgoings and debts owed. This showed that after expenditure, they had a monthly income of £15.92. The Statement of Means did not contain a statement of truth, however the Tribunal considered it when assessing the level of costs.

Third Respondent's Submissions

66. The Third Respondent had not filed a Statement of Means.

67. In his email to the Applicant and the Tribunal dated 22 June 2018 he had stated that he had a number of health issues. He stated as follows:

"It is unlikely that I will work for at least another 2 years. It is therefore unlikely that I will be able to make any contribution to any costs order made against me for the foreseeable future as I have no means of income. I currently survive on the goodwill of my parents and my partner".

68. This was not signed with a statement of truth, however the Tribunal considered it when assessing the level of costs.

Fourth Respondent's Submissions

69. The Fourth Respondent had not served a Statement of Means.

Fifth Respondent Submissions

70. The Fifth Respondent had not served a Statement of Means.

Sixth Respondent's Submissions

71. The Sixth Respondent had provided a Statement of Means. This was not signed with a statement of truth, however the Tribunal considered it when assessing the level of costs. This showed that the Sixth Respondent had approximately £83,000 equity in the family home (based on the 2013 purchase price). It included loan repayments of £638.22 and mortgage repayments of £417 along with other standard outgoings.

The Tribunal's Decision

72. The Tribunal, having found the vast majority of the Allegations proved, was satisfied that it was appropriate that costs be ordered in favour of the Applicant.

73. In light of the level of costs claimed, it was appropriate that the matter be the subject of detailed assessment. The Tribunal first of all considered how those costs should be apportioned, followed by assessing the appropriate interim payment, if any. The Tribunal was not satisfied that it was appropriate to make the orders joint and several, save between the First and Second Respondents. This was because there was a potential for unfairness if one or more Respondent did not pay their share as that would then fall on the other Respondents.

74. The Tribunal considered the nature of the case as a whole and the level of culpability and involvement on the part of each Respondent. It also considered the extent to which individual Respondents had increased the costs by the way in which they had approached the proceedings.

75. The First and Second Respondents had been heavily involved in the borrowing structure from the beginning. They had denied all the Allegations and had contested them, as was their right, in full at the hearing at which the First Respondent had acted for both of them. The Tribunal determined that their joint contribution should be 35%.

76. The Third Respondent had made some admissions and had inherited the borrowing structure put in place by the First and Second Respondents. He had then signed a further funding agreement before leaving the Firm, taking with him £300,000. The Third

Respondent had engaged at a very late stage with the proceedings and had served a detailed witness statement and exhibits as part of his defence to those Allegations that he denied. The Tribunal determined that his contribution should be 15%.

77. The Fourth Respondent had made admissions at an early stage. Although she had initially denied dishonesty, she had revised her position and made admissions to that in advance of the hearing. She had also inherited the same situation that the Third Respondent had. The difference however was that she had engaged with the Tribunal at the appropriate time and had made admissions. The Tribunal determined that her contribution should be 5%.

78. The Fifth Respondent's role had been set out extensively throughout this Judgment and it was clear that he was at the heart of much of the misconduct that had taken place. He had engaged very late stage of proceedings and had denied all the Allegations. The Tribunal determined that his contribution should be 30%.

79. The Sixth Respondent had engaged with the Tribunal at the appropriate time and had denied all the Allegations against him. His role had also been set out in this Judgment. He played an important role but not as crucial as that of the Fifth Respondent. The Tribunal determined that his contribution should be 15%. In considering the application for costs in respect of the Fifth and Sixth Respondent the Tribunal had considered whether it was appropriate to make an order for costs. The Tribunal was satisfied that it was, on the basis that they were subject to the Solicitor's Code of Conduct as employees of the Firm.

80. The Tribunal was satisfied that it was appropriate for an interim order to be made. The Tribunal determined that this should be a figure equating to 2/3 of the overall figure. The Tribunal took the figure of £252,500.32 as a starting point therefore. Based on the Tribunal's determination as to apportionment this worked out as follows:

- First and Second Respondent - £58,916.73 on a joint and several basis with each other.
- Third Respondent - £25,250.03.
- Fourth Respondent - £8,416.68.
- Fifth Respondent - £50,500.07.
- Sixth Respondent - £25,250.03.

<u>Reductions on the basis of means</u>

81. The Standard Directions had contained the following direction:

> "If at the substantive hearing the Respondents wish their means to be taken into consideration by the Tribunal in relation to possible sanctions and/or costs, they shall by no later than 4.00 p.m. on Tuesday 1 May 2018 file at the Tribunal and serve on every other party a Statement of Means including full details of assets (including, but not limited to, property)/income/outgoings supported by documentary evidence. Any failure to comply with this requirement may result in the Tribunal drawing such inference as it considers appropriate, and the Tribunal will be entitled to determine the sanction and/or costs without regard to the Respondent's means. A failure to comply may also cause the

consideration of the Respondent's means to be adjourned by the Tribunal to a later date which may result in an increase in costs".

82. The Tribunal noted that the First and Second Respondent had complied to the extent that they had served a Statement of Means within the directed timescale. However while it contained some information which indicated a lack of means, it did not explain where the monies obtained from Axiom had gone, nor did it contain sufficient detail about the companies which the First and/or the Second Respondent had owned. The Tribunal had been told that the Applicant would not take an unrealistic approach to enforcement. There was no basis to reduce the sum on the grounds of means.

83. The Third, Fourth and Fifth Respondents had not served a Statement of Means and there was therefore no basis on which to reduce the sum on the grounds of means.

84. The Sixth Respondent had served a Statement of Means within the directed timescale. This showed that he owned property with his partner which he had purchased in 2013 for £175,000. The mortgage balance was £93,035.65 and so there was clearly equity in the property. This meant there was the option of a charging order over the property, which was something open to the Applicant. The income and outgoings. The Tribunal noted the income and outgoings that had been set out in the Statement of Means and noted that he had received less than the other Respondents from the Axiom fund. However the equity in the property meant that there was no basis on which to reduce the sum on the grounds of means.

Statement of Full Order

85. The Tribunal Ordered that the First Respondent, RICHARD EMMETT, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay 35% the costs of and incidental to this application and enquiry on a joint and several basis with the Second Respondent, such costs to be the subject of detailed assessment unless agreed.

The Tribunal further ordered that the First Respondent make, on a joint and several basis with the Second Respondent, an interim payment, on account of the costs of and incidental to this application and enquiry fixed in the sum of £58,916.73 within 42 days.

86. The Tribunal Ordered that the Second Respondent, LINDSAY EMMETT, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay 35% the costs of and incidental to this application and enquiry on a joint and several basis with the First Respondent, such costs to be the subject of detailed assessment unless agreed.

The Tribunal further ordered that the Second Respondent make, on a joint and several basis with the First Respondent, an interim payment on account of the costs of and incidental to this application and enquiry fixed in the sum of £58,916.73 within 42 days.

87. The Tribunal Ordered that the Third Respondent, MATTHEW STOKES, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay 15% the costs of and incidental to this application and enquiry such costs to be the subject of detailed assessment unless agreed.

The Tribunal further ordered that the Third Respondent make an interim payment on account of the costs of and incidental to this application and enquiry fixed in the sum of £25,250.03 within 42 days.

88. The Tribunal Ordered that the Fourth Respondent, MARY HUNTER, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay 5% the costs of and incidental to this application and enquiry such costs to be the subject of detailed assessment unless agreed.

The Tribunal further ordered that the Fourth Respondent make an interim payment on account of the costs of and incidental to this application and enquiry fixed in the sum of £8,416.68 within 42 days.

89. The Tribunal Ordered that as from 2 July 2018 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor the Fifth Respondent, DAVID RAE;
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said David Rae;
(iii) no recognised body shall employ or remunerate the said David Rae;
(iv) no manager or employee of a recognised body shall employ or remunerate the said David Rae in connection with the business of that body;
(v) no recognised body or manager or employee of such a body shall permit the said David Rae to be a manager of the body;
(vi) no recognised body or manager or employee of such a body shall permit the said David Rae to have an interest in the body;

The Tribunal further Ordered that the Fifth Respondent do pay a fine of £200,000.00, such penalty to be forfeit to Her Majesty the Queen and it further Ordered that he do pay 30% the costs of and incidental to this application and enquiry such costs to be the subject of detailed assessment unless agreed. The Tribunal further Ordered that the Fifth Respondent make an interim payment on account of the costs of and incidental to this application and enquiry fixed in the sum of £50,500.07 within 42 days.

90. The Tribunal Ordered that as from 2 July 2018 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor the Sixth Respondent, DALE STEPHENSON;
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Dale Stephenson;
(iii) no recognised body shall employ or remunerate the said Dale Stephenson;
(iv) no manager or employee of a recognised body shall employ or remunerate the said Dale Stephenson in connection with the business of that body;
(v) no recognised body or manager or employee of such a body shall permit the said Dale Stephenson to be a manager of the body;
(vi) no recognised body or manager or employee of such a body shall permit the said Dale Stephenson to have an interest in the body;

The Tribunal further Ordered that the Sixth Respondent do pay a fine of £50,001.00, such penalty to be forfeit to Her Majesty the Queen and it further Ordered that he do pay 15% the costs of and incidental to this application and enquiry such costs to be the subject of detailed assessment unless agreed. The Tribunal further Ordered that the Sixth Respondent make an interim payment on account of the costs of and incidental to this application and enquiry fixed in the sum of £25,250.03 within 42 days.

Originally dated this 7th day of September 2018

RE-DATED AND RE-FILED
ON THIS 29TH DAY OF OCTOBER 2018

On behalf of the Tribunal

J. C. Chesterton
Chairman