The Respondent appealed to the High Court (Administrative Court) against the Tribunal's findings and sanction dated 5 July 2018. The appeal was heard by Mr Justice Spence on 4 April 2019 and Judgment handed down on 16 April 2019. The Tribunal's findings were upheld. The appeal against sanction was allowed. The Tribunal's order that the Respondent be struck off has been set aside and substituted with an order suspending the Respondent from practice for a period of two years from 5 July 2018. Lorrell v Solicitors Regulation Authority [2019] EWHC 981 (Admin)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11668-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MARK HARVEY LORRELL Respondent
(Shown on the Cause List as Mark Lorrell)

Before:

Mrs J. Martineau (in the chair)
Mr P. Booth
Mr M. R. Hallam

Date of Hearing: 2-5 July 2018

Appearances

David Collins, Counsel of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

The Respondent was in person.

JUDGMENT

Allegations

1. The allegations against the Respondent, Mark Harvey Lorrell, made on behalf of the Solicitors Regulation Authority were that he, while acting as a member of Lorrells LLP ("the firm"):

1.1 In or after May 2012, accepted, or caused the acceptance of, instructions to act for S Ltd:

1.1.1 where such instructions were in conflict with the interests of Client C for whom instructions had been accepted on a related matter, or where there was a significant risk of such a conflict;

1.1.2 where said instructions gave rise to a conflict with the interests of the firm, or where there was a significant risk of such a conflict;

and in doing so breached Principles 3, 4 and 6 of the SRA Principles 2011 and Outcomes 3.4 and 3.5 of the SRA Code of Conduct 2011.

1.2 Between on or around 23 July 2012 and on or around 20 May 2013 and having received up to £288,600 from S Ltd on behalf of Client C ("the loan"):

1.2.1 did not deposit the loan in the firm's client account, in breach of Rule 14.1 of the SRA Accounts Rules 2011;

1.2.2 did not keep adequate accounting records of the loan, in breach of Rule 29.1 of the SRA Accounts Rules 2011;

1.2.3 transferred monies to the firm's office account in settlement of fees without first sending a bill of costs or other written notification of costs to Client C prior to using the loan in payment of the firm's fees, in breach of Rules 17.2 and/or 20.3 of the SRA Accounts Rules 2011;

1.2.4 did not appropriately record dealings with the loan, in breach of Rule 29.2 of the SRA Accounts Rules 2011

and in doing so breached Principles 5, 6 and 8 of the SRA Principles 2011.

1.3 On or about 25 January 2013, caused or permitted the disclosure to S Ltd of counsel's advice obtained pursuant to the instruction from, and for the benefit of, Client C, without the consent of Client C, and in doing so breached Principles 4, and 6 of the SRA Principles 2011 and Outcome 4.1 of the SRA Code of Conduct.

1.4 Did not provide the SRA with information and/or documents requested by the SRA on 5 July 2016 for the purposes of its investigation, and in doing so breached Principle 7 of the SRA Principles 2011.

1.5 By reason of the matters set out at 1.1 above did not act with integrity and so breached Principle 2 of the SRA Principles 2011. Failure to act with integrity is not an essential ingredient to Allegation 1.1 above and it is open to the Tribunal to find the allegation proved with or without a finding of failure to act with integrity.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 21 June 2017 with exhibit DJC1
- Email dated 29 June 2018 timed at 11.04 from Mr Collins of Capsticks LLP to the Tribunal office
- Email dated 29 June 2018 timed at 15.01 from Mr Collins of Capsticks LLP to the Tribunal office
- Civil Evidence Act notice dated 8 November 2017
- Judgment in the case of Arkin v Borchard Lines PLC and others [2005] EWCA Civ 655
- Applicant's Schedule of Costs to Hearing on 2-5 July 2018 dated 22 June 2018

Respondent

- Response to Rule 5 Statement undated and unsigned
- Witness statement of the Respondent with exhibits ML1-ML3 dated 12 September 2017 unsigned
- Application dated 24 June 2018 to admit documents
- Additional bundle of documents numbered 1-101
- Extract from the SRA Handbook version 3 SRA Code of Conduct Chapter 3 Conflicts of Interests
- Judgment in the case of Prince Jefri Bolkiah v KPMG HL 18 December 1998
- Undated, unsigned Personal Financial Statement

Preliminary and Other Issues

Respondent's Application to admit documents

(Many of the submissions made during the application were repeated as substantive submissions during the hearing and are not repeated in detail below.)

3. The Respondent applied to admit a bundle of documents of 101 pages ("the new bundle"). He had made a paper application to do so dated 24 June 2018 which the Applicant opposed. The Respondent referred to the Tribunal's Practice Direction 6 which stated the Tribunal's Overriding Objective when managing cases, namely to ensure that they are dealt with justly. He submitted that to exclude documents which could influence the outcome of a case would be manifestly unjust if the documents proved beyond reasonable doubt that an allegation was incorrect. Allegation 1.2.1 was that he did not deposit the loan cheque in the firm's client account. Some of the documents to which his application related would show that payment was made. The Respondent explained his failure to obtain some of the documents earlier. They had been obtained from a Mr JC who was the son of the late Mr LC a director of the lender S Ltd. The Respondent submitted that he had not spoken to JC for some time when he received a telephone call about other matters from him the day before the Respondent filed his paper application. He asked JC for documents relating to this matter. He referred the Tribunal to an email to him from JC dated 23 June 2018 further to those discussions which indicated that JC had ignored an earlier request made in an email

from JS, a former member of the Respondent's firm, dated 10 December 2017 but said "I am now willing to share select documents of relevance with you." These documents made up the bulk of the new bundle (pages 6-69). He acknowledged that there was some duplication between his new bundle and the hearing bundle. He had not really checked to see if those were identical documents.

4. The Respondent also submitted that some of the new bundle documents were needed to prepare for his cross examination of the Applicant's witness Ms C; they went to her credibility in all key elements of her evidence. Also, the Respondent understood from what another division of the Tribunal had said at an earlier Case Management Hearing ("CMH") that he would be allowed considerable latitude if he did not go too far.

5. The Respondent submitted, that new documents (not provided by JC) showed that he was abroad when Ms C asserted that he had been present when she signed the loan agreement. The Respondent also submitted that the new bundle contained the counsel's opinion which it was alleged at allegation 1.3 had been disclosed in breach of confidentiality to LC. In connection with allegation 1.4, he referred to a document from an IT company which he said showed that his server was broken and he could not obtain printouts and records from the server at the material time. He also had the Reply in an action brought by S Ltd against Ms C on the loan, which he submitted showed that all the allegations she made against him had been before the High Court and disposed of. The Respondent also pointed the Tribunal to correspondence with his former firm's liquidator which he submitted undermined Ms C's credibility. While the Respondent understood the Tribunal's reluctance to allow an attack on a witness he submitted that all the documents he sought to admit were necessary. He submitted that the only objections from the Applicant were procedural.

6. For the Applicant, Mr Collins referred to his email to the Tribunal dated 29 June 2018 in which he divided the documents into categories:

    1. Client Account Documents - documents from S Ltd in respect of the Client Account;

    2. Default Documents - documents relating to S Ltd's claim against Ms C in default of the loan;

    3. Location Papers - documents relating to the Respondent's contact and location in June and July 2012;

    4. IT papers - documents relating the Respondent's access to his email account.

    The Applicant's objections were based on procedural fairness and breach of the Tribunal's directions. There was a subsidiary issue regarding prejudice. The Applicant needed time to consider the new evidence and obtain rebuttal evidence. Mr Collins referred to particular points in a chronology in his email of 29 June 2018 opposing the application to admit the new documents. Initial directions had been given dated 19 July 2017. The Respondent was aware of the deadlines he had been given. He had not submitted a Certificate of Readiness. It was telling that in the Memorandum of the 13 December 2017 CMH, the Tribunal took the step of explicitly making an order that "any applications for disclosure, permission to rely on witness evidence or any further case management directions will be made promptly" rather than merely reciting its requirement in the narrative. From 4 to 14 December 2017, the Respondent made a

number of applications, including for postponement and disclosure. A 3 day substantive hearing was listed but adjourned after 2 days for insufficient time, the Respondent's interlocutory applications having been refused. Mr Collins submitted that the Respondent's application formed part of a pattern of late applications, exhibiting a disregard for the proceedings and the unfairness that caused. The Respondent's present application was: approximately 9 months after the extended deadline for the Respondent's Answer and documents, approximately 8 (not 10 as set out in Mr Collins' email) months after the deadline for exchange of witness statements, approximately 6 months after the substantive hearing was adjourned on the basis that "delay in concluding the case was due to the Respondent's actions not any fault on the part of the Applicant", approximately 6 months after the Division ordered that any applications were "to be made promptly" approximately 4 months after the hearing was relisted and approximately 1 week prior to the re-listed substantive hearing. The Respondent had frequently flouted crystal-clear directions.

7. Mr Collins submitted regarding the potential relevance of the client account banking documents, the matter was not open and shut; the new bundle contained a copy of a cheque dated 31 May 2012 made out to the firm for £300,000.00 which appeared to predate the loan agreement.

8. Mr Collins characterised as a "document dump" the "Default Documents" relating to S Ltd's claim against Ms C with little analysis of what was in the Applicant's own exhibits. In his email of 29 June 2018, Mr Collins submitted that the application did not comment in any meaningful detail as to what the material spoke or how it correlated to the Respondent's Response (for example, the Respondent's Answer did not raise issues with the chronology outlined by witness C and the relevance of the text messages in the new bundle was unclear).

9. The onus was on the Respondent to establish that reference. As to a suggestion that the Applicant had already had the documents although they were not in the hearing bundle, Mr Collins had not had the opportunity to undertake a full cross reference with the Applicant's material but there was some overlap.

10. Mr Collins complained of lack of expedition by the Respondent. It appeared that the enquiry in JS's email of 10 December 2017 was the first made by the Respondent and it was after the date of his Answer and the date by which the witness statements were due to be served and only a matter of days before the case was listed for substantive hearing from 12 - 14 December 2017. There had been no apparent follow up or chaser between the end of December and June 2018. The Tribunal noted that on the face of the email exchanges there had apparently been some telephone conversations.

11. There had been reference to Ms C's credibility. Mr Collins submitted that her evidence went towards 3 issues:

- Did Ms C give informed consent to the firm acting for S Ltd regarding the loan?
- Did Ms C receive accounting records from the firm regarding how the money was spent?
- Did Ms C provide consent for the advice of counsel to be disclosed?

The Respondent made reference to Ms C stating that the firm acted for her regarding the loan, but in the Rule 5 Statement the alleged breach was not put in that way; it arose

from the existing retainer with Ms C and it was alleged the firm acted in a matter related to the loan. There was no dispute that the firm was retained to act for Ms C in the litigation; that was a satellite issue to the matters before the Tribunal.

12. The Tribunal might feel that the location papers were of less direct relevance to specific issues in the case than the Respondent advanced. The Respondent in his witness statement and his Response had taken no issue regarding what Ms C said in her witness statement about the date on which she came into the firm's offices to sign the agreement. Also, the Respondent first raised this point one week before this hearing in breach of directions.

13. Mr Collins submitted the Respondent had had the IT papers relating to the cancelling of the Respondent's subscription to an email account for some considerable time and given the timing of disclosure was something which the Applicant had little opportunity to cross refer or check.

14. Mr Collins submitted regarding other miscellaneous papers in the new bundle that, for example, the Reply issued in the High Court loan default action had been available to the Respondent for some time. It was by no means determinative or a matter that went directly to the issues in this case. Mr Collins had no specific issue with the admission of Mr B QC's advice but again submitted that it went little way to the issues, given that it was not disputed that the advice was sent. Consent rather than its content was the issue. As to a set of text messages, on a cursory inspection Mr Collins might have concerns regarding their completeness and pointed to breaks in their numbering. There was a clear risk of prejudice in cross examination of Ms C. Furthermore, these were not formal letters. They dated back to 2012. The Tribunal might wonder to what extent it would assist if the texts were presented to Ms C and if she said she could not remember; a witness could not be criticised for not remembering the content of such messages 6 years on.

15. The Respondent argued that "prompt disclosure" meant all documents available to a party; he could not be criticised for not disclosing in January 2018 documents not given to him until the previous week. It was correct that there had been nothing between JS's December 2017 email and the first email from JC in the new bundle. However, it was not clear how much the Respondent was expected to pursue the matter. The Respondent's request to JS was not his first. After December 2017 he had given up on getting the documents. Only the text messages and proof of travel and IT letter were documents the Respondent located. The documents relating to the liquidator of the firm were from enquiries he made as a result of documents he received from JC.

16. Regarding the bank statement and whether it was determinative about the money being paid into client account, the Respondent explained the meaning of the sort codes and account numbers which Mr Collins had challenged.

17. The Respondent also submitted that while Mr Collins said there was no allegation the firm acted for Ms C on the loan, the documents were littered with such allegations. His cross examination would go directly to the issue of whether he acted for her regarding the loan. Mr Collins submitted that the Tribunal could consider Ms C's understanding of the position as part of the wider factual matrix but allegation 1.1 was specific. Paragraph 25 of the Rule 5 Statement stated (omitting cross references):

> "There was a clear and significant risk that the interests of C and S Ltd would be in conflict in the event of a default on the agreement. For example, a dispute could arise as to whether a material default had occurred, affecting enforcement. This situation occurred in late 2012 as C sought to avoid default on the loan whilst S Ltd wished to establish that C had defaulted on the loan. Notwithstanding this conflict of interest the Respondent continued to act for C and S Ltd."

The Respondent took it that he would need to deal with that issue.

18. As to the text messages; the Respondent submitted that he had around 1,000 pages detailing every text he had ever sent and received from 2008 up to 2012. Some of these were personal, hence the gaps in numbering. He had provided a spreadsheet to demonstrate that those he wished to introduce were the only ones relevant to these proceedings. The Respondent would put to Ms C in cross examination that she said that the net loan of £288K was to have been passed to her bank account but in 4 months she did not ask for it. The Tribunal could then attach such weight as it thought appropriate. He concluded that because of the Tribunal's overriding objective that the matter should be tried fairly he should be allowed to admit all the documents.

19. The Tribunal considered the submissions for the Applicant and by the Respondent. It was being asked to give permission to the Respondent to admit around 101 pages of documents many of which were not in the hearing bundle. The Respondent did not challenge the categories used by Mr Collins to describe the new documents. He was not able to confirm to the Applicant or the Tribunal where there was duplication between the hearing bundle in respect of some of the documents and his new bundle because on his own submissions, he had not checked. He had not directly linked most of the documents to specific allegations but the Tribunal bore in mind that he was unrepresented.

20. The Tribunal considered that the client account documents were the most clearly related to a specific allegation, 1.2.1. They included a posting slip which the Respondent submitted proved that the loan monies had been paid into client account. The location documents related to facts asserted by the Applicant's witness. Their relevance seemed less obvious in terms of the degree of importance of the claimed date of a meeting between the witness and the Respondent but had some relevance to the facts. The IT documents went mainly to the allegation of non-cooperation with the Regulator (allegation 1.4).

21. The Tribunal considered the application with particular regard to its own overriding objective. The Tribunal was reluctant to agree to the Respondent's application to admit his new bundle because there were certainly procedural irregularities in the way the Respondent had approached his preparations for the hearing. He was considerably out of time to adduce new evidence and the Tribunal noted that there were documents now produced that could have been filed months previously. The Respondent admitted that he had had access to some of the documents for some time including the text messages and he lacked evidence to support their accuracy.

22. The Tribunal also noted that while the new bundle documents seemed, in the main, to be new to the case and that the Applicant had had little time to consider them, Mr Collins had clearly studied them to some extent in preparing his email dated 29 June 2018 opposing the Respondent's application to admit them. With respect to the

overall objective, it had taken some time to bring this matter to trial, this was the second listing of a substantive hearing, the sole witness apart from the Respondent was present and four days had been set aside. After careful consideration, the Tribunal considered that it was in the interests of justice for all the available relevant evidence to be placed before it and that any prejudice to the Applicant could be addressed by affording Mr Collins proper time to take instructions and if he wished, to undertake investigations and also to allow him to make an application for an adjournment. Very reluctantly therefore the Tribunal would permit all the additional documents to be admitted. However, it reserved the right to consider the costs implications at the conclusion of the hearing. The Tribunal allowed Mr Collins proper time to take instructions and consider if he wished to apply for an adjournment. Having done so, Mr Collins informed the Tribunal that the Applicant was content to proceed on the basis that the Tribunal would place appropriate weight on the new material.

23. The Respondent did not pursue any application to admit the statement of Mr JS, which was also filed outside the deadline in the Standard Directions 21 November 2017 and who was not called as a witness.

Joint statement regarding the conditions on the Respondent's practising certificate

24. At the conclusion of the Applicant's case, Mr Collins indicated that the Respondent wished, with his agreement, to make a statement regarding the Rule 5 Statement where it referred to conditions on his practising certificate. The Respondent was concerned that if not explained they would imply previous misconduct to the Tribunal. He understood it was standard to include conditions in the Rule 5 Statement. He no longer had a practising certificate as he was practising at the Bar. Mr Collins read the statement as follows:

> "Restrictions were placed on the 2015 practising certificate by way of a decision on 18 March 2016 conditions were imposed as set out in paragraph 4 [of the Rule 5 Statement]. The assessment carried out considered allegations contained in a Rule 5 Statement dated 20 March 2015 and a Rule 7 Statement dated 25 September 2015. The allegations included allegations of fabricating a letter and dishonesty. The allegations of fabricating and dishonesty were not proved at a hearing in August 2016."

The Respondent had been advised that the information about the previous hearing would not normally be given to the Tribunal unless and until a finding that an allegation had been proved, had been made. The Respondent was aware that this was a professional Tribunal and so could put matters to one side but he had remained concerned. The Tribunal was quite accustomed to seeing such references in Rule 5 Statements regardless of why such conditions were imposed and that information played no part in the Tribunal arriving at findings of fact and law upon the allegations. The Tribunal also put out of its mind that there had been a previous disciplinary matter before an earlier division of the Tribunal and had no knowledge of its particular subject matter until after findings of fact and law were made.

25. The Respondent was in person. From time to time and in the absence of the witness, the Tribunal needed to refocus the Respondent's cross-examination on to the allegations. This did not mean that the Tribunal was in any way making up its mind in advance of hearing all of the evidence. On the second day of the hearing, after expressing some concern about the focus of the Respondent's cross-examination, the

Tribunal emphasised that while it did not wish to fetter the Respondent's desire to take the witness to relevant documents, it would allow the Respondent some time to consider and reflect on what those documents would be, before he concluded his cross-examination.

Factual Background

26. The Respondent was admitted to the Roll of Solicitors on 1 August 2003. At the relevant time he practised as Managing Partner of Lorrells LLP ("the firm"), from premises at 25 Ely Place, London EC1N 6TD. On 9 September 2015, the firm was wound up by way of a creditors' voluntary liquidation.

27. The Respondent held a Practising Certificate that was subject to the following conditions:

- The Respondent may not take on the role of manager or owner of an authorised body without the advance approval of the Applicant. In the event the Respondent wishes to become a manager or owner of an authorised body, he is required to make an application to the Applicant for approval of these roles.

- The Respondent is not sole signatory to any client or office account cheques, does not have sole responsibility for client or office account or sole responsibility for authorising client or office account transfers, electronic or otherwise.

- The Respondent shall immediately inform any actual or prospective employer of these conditions and the reasons for their imposition.

28. In 2011, the Respondent was instructed by Ms C in relation to litigation arising from property dealings in London ("the substantive litigation"). The main claims were against a Ms AM and separately against the estate of a Mr EN deceased. Mrs Justice Asplin, whose judgment formed part of the Respondent's evidence to the Tribunal, summarised the case as follows. It is to be noted that Respondent did not represent Ms C at the hearing, having ceased to act for her in April 2013. The litigation later concluded and the judgment was dated 20 February 2014:

> "The Claimants' claim is for fraudulent misrepresentation, deceit and breach of trust. These claims arise out of various property dealings in and around Knightsbridge, Belgravia, Chelsea and Westminster, London, (the Area).
>
> The First Claimant, Ms [C] has since 1985 been engaged in the business of acquiring, refurbishing, letting and financing the development of properties in the Area. The Second Claimant, Mr [P], assists Ms [C] in her business by finding opportunities to acquire, refurbish, let, sell and redevelop properties.
> …
> The Defendant, Ms [AM], is the owner of various properties in the Area. The circumstances in which she acquired those properties is at the centre of this case.
> …
> In essence, there are two main heads of claim. The first is that pursuant to joint ventures induced by fraudulent misrepresentations, the Claimants transferred £2.282m to Ms [AM] or her agents in relation to the purchase of various properties and in addition paid between £800,000 and £1m in refurbishment costs in respect of properties all of which are registered in Ms [AM's] sole name.

> The second head relates to what became known as the …Joint Venture.
>
> It is said that both Mr [EN] and Ms [AM] were involved and that in April 2008, Ms [AM] undertook to secure Sharia mezzanine financing in the sum of £46m. As a result of an alleged representation by Ms [AM] that a sharia loan has been obtained, which was untrue, Mr P says that he was persuaded to transfer six properties which became known as the Security Properties to Ms [AM] at an undervalue. The claimants seek to rescind those transfers, or alternatively contend that Ms [AM] holds the properties on trust for them."

Ms AM also counterclaimed.

29. A client care letter dated 5 August 2011 was sent to Ms C and her partner Mr P. In October 2011, Ms C entered into 2 CFA agreements ("CFA") with the firm in respect of the substantive litigation dated 6 October 2011. The client care letter signed by the Respondent stated:

> "I have undertaken a conflict check and am satisfied that my firm is free to act for you in this matter. Whilst we use our best endeavours to avoid conflicts of interest, they are sometimes unavoidable. I will inform you as soon as practicable if any unanticipated conflict emerges."

The CFA included provisions for a success fee, discounted rates if C was unsuccessful and for C to pay disbursements in either event. By way of a side letter, the Respondent and C further stated that payment would not have to be made until the conclusion of the case. The Respondent disputed the efficacy of the side letters. The unsigned undated side letter in the hearing bundle stated:

> "Further to the Conditional Fee Agreement dated….2011 between Lorrells LLP and [Ms C] we have agreed that you will not have to pay any of the discounted fees to Lorrells LLP until the conclusion of your claim other than in the circumstances set out in Paragraphs 5.5, 13 and 14 of the Conditional Fee Agreement"

30. Ms C required funding to pursue the substantive litigation and the Respondent was to assist in this regard. In May 2011, the Respondent introduced C to an existing client S Ltd with a view to arranging funding. Following an initial meeting, C agreed to a loan from S Ltd of £300,000.00. The exact date on which she signed the loan agreement in June or July 2012 was disputed. The loan was secured against shares that C owned in a Jersey registered property company K Ltd (with a net value of approximately £1.3 million). The loan was "to be secured by a first priority security interest in (inter alia) the Shares [in K Ltd] in accordance with and upon and subject to the terms of the Security Interest Agreement" ("SIA").

31. The firm was retained to advise S Ltd in respect of the loan. Under the terms of the agreement, the firm received the loan funds.

32. On 25 January 2013, an advice of leading counsel Mr B dated 10 January 2013 was disclosed to S Ltd.

33. The Applicant wrote to the Respondent on 7 April 2016 requiring an explanation for the matters giving rise to these proceedings.

34. The Respondent wrote to the Applicant by letter dated 24 May 2016 and accepted that:

- The firm was instructed by C and subsequently entered into a CFA agreement that was amended by side letter
- Fees due from C were paid from S Ltd's loan
- S Ltd was a longstanding client of the firm
- The firm did not advise C on the commercial terms of the agreement
- The firm acted for S Ltd in relation to drafting the loan.
- He requested Mr H-J to act for S Ltd and to act with an information barrier.

35. The Applicant wrote to the Respondent on 5 July 2016 requesting bank statements to show the receipt of funds from S Ltd, and all correspondence between the firm and S Ltd in relation to the loan. The Respondent did not provide further information following the Applicant's request. The reasons for his not replying further were disputed.

Witnesses

36. **Ms Amanda Clutterbuck ("Ms C")** gave evidence. She confirmed her witness statement dated 26 May 2017. She corrected a typographical error in paragraph 5, penultimate line, by substituting the word "successful" for the word "unsuccessful" in respect of CFA terms. She adopted the statement as her evidence in chief.

37. As to when she found out that the firm was acting for S Ltd, the witness stated that it evolved. There was a hearing at the end of July 2012. A range of different options was put to her for dealing with disbursements. The matters were so important and so pressing that she agreed to the loan facility and at that point the agreement was put in place. She knew before she signed the agreement that the firm had been retained by S Ltd. She met LC in May 2012. The witness had valuable properties which she did not want to sell. Mr P had obtained a counsel's opinion in order to get litigation funding. She had to meet the pressure of the different court dates; she could not recall the exact sequence of events. They had to address satellite litigation. The situation had to be looked at holistically. She had not intended to get entangled with a complex thing like this. There weren't any discussions about the risk of the firm being retained for substantial litigation and also for the loan. This was just a temporary short-term step to move the matter forward. The witness stated that she thought there would be litigation funding much earlier on.

38. The witness stated that she only had access to the loan document for a very short period of time before signing it. There was a very important hearing coming up; several million pounds worth of property was subject to a freezing order which was being challenged. She was told that by delaying making a decision about funding she was inhibiting leading counsel from dealing with the matter.

39. Mr Collins asked the witness about paragraph 4.5 of the loan agreement:

> "That [the Firm] have informed [C] that they cannot accept instructions from her or offer her advice in respect of the Loan or the drafting of the Loan documents and that in these matters they are acting solely for and in the interest of [S Ltd]."

As she said in her statement, the witness stated that it was her understanding at the time that the Respondent was looking after her interests "in relation to all matters, including the loan agreement" and that Mr H-J of the firm represented S Ltd and Mr LC. There was a whirlwind of events. The witness stated that the firm had not written to her and sent a draft agreement. She met the Respondent in the boardroom prior to signing it. The agreement was being rushed through and she was taken through the document "briefly". She signed the agreement because she was told that funding would be drawn down and her QC would be paid and would attend the hearing. She also said:

> "I received an email from Mr [JS of the firm] on 20 July 2012 stating that he had to have the funds (£15,000 plus VAT) to pay for Counsel's fees on Monday 23 July 2012 for a hearing on 26 and 27 July 2012…"

The JS email was timed at 19.36 on that Friday and included:

> "I have been trying to sort out the issue of funding for the best part of today to no avail…
> Counsel requires the funds..."

The witness stated that she signed the agreement after the email possibly on 23 July 2012.

40. The witness was asked about her statement where she said:

> "Despite numerous requests from myself and my subsequent solicitors, I have never been provided with a breakdown of the funds by Lorrells."

The witness stated that she was looking for a statement of account in the first instance because the firm had drawn down £300,000.00 and her properties had been sold. This was a very large sum of money and she did not know where it had gone. She had to contact the Applicant to try and find out. She had not received any fee notes or invoices. The loan was not litigation funding and the witness stated that it should have been paid to her order to do with it whatever she wanted. It stayed in the Respondent's client account and the Applicant had informed her that it transpired that there were no funds there. The last written personal communication regarding a statement of account was on 20 May 2013 from the firm to G Solicitors; that was all she had but she had been trying to find out a lot earlier than that what had happened to the funds. The witness was referred to the table of fees and disbursements attached to the 20 May 2013 letter which Mr Collins put to the witness on the face of it referred to work done, disbursements and monies owed and paid totalling £288,600.00. The witness confirmed that she knew it had been sent but she had never received any detail about what the loan was spent on. Her first reaction was that because of the CFA and the side letter she was not supposed to be paying fees of this sort. The short-term loan was not for fees like

this. It was completely contrary to her understanding of the CFA and side letter she entered into.

41. In respect of allegation 1.3, in her statement the witness said she did not consent to sending counsel's advice to LC; LC was providing a temporary stop gap short-term loan and had no right to have sight of a privileged document. He was not funding the litigation. The witness assumed that JS's email of 25 January 2013 referred to the opinion from Mr B QC which was in the Respondent's new bundle. Mr M QC had also drafted advice. She had certainly not given consent to disclose any of the advices to LC. Litigation funders want to see opinions but he was not one.

42. The witness was asked about the Respondent's statement where he stated:

> "At the meeting with Mr [LC] (the director of [S Ltd]) laid down 3 pre-conditions to Ms C in order to offer the loan:
>
> i. The firm act only for S Ltd, she had to seek independent legal advice and she had to consent to the firm acting for him;
>
> ii. The true nature of loan was disguised as S Ltd did not want to be seen as a litigation funder and become liable for adverse costs if Ms C lost;
>
> iii. That the money was only to be used for the purposes of funding litigation and paying the firm's fees and disbursements.
>
> Ms C agreed to all of the above conditions…"

The witness stated that the loan was against very valuable property, LC had total security and there were no pre-conditions. As to Mr LC's concerns at (ii) above about adverse costs, the witness stated that she did not recollect any discussions. She was told the loan was to get opinions discussed about a part 24 application regarding a discrete issue of satellite litigation.

43. The witness stated that she met LC in May 2012. A 21 day trial was listed for June or July 2012. Then there was a question of recusal of the Judge and the matter was put off. The issue of counsel's fees dissipated. The only issue at the end of July 2012 was to challenge the order for security for costs on the properties; the 2 matters separated. There was no need to take out an expensive loan.

Cross examination

44. The witness stated that when the firm's May 2013 letter was received she was in hospital and receiving a lot of telephone calls and trying to get documents from the firm to bring the case to trial. They had to get documents from the other side and paid £15,000.00 to have them copied. She could not recall whether she saw the letter and schedule at the time. She certainly saw the schedule afterwards.

45. The witness stated that her advice was that she did not owe £55,000.00 shown on the schedule as owing to the firm. The May 2013 letter ignored the side letters. She and her partner were only liable for disbursements and not fees. She agreed that the solicitors for the firm's liquidators had written about it and they had been replied to. As to her

liability on terminating the retainer, she was told no funds were available. Mr PM asked on her behalf if the loan funds were in the client account but received no answer. She had to go to the Applicant for information.

46. The witness was referred to a letter dated 26 September 2014 from the firm to S Law then acting for the witness:

> "As to the application of the loan monies, your comments that none of the amount loaned was ever physically received by Mrs [C] and that [the firm] has never delivered any invoices to her are disingenuous. Mrs [C] is well aware of the application of the monies. For your information we enclose a copy of our letter dated 20 May 2013 to her solicitors at the time, [G Solicitors], and its enclosure showing the breakdown of [the firm's] costs to that date. The figure of £288,600 is the amount of the loan less the arrangement fee of £9,000…"

The witness could not remember whether the firm's September 2014 letter to S Law enclosed the 20 May 2013 letter and schedule from the firm to G Solicitors. As to her 17 September 2015 letter to the Applicant, she had suffered a close family bereavement 6 weeks before and was in Cornwall as she was the sole executor. A retired solicitor wrote the letter for her but she believed she checked it. She said in the letter:

> "Notwithstanding this, at no time has any part of the £288,600 been paid to me and I have no idea how it has been used."

She did not accept that the firm's letters to her 2 successive subsequent firms of solicitors provided an explanation. There were no underlying documents to the schedule. The witness could not remember whether all the documents had been given to the Applicant and some not used. There were a lot of documents.

47. A letter from the firm of 11 May 2012 to the witness and her partner included:

> "I am aware that you are seeking funding in connection with this claim and your proposed claim against the estate of [EN] and Others. During our meeting yesterday, we briefly discussed the likely costs that would be required to pursue matters and I set out below a draft estimate of the costs likely to be incurred. I am still waiting for clarification on some of the disbursements. Please also note that the Lorrells fees do not include the success fee..."

The witness's attention was drawn to particular amounts in a table in the letter relating to the litigation against AM (it also included figures in respect of the claim against the Estate of EN and Others): around £50,000.00 costs owing to a previous firm of solicitors F; an estimate of £150,000.00 due to another firm J; a discounted amount (50%) of fees to date of £112,500.00 to the firm inclusive of VAT under the CFA and £31,000.00 in unpaid disbursements. The witness stated that F solicitors had been paid in full. The witness stated that in compiling this letter, Mr JS had not taken into account the side letters and this was completely inaccurate and not progressed. The firm had undertaken the case on a success fee only and (as set out in the side letter) she and her partner were only responsible for disbursements. The witness rejected the Respondent's suggestion that it had been agreed that if funding was put in place the firm would receive its 50% and that the original side letter was superseded by others and that was why there was no signed copy of the original side letter. The witness stated that her understanding

when they first came to the firm was that counsel would assess if the case had validity and if it did not the sum of £20,000.00-£25,000.00 would be payable plus VAT but if counsel thought it was viable the firm would undertake it under a CFA. Funding for 50% of its fees and those of counsel would only be payable if funding was obtained and LC's funding was not litigation funding. When the witness received this letter she spoke to JS and asked what it was about.

48. The witness was referred to email exchanges between JS and Mr PM whom she said was purely instructed to find out what the S Ltd loan was and the background to it. He had been introduced by long standing family solicitors. He came to a meeting the day before the 11 May 2012 letter which was referred to in the letter, with a Mr JH who was also assisting her. On 4 February 2013, JS said to PM in an email at 18.43:

> "Further to our telephone conversation last Friday, I have put together some figures in respect of the fees incurred to date. These relate to Ms [C] and Mr [P's] claim against [AM] along with proposed claims against the Estate of [EN] (deceased)…
>
> We have submitted a proposal for funding and ATE insurance. We're working with JLT to provide further information in order to secure ATE Insurance. The following funders/insurers have been approached…"

An email of 4 February 2013, from PM timed at 18.45, asked for a list of documentation including a:

> "Copy of all time recording entries that have been recorded against AC's various files (i.e. the entries that sit behind the incurred fees you refer to in your document)"

He also said:

> "It would also be helpful to see how costs going forward have been allocated in your mind – i.e. the steps that still need to be taken and the costs (yours/Counsel's) which you have allocated to each step; so for instance I see that you are saying that your costs to trial on the main case are likely to be 300k – can you break down into likely steps and allocate sums against each please…"

In an email of 5 February 2013, JS sent documents to PM ahead of a meeting the following day.

49. The witness could not comment on the text messages relating to her litigation which the Respondent submitted she had sent in 2012 and which made no enquiry about what had happened to the loan funds and which the Respondent had included in his new bundle of evidence; she did not recollect them. The witness was asked where PM enquired about the fees charged under the CFA and why there was a charge. The witness replied that he asked about the loan money. She was asked if any of her lawyers who had received the letters to which the Respondent referred ever wrote and asked why the firm was charging on a 100% CFA and the witness replied that S Law had done so on 26 September 2014. She stated that even now looking at the documents she had no idea what happened to the money. A letter had been sent to LC asking where the money went and it was not answered. The witness asserted that the spreadsheets etc. came afterwards to bolster the Respondent's position. Mr PM had written in March 2013 and

asked if the loan money was in client account and received no answer. A letter to LC asking to see the client ledger was not answered either. She had written on 17 June 2013 by email to LC including:

> "One of the central difficulties which has made it very difficult for me to deal with the [S Ltd] loan before is the apparent ambiguity of whether or not the loan was ever drawn down by [K] Limited. The Directors of [K] Limited have a number of statutory obligations to see that the loan was properly drawn down before they are able to proceed with any further re-financing on my behalf. [SB – a conveyancing solicitor] will be able to clarify this with you.
>
> I understand that [K] Limited has requested this information recently from Lorrells LLP and I have also been seeking this information myself through [PM] of [KC] whi (sic) I instructed in January this year. Please can you therefore authorise Lorrells LLP to disclose all the documents which related to the draw down of the [S] facility and also the relevant ledger cards evidencing what happened to the funds drawn down under the [S] loan.
>
> Whilst you will be aware that we are able to compell (sic) Lorrells LLP to do this ourselves, by writing to the Solicitors Regulation Authority, given the time constraints and other pressures we would prefer, if at all possible, to reach an amicable settlement of these matters and the [S] loan as we have no intention of obfuscating repayment of the facility."

The witness stated that she raised genuine concerns with the person who was supposed to have raised the loan and he completely and utterly ignored her. It was put to the witness that this matter had been litigated in the High Court and she defended the action on that basis and then signed a consent order acknowledging that the loan was valid. The witness did not recall that there had been a hearing.

50. In respect of allegation 1.3, the witness agreed that the counsel's opinion in question, that of Mr B QC dated 10 January 2013 (which is quoted below at some length) was prepared for the purpose of litigation funding and that JS had her permission to use it for that purpose and for ATE insurance. The witness was referred to emails from the firm to various litigation funders in the new bundle, which it was put to her showed LC was trying to get litigation funders to take the case forward to get himself repaid and for Ms C to get her case to trial. The witness did not recall it being discussed that the advice was sent to LC for obtaining litigation funding. It was put to the witness that she too was involved in attempting to obtain it as there was an email dated 27 April 2012 from her to the Respondent:

> "See potential offer below…
>
> I suspect we could do the £500,000 it would probably be at about 1.55 a month plus an arrangement fee (which is what I and my partners would make out of it) of 5%. This is expensive money in the long term but nonetheless a considerable saving on the interest cost if you had to re-finance the £1.8m of existing debt… [Signed David]"

An email from JS on 5 January 2013, to an individual RP listed documents attached, the final one of which was "Counsel's Advice". The witness said she understood the premise but LC was not a litigation funder. JS had her permission to seek litigation

funding but did not tell her that he was sending the advice to LC. She felt that LC was being very oppressive and unpleasant and she would not give her permission.

51. The Respondent referred the witness to the CFA and the side letter. Paragraph 14.1 of the CFA stated:

> "The Client can end this agreement in writing at any time. If the Client does not continue with the Claim, the Client must pay [the firm's] fees at the discounted rate for the work done to the termination date and disbursements. If the Client continues with the case and wins, the Client will also have to pay the conditional fees for that work."

The witness rejected this interpretation; the firm had written that there was no funding and it could not continue. The trial was about to take place and she had to find funding. The situation was utterly perplexing. The firm terminated the retainer itself. As to whether she had ever put this to the firm in writing, the witness stated that the situation was chaotic; she was in hospital. She had no choice but to mitigate the situation and find solicitors and counsel who would take the matter forward. She accepted that under the side letter (not the CFA) she was liable for disbursements but received no invoices. The witness was referred to an email dated 4 April 2013 from PM to her, copied to Mr JH which included:

> "I understand from [Mr JH] that you have now agreed terms with a new firm of solicitors and Counsel and that the former have agreed to take matters through to trial on the basis of a payment of £15K with the balance of work to be undertaken on a 100% FA and that Counsel's fees have also been agreed. I also understand that you have notified Lorrells of your decision and that they will no longer be acting for you and that the [S Ltd] loan is in the process of being discharged. In the circumstances, I do not think I can usefully assist you further at this stage."

The witness explained that Mr JH was a solicitor who worked with PM at KC a consultancy and who then consulted to G Solicitors for the course of the trial. She rejected the suggestion that she chose to move advisers because she could get a 100% CFA in place of a 50% CFA. She had been told funds were not available. All her assets were at risk; they were fully charged. It was a "Kafkaesque" nightmare with her trying to mitigate her situation. She alleged that LC had taken millions of her assets for no loan at all as it was not in the firm's client ledger.

52. The witness stated that she was the beneficial owner of K Ltd which held several properties in a corporate vehicle. It operated in Jersey and its administrators were C, the directors of which took her views into account. Her former conveyancing solicitor Mr SB had set it up. The witness agreed that some of the properties were charged to the Bank of Scotland at a low interest rate of ½%. She agreed she was keen not to lose those mortgages. She understood the S Ltd loan was short-term with a view to getting matters ready to put to funders; the low interest rate with Bank of Scotland was one consideration. She could have sold a property but there was a very tight timeframe; it would have been very disadvantageous for a trial in July 2012. They had a QC who believed that they had a good case and so she did not see why funding could not be raised in the traditional way. As to whether she was able to follow a traditional route to obtain funding instead of taking the loan, the witness agreed that the Bank of Scotland would not consent to a second charge. She stated that 2 properties were charged for

costs but the others were free of charges. She had the option available of taking charges and family and friends were helping. She had the CFA and the side letter, a QC's opinion saying the case was fit for funding and she was under the impression they were going down the traditional funding route. She accepted that the firm went to fairly extensive lengths in June and July 2012 to get litigation funding. She was under the impression it would move forward very quickly. She had to deal with other matters.

53. It was put to the witness that her partner Mr P who was very experienced at raising funding on properties, provided the best offer he could get and she had forwarded it. The witness would not say it was the best offer; his brother could have lent £1.5m. When the Respondent introduced her to LC they did not know the trial would be put off for another year. Funds were needed for disbursements. When she came to sign the agreement there were completely different circumstances.

54. The Respondent put it to the witness that she lost the substantive litigation and ended up with a costs order for £1.2m. She agreed but rejected the suggestion that S Ltd lost out; it took the lion's share of the second property and then 2 others were sold. The adverse costs order was paid by a loan from Mr P's brother. She was of the view that very large sums were taken by S Ltd.

55. With reference to whether the Respondent acted in the witness's best interests, it was put to the witness that the real reason litigation funding could not be obtained was because at some point between taking the loan and dis-instructing the firm the disclosure of witness statements fatally undermined Mr P's version of events so that the prospects of success were next to zero. There was also an issue about fabrication of documents. The witness replied that this was all very much after the event. If funds had been made available from S Ltd appropriate investigations could have been made in Saudi Arabia about the opponent which would have revealed information now available. They had to fund their own investigations.

56. The Respondent directed the witness to the loan agreement which was dated 20 June 2012 in handwriting. She had said she first met LC in May 2012. The Respondent suggested that there was a second meeting when the loan agreement was signed while the witness said there was a third meeting on 22 or 23 July 2012 when the agreement was signed. As to why she said 22 or 23 July 2012, the witness replied that she was pressed by emails received from JS at the end of June. The Respondent referred her to the loan agreement:

> "4.2 That [S Ltd] may deduct from the Loan its legal costs and an arrangement fee of £9,000.00 (Nine Thousand Pounds) and that payment of the Loan to Lorrells LLP (less the said legal costs and arrangement fee) to be applied by them in or towards satisfaction of costs owing by her to Lorrells shall be a good and sufficient discharge to [S Ltd].
>
> 4.3 To the release and payment of the Loan (less [S's] said cost and arrangement fee) to [the firm] and to the application of the balance of the loan in or towards satisfaction of costs owing by her to [the firm].

4.4 That [S Ltd] has retained [the firm] to advise it in respect of the Loan and all aspects thereof (including but not limited to the drafting of the Security Interest Agreement).

4.5 That [the firm] have informed [C] that they cannot accept instructions from her or offer her advice in respect of the Loan or the drafting of the Loan documents and that in these matters they are acting solely for and in the interest of [S Ltd].

4.6 That she has been advised by [the firm], but has declined, to seek independent legal advice."

The witness rejected the suggestion that those parts of section 4 quoted above were discussed, in particular including that the firm acted for S Ltd and could not act for her. The Respondent said he was looking after her interests; that there was a firewall; that Mr H-J was acting for S Ltd/LC and that was the reason he refused to speak to her afterwards. The witness clarified that she had nothing in writing to the effect that the Respondent would be looking after her interests. The witness did not accept that during the meeting when the agreement was signed they read through the entire document together. She was referred to her statement "Mr Lorrell took me through it briefly… Mr Lorrell went through the loan agreement very quickly…" She said that the Respondent certainly did not read it out; the main thing was to have everything in place quickly. He told her it was fairly standard and gave her reassurance that it was a short-term stop gap situation. The focus of the conversation was that there were a number of things that had to be taken forward.

57. As to the date when the loan agreement was signed and whether she was bullied into signing, the witness referred to an email from JS to her dated 20 July 2012:

> "As discussed, counsel requires funds (£15,000 plus VAT (£18,000)) by Monday morning to begin his preparation for the application floating in the Judges list on 26 and 27 July 2012. As you are aware, I have sent [SB acting for C] a draft authority for him to consider on behalf of [K/C] so that [SA of C] can sign the Agreement and I can draw down funds from the £300,000 loan to pay Counsel.
>
> I am aware that you instruct Counsel to amend the pleadings to fraud but I first need to put him in receipt of funds before anything can proceed. I do not need to remind you that this is an extremely important application and the Defendant is likely to have both junior and leading counsel working on the application for the next few days. Counsel needs the full three days to ensure that he is fully prepared. In light of my dealings today in respect of trying to arrange the funding, it is now after 19.15 on Friday evening and I am only now beginning to prepare for a two day hearing beginning on Monday morning at 9.30 am. In addition, once the funds are available, I will also have to finalise the witness statement in response to the Defendant's application. This should really be served on Monday at the latest if the hearing is going ahead on Thursday 26 July 2012.
>
> In light of the above, I can only see two options:-

1. The Agreement is signed by Mr [A] over the weekend/Monday at 9am and sent to us so that the funds can be drawn down to pay counsel; or

2. You arrange for £18,000 to be sent to us by 9:30 am on Monday 23 July 2012 and upon [the Respondent's] return from annual vacation, he will sit down with you and [SB's firm BM} to discuss the issue of funding in more detail."

The witness referred to another letter dated 22 July 2012. The Respondent suggested to the witness that she was being given options, not placed under pressure. The witness replied that the whole thing and the events leading up to it and the notes sent were designed to get her to sign the loan agreement. There was no need for £300,000.00; only £18,000.00 was needed. She was pressured into looking at the global picture. The Tribunal drew attention to an earlier email of 20 July 2012 from JS to Mr SB and the witness:

> "I write further to our telephone conversation earlier today. I have spoken to [the witness] and it has been agreed that she will sign and (sic) authority to confirm that she will not hold [C] liable for any loss as a result of signing the agreement to enable [the witness] to draw down on funds for the purpose of funding her litigation.
>
> May I please have your comment on behalf of [C] so that [the witness] and I can sign the same and authorise Mr [A] to arrange for the signing of the agreement. Until the agreement is signed, Counsel will be unable to commence work for the application on 26 July 2012 and [the witness's] and [P's] case will be prejudiced.
>
> As discussed, it is extremely important that the agreement is signed immediately so that counsel can be put in funds to deal with the application from Monday 26 July 2012.
>
> Unless you have nay (sic) comments, I will arrange for [the witness] to sign the same and I will forward to Mr [A]."

The witness stated that there was no true urgency. The Respondent was saying that all sorts of things needed to be addressed.

58. The Respondent pointed out that 22 July 2012 was a Sunday and he was not in the country for 2 weeks before that. The witness stated that they would not have met on a Sunday but she just remembered being under pressure to sign. Raising £18,000.00 could well have been an option. The Respondent pointed to the letter of 11 May 2012 from JS at the firm to the witness and Mr P setting out all the money needed for all the cases. The witness stated that she stood to gain substantial damages and part of the stop gap funding of £300,000.00 was to get the things done including investigations in Saudi Arabia but nothing happened. She did not know if the loan agreement was signed on 23 July 2012 or considerably earlier. If it was the latter why, was she being pressed towards the end of July 2012? The Respondent suggested that was about a different document, a letter to Mr A of K Properties Ltd from the witness referred to in, and attached to a letter of 20 July 2012. It was needed "so that it can be sent to Mr [A]…to ensure that he will sign the loan agreement…" The witness's letter of 20 July 2012 included:

> "Following your email to me dated 16 July 2012, I am becoming extremely concerned, that, despite my request, it has not been possible for you to arrange for the agreement ("the Agreement") to be signed."

The witness stated that Mr SB drafted this letter. The Respondent suggested that it was pasted into the firm's system by JS and had the Respondent's reference and that of JS added automatically. The letter continued:

> "While I am sure that you are aware, the purpose of obtaining the funds pursuant to the Agreement is so that I am able to pursue a number of claims against various parties and seek to recover substantial sums.
>
> It is essential that the Agreement is signed and returned to my solicitors, [the firm] by Monday 23 July 2012 at 9:00am so that they are able to draw down on funds to instruct Counsel on an urgent application listed for next Thursday 26 April 2012. Counsel requires substantial funds so he can begin preparing for the hearing as a matter of urgency and attend the hearing itself to oppose the Defendant's application"

59. The letter went on to set out what the witness thought were Mr A's concerns:

> "1. To ensure that I, as beneficial owner of [K] Limited (K], understand the full meaning, effect and ramifications of your seeking independent legal advice before instructing you to execute the same. I hereby give that confirmation and confirm in particular that I understand and accept that I/ [K] risk losing the properties in whole or in part if I fail to repay the loan of £300,000 therein referred to together with interest thereon of £75,000 within 6 months of the Agreement being signed and the monies, currently held by Lorrells LLP, being released.
>
> 2. That there are insufficient funds held by you on behalf of [K] to enable you to seek legal advice on the full meaning, effect and ramifications of you entering into the Agreement at my request and that you require me to provide you with a waiver and indemnify you in that connection. I therefore expressly acknowledge and accept that you have not obtained legal advice in connection with the Agreement I require you to sign and furthermore I hereby accept, agree and undertake that in consideration of your entering into the Agreement at my express request. I (on behalf of myself and successors in title … will not hold [C]…liable…
>
> 3. I further undertake that I have no outstanding claims against [C]…"

60. The witness rejected the Respondent's suggestion that the contents of witness statements served in the High Court proceedings about a possible relationship between her partner and AM were the reasons why the witness and Mr P could not get litigation funding and ATE insurance proceedings. The witness rejected the suggestion that the witness statement affected the prospects of success on the basis that the next firm of solicitors she instructed offered a 100% CFA. Also she stated that witness statements in 2011 had already suggested a relationship.

61. As to why her appeal application against the High Court judgment in the substantive litigation had failed, the witness stated that she could not adduce new evidence for the application for permission but she had now had her claim reintroduced.

Re-examination by Mr Collins

62. Mr Collins asked the witness when she became aware of the witness statements listed in the High Court judgment which referred to the alleged relationship between Mr P and the Defendant. She said they arrived in May 2012 after Mr M QC had given his opinion but before Mr B QC gave his. The claim was then changed to fraud and Mr B assessed the prospects at 66%.

63. Mr Collins asked about the loan agreement and SIA. Her recollection was that they were signed at the same time. The correspondence on 20 July 2012 from JS related to the loan agreement and the SIA had not been signed at that time.

64. In respect of a letter to the firm from S Law marked "Draft - for approval" dated 12 September 2014 her understanding was that the firm was not in liquidation at that time. It included and the witness confirmed:

> "None of the amount loaned was ever received physically received by Ms [C]…"

In respect of the reply from the firm to the S Law letter of 12 September 2014 referring to the firm's letter of 20 May 2013 to G solicitors, the witness confirmed that she had never received any invoices in response to her enquiries nor any letter referring to any which had been sent to her. The letter of 11 May 2012 with a table of figures referred to as "a draft estimate of the cost likely to be incurred", contained the figures intended to be referred to litigation funders. She did not consider that letter to be an invoice. Her letter of 17 September 2015 to the Applicant included "I believe there is something very wrong in relation to the failure to pay me the net loan figure of £288,600 or to account to me in any way for its use." The witness clarified that she was referring by way of accounting to documents such as invoices for counsel's opinions and for investigations in Saudi Arabia for which she thought the £300,000.00 had been raised.

Findings of Fact and Law

65. The Applicant was required to prove its allegations beyond reasonable doubt. In arriving at its decision, the Tribunal gave due weight to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for his private and family life under, respectively, Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(The submissions below include both those made in the documents and at the hearing.)

66. **Allegation 1.1 - In or after May 2012, [the Respondent] accepted, or caused the acceptance of, instructions to act for S Ltd:**

1.1.1 where such instructions were in conflict with the interests of Client C for whom instructions had been accepted on a related matter, or where there was a significant risk of such a conflict;

1.1.2 where said instructions gave rise to a conflict with the interests of the Firm, or where there was a significant risk of such a conflict;

and in doing so breached Principles 3, 4 and 6 of the SRA Principles 2011 and Outcomes 3.4 and 3.5 of the SRA Code of Conduct 2011.
Allegation 1.5 - By reason of the matters set out at 1.1 above [the Respondent] did not act with integrity and so breached Principle 2 of the SRA Principles 2011. Failure to act with integrity is not an essential ingredient to Allegation 1.1 above and it is open to the Tribunal to find the allegation proved with or without a finding of failure to act with integrity.

66.1 SRA Principles cited in allegations 1.1 and 1.5:

You must:

"2. act with integrity;

3. not allow your independence to be compromised;

4. act in the best interests of each client;

…

6. behave in a way that maintains the trust the public places in you and in the provision of legal services;"

SRA Code of Conduct 2011 – Outcomes cited:

"Prohibition on acting in conflict situations

O (3.4)
you do not act if there is an own interest conflict or a significant risk of an own interest conflict;

O (3.5)
you do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 or 3.7 apply;

Exceptions where you may act, with appropriate safeguards, where there is a client conflict

O (3.6)
where there is a client conflict and the clients have a substantially common interest in relation to a matter or a particular aspect of it, you only act if:
(a)
you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;
(b)
all the clients have given informed consent in writing to you acting;
(c)

you are satisfied that it is reasonable for you to act for all the clients and that it is in their best interests; and

(d)

you are satisfied that the benefits to the clients of you doing so outweigh the risks;"

66.2 Mr Collins submitted that it was the Applicant's case that S Ltd provided a loan to Ms C in the summer of 2012 when the firm was acting for her in substantial litigation under the CFA in respect of 2 claims. In late July 2012, around £15,000.00 (plus VAT) was needed to fund counsel's fees. A loan was made in the sum of £300,000.00 secured on shares in K Ltd, a company with a net value of approximately £1.3 million. The interest rate was stated to be 56%. The loan was for an initial period of 6 months with an extension available for 12 months. The litigation was in its relatively early stages. Of the £300,000.00, the firm received a £9,000.00 arrangement fee (which was passed to S Ltd). The loan agreement was defaulted on and terminated by S Ltd in about 6 months. It was set out in the Rule 5 Statement that in the circumstances, the Respondent owed duties to act in the best interests of:

i. C in relation to the substantive litigation and the funding of the substantive litigation.

ii. S Ltd in relation to the loan agreement, including both the possibility and event of C's default, which related to C's substantive litigation and so was a related matter to that in respect of which he was acting on behalf of C.

66.3 By acting for S Ltd in relation to the loan, whilst already acting for C the Respondent's duties conflicted or there was a significant risk that those duties might conflict in relation to: the terms of the loan; the consequences of default of the loan agreement; and the conduct of C's substantive litigation. The Respondent did not seek and C did not provide her informed consent, timeously or at all, for the firm to act for S Ltd and S Ltd and C did not share a substantial common interest. The firm continued to act for C in respect of the loan following the loan agreement, including taking steps to serve a notice to extend the loan. The loan agreement was drafted by the firm without C's involvement. There was a conflict of interest between S Ltd and C in respect of the drafting the terms of the loan. As lender and borrower, S Ltd and C had different objectives and interests that would have a bearing on the appropriateness of and/or the terms of a loan (for example, as to the total amount, interest rate, security and repayment period for the loan). There was a clear and significant risk that the interests of C and S Ltd would be in conflict in the event of a default on the agreement. For example, a dispute could arise as to whether a material default had occurred, affecting enforcement. This situation occurred in late 2012 as C sought to avoid default on the loan whilst S Ltd wished to establish that C had defaulted on the loan. Notwithstanding this conflict of interest, the Respondent continued to act for C and S Ltd. There was a conflict of interest or a significant risk of conflict between S Ltd and C arising from the conduct of C's substantive litigation: S Ltd stood to benefit from protracted litigation, creating a risk of conflict with C's interests. The loan period could be extended with notice but subject to further arrangement fees, and would require ongoing interest payments, as set out in paragraph 1.1 of the agreement. The timescales in which C would require funding or be in a position to repay the loan would depend upon the progress of the litigation. In light of the extension fees and or the scope for default, it would be in S Ltd's interests for litigation to exceed both the initial loan period and the available extension periods set out in the agreement.

66.4 Mr Collins submitted that under the heading Responsibilities, paragraph 13.2 of the CFA stated:

> "[The firm's] responsibilities include always acting in the Client's best interests, subject to [the firm's] overriding duty to the Court, explaining to the Client the risks and benefits of taking legal action, giving the Client the best information possible about the likely costs of the Claim and the different methods of funding those costs."

While Ms C gave evidence for the Applicant, its case rested primarily on documentary evidence. In respect of the alleged conflict the issues were:

- whether or not the firm's retainer or extended retainer was relevant
- whether there was a substantial common interest between Mc C and S Ltd
- whether Ms C gave informed consent for the firm to act for S Ltd in respect of the loan; and
- whether consent was evidenced in writing at the relevant time.

Mr Collins submitted that in his response to the Applicant's Explanation with Warning ("EWW") letter, the Respondent said that he did not act for Ms C regarding the loan; that the parties had a substantial common interest in the litigation succeeding; and that consent was evidenced by the loan agreement.

66.5 It was the Applicant's case that the parties had different interests, and that they had no substantive common interest to satisfy the exception in the Code of Conduct. An email dated 28 January 2013 from LC, writing from the P Foundation, another of his activities, to Mr JS of the firm about default on the loan, copied to the Respondent set out the distinction between the parties' interests:

> "May we remind you that we simply provided a loan and everything else is not our concern, we would further remind you that we declined to finance the case itself"

66.6 Mr Collins submitted that evidence in writing of informed consent would need to be obtained prior to any action occurring. He referred the Tribunal to the copy of the signed loan agreement dated 20 June 2012. It set out the position on its face at paragraphs 4.4 - 4.6 quoted above. This necessarily post-dated the firm acting for S Ltd in respect of the loan. A signature on a contract document did not provide consent for the contract itself to be drafted. It was significant to that end that there were no documents before the Tribunal which set out in writing, as required, that consent was provided prior to this document being drafted and signed. It was Ms C's evidence that she did not provide written consent for the firm to act for S Ltd in drafting this document. In her statement she dealt most specifically with the issue in this case:

> "Throughout this entire process, [the Respondent] was acting for me with a firewall in place. [The Respondent] did not at any stage ask for my consent for [the firm] to act for [S Ltd] in relation to the loan agreement. I did not provide

my consent in writing for [the firm] to act for [S Ltd] in relation to the drafting of the loan agreement…."

Mr Collins submitted that C's understanding was very much at odds with the position of informed consent given the documents she signed. C was not provided with appropriate legal advice prior to the firm being retained by S Ltd in respect of the loan agreement. She was given assurances that the Respondent would be acting in her interests and that these interests would be protected by the firm's information barrier. C did not accept that she was told to seek legal advice in relation to the loan agreement. Information barriers could not cure a conflict, but their existence indicated that the existence of a conflict or a significant risk of conflict between the interests of C and S Ltd was identified at the time by the Respondent, but that he decided to continue to act for both notwithstanding that knowledge.

66.7 Regarding the firm's own conflict of interest, the firm had an interest in C and S Ltd entering into a loan agreement, irrespective of C's best interests as it stood to benefit from the agreement through payment for work carried on behalf of C's substantive litigation and actual and potential scope for legal fees from S Ltd. Mr Collins submitted that the client required funding on the best terms while the firm just needed that funding to be obtained on any terms. On the Applicant's submission, the firm and the Respondent stood to benefit if Ms C could get funding. The Respondent's position on this issue appeared to be that he and C tried to get other funding and it was only available through S Ltd; they had no other options and so there was no inappropriate action, but Mr Collins submitted that this was not a defence. If there was an own conflict situation, no exceptions were available to a solicitor under the Code and the Respondent should not have acted for S Ltd regarding the loan.

66.8 The Rule 5 Statement set out:

"On an objective basis the facts and matters set out at Allegation 1.1 amounted to a failure to act with integrity.

The Respondent failed steadily to adhere to an ethical code in that he:

"knowingly accepted instructions from and acted on behalf of S Ltd in respect of the loan agreement when he knew that it was related to the matter on which he was instructed by C and that the interests of C and S Ltd were, actually or potentially, in conflict;

personally benefited from the acceptance of instructions from S Ltd.

In the circumstances it is the SRA's case that the Respondent's conduct fell short of steady adherence to an ethical code to a degree amounting to a failure to act with integrity.""

The Rule 5 Statement had been issued in June 2017. Mr Collins submitted that there had been recent authorities regarding the definition of integrity. The paragraphs quoted above referred to dicta in the case of Hoodless and Blackwell v FSA [2003] FSMT 007 which was subsequently approved in Wingate and Evans v SRA and Malins v SRA [2018] EWCA Civ 366:

"97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson PC in Williams at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.

98. I agree with Davis LJ in Chan that it is not possible to formulate an all-purpose, comprehensive definition of integrity. On the other hand, it is a counsel of despair to say: "Well you can always recognise it, but you can never describe it."

99. The broad contours of what integrity means, at least in the context of professional conduct, are now becoming clearer. The observations of the Financial Services and Markets Tribunal in Hoodless and Blackwell v FSA [2003] FSMT 007 *had* met with general approbation.

100. 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.

101. The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors:
…

iii) Subordinating the interests of the clients to the solicitors' own financial interests (Chan);"

Mr Collins submitted that the example of lack of integrity in paragraph 101(iii) above was relevant here; when funding was sought, the Respondent failed to prioritise the client's interests and his own professional obligations in the light of the conflict and he subordinated those duties to his own interests.

66.9 Mr Collins made a general observation regarding the evidence of Ms C. He submitted that the Respondent would spend some time on the High Court litigation. The Tribunal would be well placed to assess Ms C's evidence based on all the available material including that evidence. It was not denied that critical comments had been made regarding her evidence in the High Court but this hearing was not a matter of re-litigating that case or the issues in it. Any observations made by the High Court presented one individual's view of the evidence on that particular day regarding different issues than those the Tribunal was considering at this hearing.

Submissions by the Respondent

66.10 The Respondent referred to the SRA Handbook. The starting point was the definition of a conflict in interests. The rules dealt with how to handle it if it arose. A solicitor owed separate duties to act in the best interests of 2 or more clients in relation to the same or a related matter and if those duties conflicted or there was a significant risk of

a conflict the solicitor must not act for all or both of them unless the matter fell within the scope of the limited exceptions set out at Outcomes 3.6 or 3.7:

- In the case of an own conflict; if the duties to act in the best interests of any current client in relation to a matter conflicted with the solicitor's interests or there was significant risk of conflict the solicitor could never act.

- In respect of a client conflict, while the Respondent did not concede one had arisen, the firm used "a belt and braces" approach.

Mr H-J had 40 years' and the Respondent 30 years' experience; they took their duties very seriously and, in this case, looked carefully at whether a conflict arose. It was the Respondent's evidence that he specifically asked Mr H-J to look at the issue. Any reference to Chinese walls or about advising clients the firm could not act was not to concede that they decided a conflict arose in the first place. It was common to the parties in these proceedings as to what they should be looking at. In this case the question was first whether the firm acted for Ms C and S Ltd on the loan. One had to look at the firm's duty to each and to ascertain that duty; it was necessary to look at the retainer and what would be expected of the firm. Secondly, when the firm issued the claim for S Ltd against Ms C, one asked what were its duties regarding each client at that point. The Respondent read into the allegations that both of these situations were covered under 1.1.1.

66.11 The Respondent submitted that it was agreed between the parties that when a solicitor acted in litigation their duty was to prosecute the action in the client's best interests to a successful outcome and to protect confidential information. The Respondent submitted that with S Ltd the firm had 2 distinct retainers; first to draft the loan agreement and subsequently almost a year later to issue a claim to enforce a breach of it. He referred the Tribunal to the case of Prince Jefri Bolkiah v KPMG HL 16 December 1998:

> "Where the court's intervention is sought by a former client, however, the position is entirely different. The court's jurisdiction cannot be based on any conflict of interest, real or perceived, for there is none. The fiduciary relationship which subsists between solicitor and client comes to an end with the termination of the retainer. Thereafter the solicitor has no obligation to defend and advance the interests of his former client. The only duty to the former client which survives the termination of the client relationship is a continuing duty to preserve the confidentiality of information imparted during its subsistence."

The Respondent submitted that all the reported cases dealt with the situation where an ex-client was trying to restrict the solicitor from acting for another client. The judgment also referred to an earlier case in the Court of Appeal Rakusen v Ellis Munday & Clarke [1912] 1 Ch. 831 which was the leading authority:

> "that there is no absolute rule of law in England that a solicitor may not act in litigation against a former client;"

Whenever a client did not pay their bill, it was quite common to sue if the bill was not paid. The only circumstance where one could not act for a former client was if there was a risk of confidential information being leaked to the client for whom the solicitor was acting as he was no longer required to act in the former client's best interests. The

Respondent had not heard any allegations that the firm leaked confidential information relating to a conflict of interest but only that JS released counsel's opinion. The issue turned on whether there were one or two retainers. The Applicant said that there was a potential for conflict because of what could happen if C did not pay back the loan and that the firm was in breach of duty because it had to enforce the agreement but that argument did not work if the first retainer did not include that obligation. The Respondent's evidence was that if the firm had still been acting for C and S Ltd asked it to sue her the firm would have declined. It was only by virtue of C terminating the retainer that the firm could so act. Mr Collins had referred to clause 4.4 of the loan agreement about S Ltd's retainer, which might indicate that the retainer was wider than the Respondent's interpretation and to the email from LC about receiving no advice. The email proved the Respondent's case. Whether or not LC expected advice was another matter not falling within this case. LC never made that complaint save for by this email and the firm continued to act for him in various matters until his death. The Respondent submitted that there was no conflict in just drafting the loan agreement. There was no need to advise S Ltd or to act in conflict for that purpose.

66.12 The Respondent submitted that the Tribunal had also been taken to emails between him, Mr PM and JS when they were seeking to gain an extension of the loan for C. It could be seen that they were dealing with LC direct. Had H-J still been acting for S Ltd they would have been talking to H-J. For nearly a year they did not do anything for S Ltd which had been billed, they would say by a final bill, which was paid and no further work was done. They then spoke to LC to get more time for C. LC then instructed them 3 months after C terminated the retainer. There was a clear distinction between the 2 retainers. The firm's duty was different regarding the first retainer relating to drafting the document. One had to look at the firm's duty then and how did it possibly conflict with its duty to C to advance the litigation. The duty to S Ltd was to draft a document in accordance with LC's instructions and give him security over the shares of the company K Ltd; that was all they did and nothing more. His emails confirmed that he received no advice. Whether that could be construed as a complaint, was another matter. The Respondent submitted that there was an odd absence of documents; one would expect to see correspondence with H-J and LC and HJ and K Ltd; the file should show the extent of the retainer. There should be a client care letter setting out what the firm's instructions were and communication between H-J and LC about any variation. None of those documents were before the Tribunal and the Respondent had no access to documents. The Applicant had a very high hurdle to climb. It had not written to LC as it did with C and there was no statement from LC or H-J. The firm could not give C advice on any agreement she was entering into. Where the retainer included litigation funding it did not extend to advice on a litigation loan. If a litigation funder did decide to lend, it would ask C to get another solicitor to advise on the loan; that would be a precondition. The firm knew the merits and presented them to litigation funders with counsel's opinion; that was all it did. The firm acted in a role similar to a valuer; a valuer did not get involved in negotiating the loan. It was the Respondent's submission that it would a wrong basis on which to found a conflict. The purpose of getting the advice of Mr B QC was that litigation funders always wanted it.

66.13 The Respondent submitted that if the Tribunal disagreed that there were 2 retainers and found there was a client conflict then the Respondent relied on the exceptions in the Outcomes. The Respondent quoted Outcome 3.6 where the clients had a substantially common interest. It required the Tribunal to look at all the evidence and consider whether the benefits to the clients outweighed the risks, what was available to C and the consequences of failure to get litigation funding and what the firm's role was in her

getting the loan. He asked the Tribunal to weigh C's evidence against his. On her evidence she was bullied into taking the loan. The Tribunal had to decide whether the Respondent was acting in her best interests considering his view of the litigation and her prospects of financing a bridging loan. This brought into play all the issues on integrity; was he genuinely trying to act in her best interests or to make money. Was he furthering her best interests because she faced catastrophe? His case was that the account she gave was untrue. The Respondent referred the Tribunal to a House of Lords judgment on weighing up conflicting evidence. Grace Shipping v Sharp & Co. [1987] 1 Lloyd's Law Rep 2017 and the judgment of Lord Gough:

> "Speaking from my own experience, I have found it essential, in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth."

The Respondent submitted that the High Court judgment in the main litigation was reached after a 3 week trial by one of the most distinguished Judges in the High Court, Lady Asplin. She had expressed some criticism of the evidence given by P and C. The Respondent also quoted from a series of letters that had been in evidence in the High Court proceedings which he submitted undermined Ms C's credibility and one of which he said P had produced to him to show he P held certain properties on trust. The Judge had found on the balance of probabilities that the documents were "produced after they were dated in an attempt to bolster the claim and that they were neither produced nor sent at the time." The Respondent also referred to views expressed by the Judge about the motivation of one of the claimants' witnesses to give evidence. The prospects of refinancing the loan relied on what the Respondent had been told by the clients. The Respondent asked the Tribunal to disregard Ms C's evidence and judge on the documents and on what he had said. He submitted that C knew full well that the loan had been used for legal fees.

66.14 The Respondent submitted that he was presented with a client who could not afford to proceed without funding and without it she would have lost the claim and had an order for adverse costs. He was looking for funds as his new documents showed. He acted in her best interests and could not get funding partly because of timing and partly because of additional witness evidence. He introduced her to LC. She then had the option of borrowing to get over the hurdle. As to bullying her, the Respondent stated he was not even in the country at the time she said she signed the loan agreement. In his letter of 20 July 2012, JS gave her the option to pay £18,000.00. The Respondent also referred to the letter of 20 July 2012 to Mr A at K Ltd with its reference to needing to draw down monies. Ms C had already given instructions to K Ltd on 16 July 2012 to sign it.

66.15 The Respondent referred to a letter Ms C had provided to the Applicant dated 25 February 2013 from PM to Ms C after a default notice had been served which he submitted showed her as having said the firm had not advised her. PM said:

> "I have told [JH] that in light of this development we will have no option but to look at the legality of the loan, the role that [the firm] played in putting it in place; whether it was appropriate and in line with Law Society standards for them to advise [LC] and not you in setting it up etc…"

However, the Respondent submitted that in her witness statement, C said that the firm had advised her and that he said he would look after her. The Respondent submitted she could only get out of her arrangement with the firm based on a total failure of consideration. He submitted the loan was her only option and suggested that she could not even borrow £18,000.00. His firm turned over close to £500,000.00 a month and all he would get out of this was at most £100,000.00 and it would not even get them to trial. He honestly believed they could replace the loan funding. Once the witness statements came in they could not use Mr B QC's advice regarding 66% prospects anymore. It was impossible to win the case from that point. The Respondent rejected the idea that he had acted for a benefit of £2,000.00 for someone who gave the firm all his work. There was another firm of solicitors geographically opposite to his and they swapped conflict work. LC was a loyal client from 2005 to his death and all he asked was for the loan agreement to be drafted.

66.16 As to informed consent, the Respondent submitted that one had to look at the context; LC and C were sophisticated and did not need their hands held. They operated complex off-shore structures with excellent relationships with banks and they knew about risk. One talked to them of risks in a different way. C was involved in a development with an estimated value of £750m. She was extremely sophisticated about all aspects of litigation lending and borrowing. Also, P had obtained an offer of a similar bridging loan. They had taken numerous loans and given numerous charges. The Respondent probably did not obtain a letter of consent from C; she understood and he did not think there was a conflict in any event. The loan was as good an offer as she could get to prevent the litigation collapsing and it was absolutely in her best interests to take that route.

66.17 Regarding allegation 1.5 and the requirement to act with integrity, the Respondent submitted that by the loan he kept C's case on track. He did not put any pressure on her whatsoever to take the loan. The money sat there from May 2012 until she took it. In July 2012 she was emailing K Ltd about why the agreement had not been signed yet and referring to having contacted them on 16 July. He was not even in the country. They had not had a meeting then; he had not spoken to her. She clearly decided to take the loan. Up to the day before, JS was saying "Please send me counsel's fees". The Respondent tried to win her case as he did for all clients. He did not need to get £2,000.00 to draft the loan agreement.

Evidence of the Respondent

66.18 The Respondent relied on his witness statement which was unsigned and undated but which he said had been signed and was filed the same day as his Answer.

Cross-examination

66.19 The Respondent stated that he had been called to the Bar in 1999 and enrolled as a solicitor in 2003. At the material time his firm consisted of 4 partners and had between

30 and 40 employees. The partners had over 100 years' experience between them. He confirmed that he did not act for Ms C in respect of the loan because he was aware of the potential conflict if he acted for both parties. He considered very carefully with Mr H-J if it was appropriate to act for both. He asked H-J to prepare a note which he did. It was not possible to set up a Chinese wall within the firm because the firm needed 2 offices for that. The loan was related in some sense to C's litigation. There was not an automatic conflict because both were clients. He was aware of all the case law. He looked at the scope of the retainer; the firm was being asked to draft a document. There was some misunderstanding about its scope; the firm was not asked to negotiate, advise about the suitability of the loan or about security.

66.20 Mr Collins submitted that the Bolkiah case was only relevant if the Tribunal did not accept the Applicant's position that there were retainers in force with S Ltd and C at the same time.

66.21 The Respondent gave evidence that he had considered his duties to Ms C which were to act in her best interests and to prosecute the litigation to the best of his ability. The duty to S Ltd was to draft a document that accorded with its instruction regarding the agreement it had already reached. This could extend to enforcing the SIA. That was the extent of the retainer and it did not in any event conflict with his duty to Ms C. He was not asked to look for the best possible terms for the loan; that had already been agreed between Ms C and S Ltd. Looking for funding was not outside his retainer with Ms C; the firm did it as a matter of course in all the litigation it undertook. He decided there was no conflict but as "belt and braces" he felt it was best to ensure that he was acting in her best interests so he ensured he had in writing that he was not acting for her and that the firm had advised her to obtain independent legal advice. It would have been different if the firm were negotiating for both S Ltd and Ms C regarding the terms of the loan. The retainer ended once the documents were signed.

66.22 Mr Collins referred the Respondent to his witness statement. He confirmed that his Answer and statement set out that he did not act for Ms C regarding the loan. He did not advise her and he was only there when she signed the agreement because Mr H-J was not available. He had not advised her about it before that date. It was 6 years ago but he recollected they read line by line through the document and she signed it. He had previously explained to her why the firm could not act for her. In that meeting he did not outline to Ms C any risks in the firm acting for S Ltd. It was put to him that he did not cover discussing risks prior to signing the agreement in his witness statement. The Respondent stated that he might have thought that the firm was going to act for her before he realised it could not have Chinese walls. Between those 2 meetings he might have discussed Chinese Walls with Ms C. It was 6 years ago when he drafted the statement and very difficult to remember. They would have dealt with what they needed to regarding the rules. He was referred to the statement where it referred to abandoning the idea of a Chinese wall; of Ms C being told to get independent legal advice and declining to do so; his explaining he could not act for her as he would have a conflict and her understanding and agreeing to the firm acting for S Ltd. There was no reference to discussing risks to her in his firm acting for S Ltd. The Respondent replied that he could not think what risk there was where the firm was just drafting a document. The loan agreement was quite clear regarding her consent. The Respondent confirmed there was no reference to written consent other than in the loan agreement.

66.23 Mr Collins referred the Respondent to his Response to Rule 5 Statement (R is the Respondent):

"The truth of the matter is as follows:

S Ltd made 3 pre conditions to Ms C in front of R:

i. The firm act only for S Ltd, she had to seek independent legal advice and she had to consent to the firm acting for him;

ii. The true nature of loan was disguised as S Ltd did not want to be seen as a litigation funder and become liable for adverse costs if Ms C lost;

iii. That the money was only to be used for the purposes of funding litigation and paying the firms fees.

Regrettably, both R and Ms C agreed to conceal the true nature of the loan as it was the only way S Ltd were willing to lend the money and Ms C would have had to abandon her claim otherwise. The concealment was done only to protect S Ltd from any adverse costs order as he was not willing to risk losing his money and having to pay up to £300,000 to [AM] for her costs…"

The Respondent stated that originally LC was interested on the recommendation of his son's company which was a litigation funder but the decision in the case of Hamilton v Al-Fayed (Costs) [2001] AC 395 with the possibility a funder could become liable for an adverse costs order deterred him. What made a funder liable for adverse costs was very wide. LC did not want the loan to be a traditional litigation funding loan but a secured loan. The loan was always going to be secured on shares (in K Ltd). The Respondent did not know why he used the word "regrettably"; the true nature of the loan was not really concealed. It was quite clear the monies were for legal fees and it was certainly in LC's interest for the litigation to succeed for various reasons. If AM's lawyers saw the loan agreement they would make a claim against S Ltd. The Respondent was not sure what he meant by the word "regrettably". As to whether he was playing "fast and loose" with his professional duties not to mislead the other side or the court, the Respondent stated that it was not the law that if a client obtained a loan one had to tell the other side. It would be the case if the solicitor was asked "Did anyone lend your client money?" and answered "No". The Response clearly said at (iii) above that the loan was for legal fees. The Respondent stated that the Response was not the loan agreement and if he was under a duty to disclose the loan agreement it would be clear at clause 4.2 that the loan was for legal fees in third party litigation. The loan agreement was not a traditional litigation funding document. The 3 pre-conditions set out in his Response were what LC said in a meeting. The Respondent did not know what he was thinking of when he put the word 'concealment' in his Response. All of that wording was unfortunate. The Respondent rejected the suggestion that the loan agreement was a sham; S Ltd was funding litigation by this loan although it was not its traditional business. As to whether a solicitor should conceal the true nature of funding, the Respondent drew a parallel with a client asking a solicitor to set up an off-shore funding structure. The solicitor was only drafting documents to smooth the client's arrangements for tax or for whatever reason. It was acceptable as long as one did not lie to people or to the court. The Respondent did not consider that a solicitor should conceal the true nature of a loan to avoid an adverse costs order.

66.24 Regarding the conflict issue, the Respondent stated that the CFA was on the Law Society's standard terms but modified. He agreed it was in place at the time of the

loan. Mr Collins referred to paragraph 13.2 covering the firm's responsibilities quoted above. The Respondent agreed that the firm's responsibilities included giving information about the different options for funding. He agreed it was an important document (drafted by H-J) with a significant amount of money at stake. He did not know the details of the loan agreement but if he had spotted something incorrect he would have put it right. He was not involved in any way with this file.

66.25 As to advising S Ltd regarding C's claim or position, the Respondent stated that prior to S Ltd's involvement, the firm was approaching funders including LC's son and they were given a pack of 20 to 30 pages including the claim form, relevant defence documents and 2 advices from Mr M QC as well as some other documents. The Respondent was referred to the clause of the loan agreement (quoted above) where it covered the retainer with S Ltd and referred to the loan and advising on "all aspects thereof". The Respondent stated that the relevance of paragraph 4.4 did not mean anything to him at the time (in relation to whether he would have changed it if the retainer was different from what was stated). To comment further he would need to see the client care letter, the file, and emails between the client and H-J, the client and K Ltd and H-J and K Ltd. This point had not been raised until the allegations were made. The Applicant never asked for the file or spoke to H-J and was now implying the scope of the retainer from one paragraph. As to whether the Respondent knew what the retainer with S Ltd was, he knew what H-J did and he was not in the country for that period. H-J said he just drafted the agreement and LC was given the counsel's advice to rely on. The Respondent knew the limited scope of the retainer from conversations with H-J and reading documents recently and reading H-J's letters to S Law. The Respondent agreed that clause 4.4 suggested the retainer was broader than just drafting but he thought the documents had not all been prepared at this time. One could not imply from 4.4 what H-J did in reality. This was just "catch-all" drafting. HJ could not advise on the litigation; he did not know anything about it; he would have come to the Respondent for that. The Respondent did not know what "all aspects thereof" meant; he did not think it encompassed enforcing the loan. There were numerous conversations trying to extend the loan which would have been with H-J. The retainer was extended when enforcement started. Drafting was always open to criticism. In drafting clause 4.4, H-J was not thinking about setting out the bounds of the retainer but telling Ms C that the firm was not acting for her. That did not mean the retainer extended to enforcement. As to there being no copies of client letters in the Respondent's material to indicate that there was a difference in reality from clause 4.4, that was because when it was first brought to his attention he no longer had access to the files and emails; the firm had been in liquidation for some time when the issues of conflict were put to him.

66.26 It was put to the Respondent that he accepted the document was unclear and that C received no legal advice so he was not in a position to satisfy himself that she was aware of all the issues. The Respondent stated that she was a very experienced business woman. It would have been obvious to her and if it was not obvious the Respondent would have explained to her that if she did not pay, the lender could take her properties. As to whether the client could give informed consent to the firm acting for another party if she did not know the scope of the retainer, he replied that she knew from the first meeting that the firm had to draft the SIA. The Respondent agreed that a client other than C would not be in a position to assess a conflict and give informed consent if they did not know the scope of the retainer. Mr Collins put it to the Respondent that LC's email to JS on 25 January 2013 showed he was another client confused about the extent of the retainer with the firm:

"I was surprised that I did not get any advice re [C].

…I was somewhat lost as to why there has been no advice."

The Respondent did not know what LC meant; LC's emails were often hard to make sense of. This was 7 months after the loan was made. The firm did a lot of work for LC; it acted for a number of his companies on a number of matters. In January 2013, the firm was not instructed to provide advice on the loan but with that type of relationship absence of instructions would not stop LC asking questions about the matter. At that time the firm was still acting for C. The Respondent was speaking to LC about extending the loan to the adjournment of the trial which LC subsequently agreed. The Respondent was not sure when Ms C went into default.

66.27 The Respondent stated that the firm's retainer with C regarding finding funding, meant the firm introduced the case to funders and ATE insurers. That was how litigation funders found their cases, through links to law firms. The firm sent them documents and invited them to fund cases. The Respondent referred the Tribunal to examples such as an email RP dated 26 June 2012:

> "I am still beavering away on the [C] case. It has been transferred to the High Court…"

The Respondent would send papers for various cases to litigation funders at the same time as the emails showed. The funder would make a written offer and then the firm either would or would not advise the client about it. It would be a separate retainer to advise a client about funders. The CFA was not about advising on a loan. The firm declined to do that for C.

66.28 In respect of conflict of interest, the Respondent considered that S Ltd and C had the same interest in the C litigation in as much as S Ltd would be better off if she succeeded than failed. It was "absolutely not true" that S Ltd was not interested in the progress of the case. It did not manage to recover its money because the case was lost and it had a charge over shares in K Ltd and not over the properties; a charge on properties was better than a charge on shares in the company owning them. When C lost the substantive case, the other side obtained a worldwide freezing order covering her beneficial interest in the properties. It took priority over S Ltd which knew at the outset that it would end up not recovering all its money in that circumstance. If C had won there would have been no adverse costs order and no freezing order and S Ltd's security would have been second to the Bank of Scotland. The Respondent confirmed C and P always wanted litigation funding or a second charge on property which it transpired they could not get. They were getting near to the July 2012 hearing date. The Respondent introduced C to LC as a stop gap. The loan was not intended to remain in place until the end of the hearing, unless they could not get other funding. The loan was also for a number of other cases of C's. Mr Collins suggested that the common interest of C and S Ltd was in being in a position no one wanted; the Respondent stated that both wanted C to obtain litigation funding and to win. LC gave a 6-month extension option because he knew she might not get litigation funding. Mr Collins pointed to the email from LC to JS of 28 January 2013 which referred to S Ltd declining to fund the case itself. The Respondent thought this was LC thinking about adverse costs and not that S Ltd had declined to finance the action as the loan agreement was clearly for legal fees. As to C thinking the loan was not litigation funding, the Respondent stated that one could take the loan either way; litigation funding was giving money to support litigation.

Traditional litigation funding would work on a percentage of damages recovered but in the Al Fayed case the individuals who each lent £5,000.00 to the claimant were friends rather than litigation funders working in the traditional way; adverse costs not only arose where the funder was getting a success fee.

66.29 The Respondent disagreed that S Ltd did not care about the litigation. He agreed C wanted the best litigation funding deal and S Ltd wanted the best deal for itself. As to whether the Respondent was aware of these interests in 2012, he was aware of the terms of the loan agreed already when S Ltd came to the firm. It was obvious that the Respondent would not be able to negotiate the terms of the loan between the 2 of them. He might have thought he could act for both when he first met C; but then he discussed it with H-J. The Respondent agreed that his letter of 24 May 2016 in response to the Applicant's EWW letter of 7 April 2016 did not refer to a Chinese wall but he did impose one on himself. He might have mentioned it to C at the May 2012 meeting with LC. As "belt and braces" he never got involved with H-J's relationship with S Ltd. He just told Ms C that he was not going to act for her. As to whether if a retainer changed that needed to be put in writing the Respondent stated that this would be a new retainer as his retainer with C did not extend to the loan. One would have to decide when it arose whether to act.

66.30 The Respondent rejected the suggestion that where a loan of £300,000.00 was secured on properties worth in excess of £1m of equity at 56% interest and where there was an immediate need for £15,000.00 plus VAT for counsel's fees and where clause 4.4 was at best unclear and at worst mistaken about the firm's retainer with S Ltd, C was not in a position to give informed consent to the firm being retained by S Ltd. He stated that there was a lot more information than was in the documents.

66.31 The Respondent agreed the firm was paid £2,000.00 plus VAT for drafting the agreement which LC probably had to pay. The Respondent agreed that his May 2016 letter to the Applicant referred to the loan agreement and not any other type of funding. It also said:

> "I did explain the risks and relevant issues to Ms [C]…"

He agreed that the firm benefitted by her being in receipt of funds so she could pay the firm. The letter also stated:

> "In those circumstances I considered it reasonable for the firm to act for [S Ltd] to assist Ms [C] to continue with her claim and that was her primary motivation and it was in her best interest that she obtain funding…We were also acting on a number of other cases for Ms [C] without pay and she considered it only fair we were paid if she could get funding."

66.32 The Respondent rejected the suggestion that he increased the chances of receiving future work from S Ltd by acting in respect of the loan. The firm had 100% of its work anyway. If S Ltd had told LC to get someone else to draft it he would still have come back to the firm to enforce it. C terminated the firm's retainer and so it was acceptable for the firm to enforce the loan. S Ltd liked and trusted the firm.

66.33 Mr Collins pointed to Ms C's witness statement with which the Respondent had not taken issue in cross examination or in his Response. It referred to HMRC serving a winding up petition against the firm "in or around May 2012". The Respondent agreed

a petition was served; monies were owed to HMRC and there were cash flow issues. The Respondent rejected the suggestion that one could therefore infer that he favoured S Ltd, his long- term relationship with S Ltd and the financial difficulties of the firm above his professional duties because the firm was paid to draft the loan and there was the prospect of fees if Ms C obtained funding and there were better prospects of success regarding the CFA. He also rejected the suggestion that his moral compass was not at all reliable. If he had sent S Ltd somewhere else and lost the £2,000.00 fee, the loan would still have been made.

Re-examination of the Respondent

66.34 In re-examination, the Respondent stated that when the firm took on the CFA they hoped they had a good genuine case and were dealing with genuine clients. He suggested it was pivotal to the case whether Mr P was in a relationship with Ms AM. In his opinion dated 10 January 2013, Mr B QC stated:

> "The issues in the case are complex and the factual background to the case and in particular the relationships between the parties are somewhat curious. There is very significant conflict of evidence between the Claimants and the Defendant.
>
> On any view, the Defendant appears to be something of an exotic but if the Claimants are believed she is a cunning rogue who has passed herself off to be someone very different from her true origins and standing. By such means she has effectively defrauded the Claimants and in particular caused Mr [P] to move assets and transfer to the Defendant a range of financial benefits and properties belonging to Ms [C] or in which she and he had joint or common interests.
>
> I have spent a great deal of time in conference with the Claimants - separately and together, together with [JS] of my instructing solicitors. We found them to be credible and reliable in their account of the matters in issue. Although there is clearly a potential for conflict between them – particularly having regard to the lurid allegations made by the Defendant, each of the Claimants has confirmed in writing that they have no objection to [the firm]and myself acting for them on their joint instruction and are each maintaining a consistent and complimentary (sic) history of the events…"

The Respondent stated that he told Ms C she had to accept the risk that the Defendant's allegations of a relationship with P were true and that he should stop acting for P, and C should join P as a party. When the witness evidence was served, the Respondent felt he had been deceived into acting under the CFA. The High Court found that the properties had been transferred legitimately to AM to pay debts of P to AM. Other damaging facts were found by the High Court. If Mr B QC had had those statements when he gave his opinion he would not have assessed the merits as being in the region of 66%. The Respondent asserted that the prospects changed dramatically after the loan was taken out. The Respondent had nothing further to do with the case; JS was left to deal with it. They were considering whether to terminate the retainer but did not need to. They suddenly received allegations that the loan money had not been paid. H-J thought they were ludicrous in the circumstances. The Respondent felt the clients' motives in making the allegations related to not paying the firm's fees.

66.35 In redirection regarding the documents he had access to, the Respondent did not dispute that by September 2017 he had identified 12,000 documents relating to C's litigation against AM. He stated that the firm would scan in all documents relating to a piece of litigation.

Applicant's Points of Law and Fact

66.36 Mr Collins submitted that, while there were criticism of C in the High Court judgment, her understanding came mainly from Mr P and her statements described by the Judge as false were statements made outside of court in circumstances described as harassment and which she accepted were not true. The Tribunal might feel that was a different set of circumstances from this case. They were incorrect statements in a domestic setting and did not take anyone too much further regarding evidence in this case. The Grace Shipping case was an uncontroversial reminder to bear in mind objective evidence and the Applicant relied extensively on objective documentation to establish its case.

66.37 Mr Collins referred the Tribunal to the case of Arkin v Borchard Lines and Others [2005] EWCA Civ 655 which addressed litigation funding and which was still good law applying at the relevant time frame.

66.38 Mr Collins also referred to the case of Iqbal v SRA [2012] EWHC 3251 (Admin) which set out that where manifest incompetence was not pleaded or specifically found at Tribunal level in circumstances where it appeared to the Tribunal the conduct was manifestly incompetent such a finding should be made. If the Tribunal accepted the position in the Reply that the loan was a sham to avoid adverse costs that encapsulated a finding of manifest incompetence which would involve the Tribunal not accepting the Respondent's clarification in evidence of that part of his Response.

Determination of the Tribunal in respect of allegation 1.1

66.39 The Tribunal had regard to the evidence including the oral evidence and to the submissions for the Applicant and by the Respondent. The allegations arose out of the Respondent's involvement in a major piece of litigation which took place in the High Court and the funding arrangements for one of the Respondent's clients Ms C. The Respondent acted for Ms C and her personal partner Mr P in their claim against Ms AM. In brief the claim was unsuccessful as was much of the counterclaim. In the judgment the Judge assessed the witness evidence and made certain criticisms of the parties. The case was clearly complex - the judgment ran to around 100 pages. Ms C informed the Tribunal that having previously failed to get permission to appeal she had succeeded contemporaneously with this hearing in having the matter re-opened by the Court of Appeal. The firm was not the first or the last to act for Ms C in the claim. It was clear that the Respondent and Ms C both felt very strongly about the allegations before the Tribunal and the Tribunal heard oral evidence at length from both. The Tribunal considered however that the issues relating to the Respondent's conduct, while they required a level of understanding of the High Court Case, were different from the issues in the High Court.

66.40 In respect of allegation 1.1, on his own account (in his witness statement) the Respondent acted from "around 2011" for Ms C in various matters including her litigation against Ms AM. The client care letter was dated 5 August 2011. It was not disputed that the Respondent was still acting for Ms C in May 2012. That retainer

concluded in 2013, on the evidence in early April. It was not material to determining the allegations which of the Respondent or Ms C terminated it. During the course of the retainer, Ms C entered into a loan agreement with another client of the firm S Ltd (whose main actor in the loan was its director the now deceased Mr LC) in the amount of £300,000.00. The agreement was dated 20 June 2012 in what the Respondent said was his handwriting but the exact date it was signed was disputed between the parties. Ms C originally believed it to have been signed on 22 July (a Sunday) or 23 July 2012 but the Respondent, who stated he went through it with her before she signed it, presented evidence that he was out of the country at that time. The Tribunal found that the agreement was certainly signed in the summer of 2012 and that the Respondent and Ms C were both present when she signed. The Tribunal did not consider that anything turned on the exact date of signature. It was not disputed that Ms C needed money to continue to fund her litigation activities. These were wider than just the main action against C which in itself was anticipated to be costly. It was hoped by all involved that the monies borrowed from S Ltd at 56% would be replaced within 6 months or at worst 12 months by traditional litigation funding. That proved to be impossible for reasons which were disputed. At a later date, Ms C defaulted on the loan and S Ltd instructed the firm to take enforcement proceedings against her by a claim dated 18 July 2013. It was alleged that the interests of S Ltd were in conflict with those of Ms C (allegation 1.1.1). The Tribunal would address the 2 stages of the firm acting for S Ltd separately.

66.41 First, regarding the firm acting for S Ltd in making the loan to Ms C, the Respondent did not accept that there was a conflict of interest between them. Put simply his case was that if the Tribunal found there to be a conflict or significant risk of a conflict between the clients they had a substantially common interest in Ms C winning the litigation and that the conditions in Outcome (3.6) were satisfied so that he was not in breach of his duty at Outcome (3.5). The Respondent also gave evidence that he did not act for Ms C in respect of the loan agreement and that his firm's retainer with S Ltd was strictly limited to drafting the agreement in terms already agreed between S Ltd and Ms C. Ms C in her oral evidence and as she said in her witness statement: "understood at all times that he [the Respondent] was acting on her behalf in relation to all matters including the loan agreement." The Tribunal also had regard to the documents relating to the loan. A considerable number of points had been gone through in cross examination of Ms C and the Respondent including whether her not having received the loan monies had been dealt with in High Court litigation for default on the loan but the Tribunal did not consider that this was relevant to allegation 1.1. The Respondent also asked the Tribunal to disregard her evidence in its entirety. The Tribunal had regard to the guidance in the Grace Shipping case when considering all the evidence. The Tribunal occasionally found Ms C's evidence to be confused but where it was relevant to the allegations it was generally supported by documents or the Respondent's own evidence. The Tribunal considered that it had a considerable volume of relevant documents available and it was able to arrive at a determination largely on the basis of the documents so that the detail of what was disputed between the Respondent and Ms C was not determinative or even in the main relevant. The Respondent had implied that not all the relevant documents had originally been disclosed either to the Applicant by the witness or by the Applicant to the Tribunal. The Tribunal took no view upon this assertion.

66.42 It was not disputed that in May 2012 Ms C was a client of the firm in respect of various pieces of litigation or that the firm drafted the loan agreement for S Ltd. The Tribunal found that the terms of the loan agreement at clause 4.4 were quite clear. The firm was

retained to advise S Ltd "in respect of the Loan and all aspects thereof". The Tribunal had no evidence from Mr H-J who acted for S Ltd or from anyone else that this was what the Respondent described as "catch-all drafting". Regarding the firm's duties to Ms C, the Respondent gave evidence supported by documentation filed on the first day of the hearing of the efforts made by the firm to secure litigation funding for Ms C. The CFA at clause 13.2 stated the firm's responsibilities included always acting in the client's best interests and:

> "giving the Client the best information possible about the likely costs of the Claim and the different methods of funding those costs."

The client care letter stated under the heading "INITIAL ACTION":

> "To advise you and investigate the costs of an ATE policy and the possibility of a funder funding your claim."

The loan agreement stated at paragraphs 4.5 and 4.6:

> "That [the Firm] have informed [C] that they cannot accept instructions from her or offer her advice in respect of the Loan or the drafting of the Loan documents and that in these matters they are acting solely for and in the interest of [S Ltd].
>
> That she has been advised by [the Firm], but has declined, to seek independent legal advice."

The Respondent maintained that he did not act for Ms C in respect of the loan but at the same time in his statement he said:

> "I was very cautious as I was not acting for Ms C but I remember reading through it… she read the agreement in my presence. I do not believe she had seen it before...In any event she read it through with me and she understood exactly what it meant."

Also in oral evidence the Respondent confirmed that they had read through the loan agreement together. This action was an example of the extent to which the firm was involved in the funding issues. Ms C had some recollection of them reading it but was unclear about the date. The Respondent in evidence accepted that finding funding for the case fell within his retainer. The Tribunal also noted for example the email from JS of the firm to Ms C of Friday 20 July 2012 where JS said:

> "I have been trying to sort out the issue of funding for the best part of today to no avail."

That email also set out the funding options; get K Ltd to sign the necessary documentation over the weekend so the S Ltd loan could be drawn down or otherwise provide £18,000.00 to the firm in the same timeframe. This was also consistent with the efforts that the Respondent made later to get the loan extended. He was deeply involved in it. The Tribunal found that he could not cherry pick among his duties to the client and subdivide his duty to advise on funding litigation and to give her the best advice; the Tribunal found that the matter of funding was clearly integral to the Respondent's duties to Ms C. The Tribunal considered that in the light of the other documentary evidence and the Respondent's own evidence of how he had conducted

the loan matter with Ms C going through it with her line by line before she signed it, clauses 4.4 and 4.6 in the loan agreement had not applied in practice. What the Respondent and the firm did and the documentation were consistent with acting for Ms C in the round; on the litigation and the loan agreement, indeed the latter was part of the former.

66.43 The Tribunal also found as a fact that the firm was acting for S Ltd; the position that another member of the firm H-J drafted the agreement for S Ltd and that the Respondent maintained that he did not become involved did not undermine that fact and the Respondent did not dispute that the firm acted but he sought to minimise the extent of its retainer to do so. Whatever the scope of the retainer with S Ltd, the firm was acting for that company. The director LC complained he received no advice about Ms C's matter but that was later when the loan had not been replaced as planned and he was understandably unhappy. The Tribunal considered that it was inconceivable that the retainer was as limited in respect of the document as the Respondent urged on the Tribunal; it was not credible that a document was drafted without any advice being given upon it and the terms of the loan agreement did not support that position.

66.44 The Tribunal was satisfied that C and S Ltd were both clients of the firm in respect of the loan/loan agreement and that there was a client conflict or significant risk of a conflict between them. That conflict lay in their differing interests. The interests of Ms C were to obtain funding to take her litigation forward and win it. S Ltd wished to lend at a profit and be repaid. Even if S Ltd accepted the loan might continue beyond 6 months, on the Respondent's own evidence in his witness statement and Response, S Ltd did not wish to get involved in the litigation and/or risk an adverse costs order. It was not a conventional litigation funder. Furthermore, the loan was secured on shares in K Ltd. It was not dependent on the litigation succeeding. The loan was clearly intended to be short-term only and to be repaid which raised the spectre of default where the clients would be pitched against each other. The Tribunal considered, based on its foregoing analysis, that the clients did not have a "substantially common interest". As there was no substantially common interest, the conditions to be satisfied in Outcome (3.6) did not apply. Even if they had, on the Respondent's own evidence he had not complied with them. He did not explain the relevant issues and risks to Ms C; he emphasised that he did not advise her and the Respondent did not consider, looking back, that what he did carried any risk about which to give advice with which view the Tribunal disagreed. There was no informed consent to act for both clients from Ms C or S Ltd. There was no evidence that it was reasonable for the Respondent to act and it could not be in both clients' best interests on the Tribunal's analysis. In the circumstances the Respondent could not be satisfied that the benefits to the clients outweighed the risks. The Tribunal found proved on the evidence to the required standard that the Respondent had in or after May 2012 accepted or caused to be accepted instructions to act for S Ltd where those instructions were in conflict with the interests of client C as alleged in 1.1.1.

66.45 The Tribunal considered that the Respondent had by his actions breached his obligation not to allow his independence to be compromised (Principle 3), to act in the best interests of each client (Principle 4), and to behave in a way that maintains the trust the public places in you and in the provision of legal services (Principle 6). He had also breached Outcome (3.5) and acted where there was a client conflict and the exceptions in Outcome (3.6) did not apply. The Tribunal found allegation 1.1.1 proved on the evidence to the required standard in respect of the Respondent accepting instructions from S Ltd on the loan.

66.46 The Tribunal also considered whether there was a conflict when the firm accepted instructions to take enforcement proceedings against Ms C when she defaulted on the loan. It was clear that when proceedings were issued the retainer had been terminated. In her statement Ms C said: "In April 2013, I decided to instruct a new firm of solicitors…" This appears to have been in early April 2013 as set out in a letter from her costs adviser Mr PM to her dated 4 April 2013. PM said he understood she had notified the firm of her decision and it would no longer be acting for her. The Tribunal accepted the Respondent's argument based on the case of Bolkiah that as Ms C's retainer had come to an end there was nothing to prevent the Respondent from accepting or causing the acceptance of instructions to act for S Ltd in enforcing the loan providing he did not breach Ms C's confidentiality which formed no part of the allegation. The Tribunal did not find allegation 1.1.1 proved on the evidence to the required standard in regard to the firm accepting instructions to act for S Ltd in the enforcement proceedings. The question of breach of Principles and the Outcomes alleged in respect of allegation 1.1.1 did not therefore arise.

66.47 In respect of allegation 1.1.2, relating to own interest conflict or significant risk of such conflict, if this was found to exist there was a blanket ban on acting for the client. The Tribunal had found as a fact that the Respondent was retained to advise Ms C on funding. The Tribunal noted that the loan agreement at 4.2 provided:

> "payment of the Loan to [the firm] (less the said legal costs and arrangement fee) to be applied by them in or towards satisfaction of costs owing by her to [the firm]".

This gave the Respondent an interest in the loan by way of recovering fees already incurred. The litigation could not go on without the loan and so the firm had an interest in it going forward as well. The firm also earned a fee from S Ltd for the agreement; the fact that on the Respondent's evidence the firm's fee was £2,000.00 which the Respondent deemed modest in the overall turnover of the firm at that time did not undermine the own client conflict. The Respondent submitted that the client was sophisticated in litigation matters; this might affect the way in which the solicitor dealt with the client but it did not weaken the solicitor's duty to the client. The Tribunal found allegation 1.1.2 proved on the evidence to the required standard in respect of accepting instructions to act for S Ltd in respect of the loan and that this constituted a breach of Principles 3, 4 and 6 and of Outcome (3.4), you do not act if there is an own interest conflict or a significant risk of an own interest conflict. However, as with allegation 1.1.1 the Tribunal did not find this allegation proved in respect of acting for S Ltd to enforce the loan.

66.48 In respect of allegation 1.5 failure to act with integrity related to allegation 1.1, the Tribunal had regard to the guidance given in the case of SRA v Wingate and Evans to which Mr Collins had referred. Particularly relevant was the reference to paragraph 101 "(iii) Subordinating the interests of the clients to the solicitors' own financial interests…" The Tribunal considered that the Respondent had behaved in a cavalier fashion in respect of the firm taking instructions from S Ltd to act regarding its loan to Ms C. He had preferred the interests of one client (S Ltd) over another (Ms C). He did not advise her of the risks she was taking by the loan; she exposed herself to an interest rate of 56%. There was an alternative – to pay the firm to cover immediate needs only; £15,000.00 plus VAT by way of counsel's fees for an imminent hearing but no advice was given to Ms C about that. There was no evidence she was advised to seek independent advice and on the Respondent's own evidence, she was not. The

Respondent merely relied on the clauses in the loan agreement that said she had been so advised. JS's letter of the Friday preceding the imminent hearing presented just the 2 stark choices: take the loan or make a cash payment into the firm. The Respondent sought out the loan arrangement and Ms C was encouraged to go into it. She alleged that she was bullied to do so; the Tribunal took no view about that but in any event the Respondent allowed her to go ahead with the loan which benefitted the firm because it enabled the litigation to continue and was favourable to a longstanding client of the firm. The Tribunal considered that the Respondent had failed to adhere to the ethical standards required of the solicitors' profession in behaving as he did regarding the loan. The Tribunal found allegation 1.5 proved to the required standard on the evidence and found that the Respondent had failed to act with integrity in respect of allegation 1.1.

67. **Allegation 1.2 - Between on or around 23 July 2012 and on or around 20 May 2013 and having received up to £288,600 from S Ltd on behalf of Client C ("the loan") [the Respondent]:**

1.2.1 did not deposit the loan in the Firm's client account, in breach of Rule 14.1 of the SRA Accounts Rules 2011;

1.2.2 did not keep adequate accounting records of the loan, in breach of Rule 29.1 of the SRA Accounts Rules 2011;

1.2.3 transferred monies to the Firm's office account in settlement of fees without first sending a bill of costs or other written notification of costs to Client C prior to using the loan in payment of the Firm's fees, in breach of Rules 17.2 and/ or 20.3 of the SRA Accounts Rules 2011;

1.2.4 did not appropriately record dealings with the loan, in breach of Rule 29.2 of the SRA Accounts Rules 2011

and in doing so breached Principles 5, 6 and 8 of the SRA Principles 2011.

67.1 Principles and Rules cited in the allegation:

SRA Principles 2011

"You must:

5. provide a proper standard of service to your clients;

6. behave in a way that maintains the trust the public places in you and in the provision of legal services;

8. run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles"

SRA Accounts Rules 2011

Allegation 1.2.1

Rule 14.1

Client money must without delay be paid into a client account, and must be held in a client account, except when the rules provide to the contrary (see rules 8, 9, 15, 16, 17 and 19).

Allegation 1.2.2

Rule 29: Accounting records for client accounts, etc.
Accounting records which must be kept
29.1
You must at all times keep accounting records properly written up to show your dealings with:
(a)
client money received, held or paid by you; including client money held outside a client account under rule 15.1(a) or rule 16.1(d); and
(b)
any office money relating to any client or trust matter.

Allegation 1.2.3

17.2
If you properly require payment of your fees from money held for a client or trust in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party.

17.3
Once you have complied with rule 17.2 above, the money earmarked for costs becomes office money and must be transferred out of the client account within 14 days.

20.3
Office money may only be withdrawn from a client account when it is:
(a)
money properly paid into the account to open or maintain it under rule 14.2(a);
(b)
properly required for payment of your costs under rule 17.2 and 17.3;
(c)
the whole or part of a payment into a client account under rule 17.1(c);
(d)
part of a mixed payment placed in a client account under rule 18.2(b); or
(e)
money which has been paid into a client account in breach of the rules (for example, interest wrongly credited to a general client account) - see rule 20.5 below.

Allegation 1.2.4

29.2
All dealings with client money must be appropriately recorded:
(a)
in a client cash account or in a record of sums transferred from one client ledger account to another; and
(b)

on the client side of a separate client ledger account for each client (or other person, or trust*)*.
No other entries may be made in these records.

67.2 For the Applicant, Mr Collins submitted that this set of allegations included a variety of failures. These were set out in the Rule 5 Statement as follows (omitting most cross references):

> "Improper handling or accounting of client funds (Allegation 1.2)
>
> Did not deposit the loan in the firm's client account (Allegation 1.2.1)
>
> 38. Under paragraph 4.2 of the Loan agreement, the loan (less legal and arrangement fees) was to be paid to [the firm] 'as good and sufficient discharge to [S Ltd]'.
>
> 39. The ledgers received by the Applicant from the Respondent can be seen at … No money is recorded in C's client account between 21 November 2011 and 24 April 2013, with the exception of a £3,000 refund of Counsel's fees.
>
> Did not keep adequate accounting records of the loan (Allegation 1.2.2)
>
> 40. The Respondent failed to keep complete accounting records to show his dealings with C's client money received or held or paid (see paragraphs 38 to 39 above).
>
> 41. It is additionally relied upon that C did not receive breakdowns of the funds when requested:
>
> > "Despite numerous requests from myself and subsequent solicitors, I have never been provided with a breakdown of the funds by [the Firm]"
>
> Transferred monies to office account in settlement of fees without first sending a bill of costs (1.2.3)
>
> 42. By letter dated 20 May 2013, the Respondent requested funds for the balance owed by C of £55,464. A total of £288,600 is recorded as paid. Additionally, the Respondent's letter to the Applicant, dated 24 May 2016, notes that 'the sum of £55,4654.79 (sic) (being £344,064.79 less £288,60[0] the sum paid from [S Ltd's] loan) was due and we would not release our papers until the sum was paid'.
>
> 43. C confirms that she 'did not receive payment of the loan from [the Firm] and I do not know how the monies have been used by [the Firm].
>
> Did not appropriately record dealings with the loan (Allegation 1.2.4)
>
> 44. Paragraph 38 to 43 above are repeated."

67.3 Mr Collins submitted that in a large part these charges flowed from documents in the hearing bundle relating to the firm's accounts. Mr Collins directed the Tribunal to the ledger card for Ms C's litigation. The right hand side for client matters was noticeably deficient save for £3,000.00 on 1 August 2012. Her evidence was that she did not receive notification about when the loan monies were spent which was supported by the absence of records within the ledger card. Nevertheless, the table attached to the firm's letter to G Solicitors dated 20 May 2013 showed outstanding fees with the amount paid reflecting the net amount left from the loan. That is the loan monies appeared to have been used towards Ms C's litigation without notification as required by the SRA Accounts Rules. Mr Collins clarified that while it was part of the Applicant's case and it was Ms C's evidence that no invoices had been delivered (allegation 1.2.3) the Applicant's case rested on the ledgers. As to the banking records presented on the first morning of the hearing, the Tribunal should place what weight it felt appropriate on them but in themselves they were not determinative of the loan going into client account because there was an issue of continuity attaching loan funds to the funds recorded as paid into a client account and the issue of establishing that the funds were allocated as loan monies. Mr Collins drew the Tribunal's attention to the timings on his chronology. On the papers, money was transferred in early June 2012. On the Respondent's case, agreement was reached on 20 June 2012. It would appear that, when the money was paid into client account, there was no loan in place. For the money to be paid in as a loan, there would need to be evidence on the Respondent's own case of it being allocated around 20 June 2012 and there was no material to that end. The evidence pointed strongly to it not being allocated as loan monies to Ms C because the ledger card had no entries for that. Therefore, while funds might have gone to client account in respect of S Ltd they were its funds not hers.

Submissions of the Respondent

67.4 The Respondent submitted that the Tribunal had seen evidence from HSBC that the money had been paid into client account. Regarding the other aspects of allegation 1.2, the issue was not one of records not being kept by the Respondent but of his not being able to obtain documents because of the liquidation of the firm. The loan could have been recorded on another ledger than the one for the litigation even though that ledger recorded disbursements against the loan monies. One could have numerous ledgers for one matter. Preferably the loan should have been recorded on the litigation ledger on the date of draw down. He accepted the loan was not properly recorded on that ledger but it could be on others that would not put him in breach of the rules. He did not do the accounts. He was not automatically responsible for other people's mistakes. He could not check their every move just because he was a partner.

67.5 Regarding allegation 1.2.3, the Respondent submitted that there did not have to be a bill. He referred the Tribunal to the letter from the firm dated 20 May 2013 enclosing the schedule of fees and disbursements to G Solicitors. It included:

> "We have now had the opportunity to review the files and prepare a breakdown of our firm's outstanding fees in connection with the matters upon which this firm was instructed by Ms [C].
>
> Following a telephone conversation with you earlier today, we have also reviewed the undertakings that we proposed under cover of our firm's letter dated 16 May 2013…

> As stated in our letter, we also enclose herewith a breakdown of our firm's costs incurred to date. The balance owing to us is the sum of £55,464.79. This is based on the agreed 50% Discounted Conditional Fee Agreement. In the event that Ms [C]'s claim against Ms [AM] is successful, the balance of our fees, disbursements and any additional liability in the matter will also become due and owing by Ms [C]. This will be an additional sum of £365,860.77, including VAT and success uplift at a rate of 66.5%.
>
> Once we have received our firm's fees in the sum of £55,464.79, as well as the signed undertaking in the form attached herewith, we will release our papers…"

The Respondent submitted that this letter provided a breakdown of what money was billed on a number of files. Disbursements did not have to be on a bill. He did not accept that on 22 July 2012 C did not know about the payments, JS was consistently saying he needed £15,000.00 plus VAT to pay counsel. She would know that if there was an application the firm would pay a court fee. He did not believe JS would instruct counsel willy nilly without notification. The Tribunal suggested it would have been the natural thing to do to send invoices in response to the email from PM on 4 February 2013 which requested a detailed list of documents. The Respondent pointed to the fact that time recording entries that had been recorded against C's various files had been provided with the firm's reply. PM did not complain in subsequent emails that he did not receive them. Time recordings would show every telephone call, letter and disbursement, in more detail than on a bill. On 4 February 2013, JS emailed:

> "Further to our telephone conversation last Friday, I have put together some figures in respect of the fees incurred to date. These relate to Ms [C] and Mr [P's] claim against Ms [AM] along with the proposed Claims against the Estate of [EN] deceased…"

On 5 February 2013 JS emailed PM:

> "Ahead of our meeting tomorrow, please see the attached documents."

The Respondent submitted that the client would already have had a breakdown of what was on the schedule attached to the firm's 20 May 2013 letter to G solicitors. The Respondent also relied on the firm's letter of 11 May 2012 to the clients quoted under Ms C's witness evidence above, which he submitted gave a breakdown of costs and disbursements and the figures attached to an email of 4 February 2013 at 17.43, a 2 page costs estimate. He submitted that an email of 6 February 2013 at 17.17 to Ms C from JS showed that these documents had been sent to PM and JH – it referred to a meeting the Respondent and JS had with them that afternoon. Part of PM's brief was to look into all the costs incurred – to satisfy himself that they had all been incurred as subsequent emails that month showed. JS sent PM all he needed to do an assessment of costs. Later PM said he could help C get costs assessed; it was what he did.

67.6 As to allegation 1.2.4, the Respondent said he was not sure what was meant by not appropriately recording dealings with the loan. He had not had the records available to him for some time.

<u>Evidence of the Respondent</u>

67.7 The Respondent accepted that the loan was not recorded in the ledger card which ended at 24 April 2013 for Mr P and Ms C in the litigation against AM. He had no access to the firm's servers. Mr Collins referred to an email from the Respondent to Mr AD of the Applicant dated 20 May 2016 in which the Respondent provided ledgers retrieved from his email. The date 20 May 2013 was shown on the bottom right hand corner of the copy ledger. There was also a letter of that date from the firm to G solicitors acting for Ms C. The Respondent agreed the copy ledger could have been printed on that day. Mr Collins suggested the ledger could have been printed by JS whose name was shown in a reference at the foot of the ledger pages as part of a reconciliation exercise preparing the schedule provided to G Solicitors on that date. The amount shown as paid on the schedule £288,600.00 matched the net amount of the loan suggesting it had been drawn down by 20 May 2013. The Respondent agreed that the figure represented fees and disbursement and stated that it related to a number of cases. He did not think all the amounts had been paid because there would have been invoices but one did not need invoices to pay disbursements which were shown as office payments and he thought were the same as in JS's table (to the letter to G of the same date).

67.8 In respect of a copy cheque dated 30 May 2012 made payable to the firm and drawn on S Ltd's account for £300,000.00, the Respondent stated that at the meeting with LC (in May 2012) the loan was agreed in principle but as LC was going away he said he would leave a cheque with the firm and if C wanted it, it was there. The Respondent agreed it was paid into client account and labelled as LC money until the draw down date when it should then have been labelled as C's funds. He agreed that there was draw down in the summer of 2012. There was no record on that ledger. He sent to AD of the Applicant the only ledger he could find. He did not have access to other ledgers. The money could have been held to C's order in that ledger or put in a C/S Ltd ledger. If it was not transferred it would have been held to her order. It was certainly not used by S Ltd or to its benefit. The absence of recording on the litigation ledger would not have been correct but annual audits found a lot of errors; it was a large firm and inevitably there were a lot of errors. They had to reconcile globally. In his Response, the Respondent's stated:

> "The accounts of the firm are no longer available to R and were not at the time of the letter from the SRA but as far as R recalls the funds were paid into S Ltd account until used to pay for the fees due under the discounted CFA."

The Respondent said it was a possibility that the funds had been put into S Ltd's name and account and stayed there until paid to the firm. Either way the money was held to C's order and S Ltd would have been aware of it because it was a mistake and it was not something the Respondent would have looked at or dealt with. JS was dealing with it. The Respondent's role was at the evidence gathering level and making introductions to funders. JS prepared the estimates and payment of disbursement was done by JS through the firm's accounts department both of whom would have known the money was for Ms C.

67.9 As to Ms C's assertion that invoices were not sent, the Respondent did not have the files but invoices for fees would go to the address in the ledger and fee notes would have been sent for disbursements. He imagined that there was a ledger somewhere else or the firm would have laid out its own money and it would not do that.

67.10 Mr Collins referred to the letter dated 12 September 2014 from S Law to the firm marked as a draft. The Respondent confirmed that the firm was still in operation at that time so he and the firm members had access to all drives. The letter included:

> "None of the amount loaned was ever received physically received by Ms [C]…"

The Respondent agreed this was quite a serious allegation which he as managing partner of the firm and colleagues would take seriously and would reply rebutting it on the strongest available basis. The letter in reply from the firm to S Law dated 26 September concluded that the firm took great exception to the allegations in S Ltd's letter. Mr Collins suggested that the obvious response would be to look through the files and extract invoices and send at least a selection. The Respondent stated that H-J would not have access to that file and the invoices and it was a minor allegation in the letter. In the reply letter H-J dealt with the important issues. If C did not receive invoices it was not a failure of the Respondent. He did not see the letter or reply until these proceedings. The Respondent stated that the firm could not take money unless invoices were raised; he did not know what happened to them. The first time he was put in a position of having to find the invoices was 4 years afterward and it was now 6 years.

Determination of the Tribunal regarding allegation 1.2

67.11 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and by the Respondent. In respect of allegation 1.2.1 the Respondent had produced evidence on the first day of the hearing that a cheque dated 30 May 2012 from S Ltd in the amount of the loan had gone into the firm's client account. The fact that it was paid in advance of the date of the loan did not detract from the fact it was paid into the firm's client account. The Tribunal found that allegation 1.2.1 was not proved on the evidence to the required standard.

67.12 In respect of allegation 1.2.2, the Tribunal found that the loan funds were paid into client account and the funds were drawn down. The Respondent did not dispute that. The Respondent had submitted that there were 2,000 boxes of documents from the former firm and that it would be futile to go through them. He also submitted that the loan could have been shown on another ledger and that the firm made lots of accounting mistakes but the Tribunal concluded on the evidence before it that the ledger relating to the litigation should have recorded the loan and it did not do so. An issue had been raised by Ms C about the loan monies not having been passed on to her but this was not the subject of any allegation and not therefore a matter for the Tribunal to adjudicate upon. Rule 29.1 required client ledgers to be written up. The loan amount must be shown on a client ledger in Ms C's name but the only such ledger before the Tribunal, the one relating to the litigation against Ms AM, did not record the loan amount. The fact that it showed the amounts deducted was not adequate to satisfy the requirements of the rule. The Tribunal found allegation 1.2.2 proved on the evidence to the required standard.

67.13 In respect of allegation 1.2.3, the Respondent had spent some time taking Ms C in evidence through correspondence with her later representatives about how the loan money had been applied. The Tribunal considered that the crucial words in the allegation were "without first sending" and "prior to using the loan in payment of the firm's fees". The Tribunal found that there was no evidence of notification or of monies being transferred to office account within 14 days of notification or of a bill being

delivered. In the heading of the ledger for the litigation the last entry on which was dated 24 April 2013 the following figures were shown:

- "Costs delivered" "0.00"
- Work in progress £262,735.00
- Time recorded £263,410.00.

The schedule attached to the firm's letter of 20 May 2013 showed work in progress for the AM litigation as £366,227.00; it had jumped up by £100,000.00 with "Paid £288,600.00" the net loan amount and outstanding fees as £55,464.79. A summary of fees attached to the Respondent's email of 20 May 2016 to AD of the Applicant enclosed the ledgers which he said he had found in his email as he could not access the firm's servers. They showed work in progress as £366,227.00. It was not clear where this figure came from. All the letters the Respondent pointed to were written to justify what the money had been spent on some time ago with the exception of the letter of 11 May 2012 which was written early on. That letter consisted of historical information and estimates of future costs at a high level. It did not record what fees had been incurred and inform the clients that monies were to be taken in satisfaction of those fees from client to office account. The letter to G Solicitors enclosing a schedule was written a year later, after Ms C's retainer had ended. The Tribunal found that the correspondence relied on by the Respondent did not satisfy the requirements of the accounts rules. Within a year the net loan of £288,600.00 had been disbursed and the client had not been notified how. The Tribunal found allegation 1.2.3 proved on the evidence to the required standard and that Rules 17.2 and/or 20.3 had been breached.

67.14 In respect of allegation 1.2.4, the Tribunal found that the loan money which was cash should have gone into a designated client account; it was not shown in a client cash account; there was no record of sums transferred from one client ledger to another and it was not shown on the client side of a separate ledger account for the client. It was certainly not shown on the client side of the litigation ledger which was blank. On the evidence before the Tribunal, dealings with the loan had not been appropriately recorded. The Tribunal found that the Respondent had thereby breached Rule 29.2 and that allegation 1.2.4 was proved on the evidence to the required standard.

67.15 The Tribunal found that the Respondent's actions set out in allegations 1.2.2-1.2.4 constituted a breach of Principle 5 the requirement to provide a proper standard of service to the client, Principle 6 maintaining public trust and Principle 8 running your business or carrying out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles. In summary, the Tribunal found proved on the evidence to the required standard all aspects of allegation 1.2 with the exception of 1.2.1.

68. **Allegation 1.3 - On or about 25 January 2013, [the Respondent] caused or permitted the disclosure to S Ltd of counsel's advice obtained pursuant to the instruction from, and for the benefit of, Client C, without the consent of Client C, and in doing so breached Principles 4, and 6 of the SRA Principles 2011 and Outcome 4.1 of the SRA Code of Conduct.**

68.1 Principles 4 and 6 of the SRA Principles 2011 cited in allegations 1.3 are set out in respect of allegation 1.1 above.

Outcome 4.1 of the SRA code of Conduct 2011

"**O (4.1)**
you keep the affairs of clients confidential unless disclosure is required or permitted by law or the client consents;"

68.2 For the Applicant, Mr Collins submitted that there was now a copy available of the advice in question but he submitted that its contents did not take matters too much further. When dealing with a privileged document consent should be obtained before disclosure to another party. By an email dated 25 January 2013, Mr JS sent an email to LC at the P Foundation saying:

> "With respect to [L, a potential funder and LC's son's company] and funding for the above Claim going forward, I enclose herewith a copy of Counsel's advice..."

It was not disputed in the Respondent's Answer that the advice was sent. Ms C addressed the release in her statement:

> "I did not provide my consent to send Counsel's advice to Mr [LC]. I did not know that Counsel's advice had been given to [LC] until I saw the email."

It was the Respondent's position that he would have expected his colleagues to have obtained consent but he could not provide direct evidence on that issue. Mr Collins submitted that as Managing Partner of the firm the Respondent was responsible for failures in that regard. As part of C's case, an advice was prepared by leading counsel in relation to the claim. The Respondent had a duty to maintain C's confidentiality in disclosing the opinion, or causing or permitting its disclosure, the Respondent breached C's confidentiality. Mr Collins pointed out that the wording of the allegation included the words "caused or permitted" and it was for the Tribunal to decide if that applied. If it found factually that the disclosure was not permitted it should go on to consider if Principles 4 and 6 were engaged.

68.3 The Respondent submitted that he believed the firm had a blanket authority allowing JS to disclose the counsel's opinion. It would not assist S Ltd in enforcement in any way; it was a short note regarding the high prospects of success. Its only purpose was to show to a funder. For example, an email to another ATE funder Mr R dated 24 February 2013 showed that was what the document was used for. It included:

> "In the meantime the [C] case has now got a Barristers opinion at I believe 66%, they are looking for a funder, they can offer ATE, plus property by way of security.
>
> They need circa £1.2 Mil, I have a loan in there for circa £400K that would be taken out…"

The Respondent submitted that even if the Tribunal thought a blanket general authority was not adequate and JS should have obtained an express authority, this was not something the Respondent could be responsible for; JS was a qualified solicitor. There was a division of duties. The Respondent dealt with the overall evidential position of the case not the day to day running. In emails, Ms C talked about having substantive meetings with JS alone. The Respondent was not in all the meetings with the Respondent holding his hand.

68.4 In evidence the Respondent agreed that he believed that Ms C provided consent to disclose the advice to litigation funders. He stated that the advice could be provided to litigation funders and ATE insurers. Litigation funders always wanted ATE insurers involved in the action so that if the case was lost they would get their money from the insurer. He agreed LC was not a professional litigation funder according to the traditional definition. He agreed the loan was not conditional on Ms C winning her case. She gave consent for the opinion to be given to a professional funding agent to give to anyone who would consider a loan or funding regarding the litigation. LC obtained the advice to send to an ATE insurer. Only JS knew the scope of her consent; he put together most of the material for litigation funders. The Respondent did not know the precise scope of it. There was another person responsible identified in the client care letter as well as the Respondent (JS) however the Respondent agreed he was the senior lawyer. All the counsels' advices obtained from when he started acting for C and P were for the purpose of obtaining funding. The firm had general consent to send advice to funders but the Respondent could not remember what consent they had at that particular time.

68.5 The Tribunal had regard to the evidence including the oral evidence, to the submissions for the Applicant and by the Respondent. Ms C gave evidence that she had not consented to the release to Mr LC of the advice in question. The Respondent believed that the firm in the person of JS had consent to use it to seek funding and there was evidence of documentation being sent to litigation funders for that purpose. The Tribunal found as a fact based on its contents that the advice was clearly prepared for the purpose of seeking funding. The wording of JS's email of 25 January 2013 to LC was in similar vein. The enforcement claim was dated some time later, 18 July 2013. Ms C distinguished LC from other funders because he was not a traditional litigation funder. The Tribunal found as a fact that the release of the advice of Mr B QC was part of the ongoing effort to obtain litigation funding. It could very well have been covered by a general consent so that it could be passed via LC to a litigation funder which L was and the Tribunal found that Ms C knew of the purpose for which it was being used generally. The Tribunal did not consider that it was proved beyond reasonable doubt on the evidence that the disclosure was made without C's consent and found that allegation 1.3 was not proved.

69. **Allegation 1.4 - [The Respondent] Did not provide the SRA with information and/ or documents requested by the SRA on 5 July 2016 for the purposes of its investigation, and in doing so breached Principle 7 of the SRA Principles 2011.**

69.1 Principle 7 cited in allegation 1.4 required that you must:

> "comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;"

69.2 For the Applicant, Mr Collins submitted that on 5 July 2016, Mr AD of the Applicant emailed the Respondent asking for a variety of documents and information:

> "The copy ledger you have provided in the matter of [the substantive litigation] does not show (i) receipt of £288,600 from [S Ltd] or otherwise, or (ii) bills to [C].
>
> As you are aware, one of the complaints raised by [C] is that at no stage has she been told how the funds from [S] have been utilised.

> Please explain and support your explanation with documents where available, including bank statement (sic) to show the receipt of funds from [S Ltd].
>
> Please also provide copies of all correspondence between your firm and [S Ltd] in relation to the loan."

No substantive response or further documentation was received by the Applicant. The Respondent therefore failed to co-operate, promptly or at all, with his regulator in respect of this request. The email of 5 July 2016 flowed from previous correspondence to that email address (of the Respondent at the firm) between the Forensic Investigation Officer and the Respondent. In the new documents which the Respondent had provided there were IT related emails saying that at this point the Respondent no longer had access to that email account. Mr Collins submitted that the Tribunal might think that as part of his duty to cooperate with the Applicant responding to emails would extend to providing up to date information if the solicitor's circumstances changed.

Submissions of the Respondent

69.3 The Respondent submitted that he did not receive AD's email. He did respond to those he received. He would have welcomed the opportunity to make representations. There was no deliberate attempt to run from the matter. Whenever he had issues with the Applicant throughout his career he always cooperated. It was a genuine error; he just did not see the email.

Evidence of the Respondent

69.4 In cross examination, the Respondent stated that he not received the email dated 5 July 2016 from AD of the Applicant because he had lost access to the Office 365 server. The arrangement was cancelled between 2 emails. The Respondent referred to an email from an IT company of 28 September 2017 in the new bundle stating that the "date the subscription was cancelled…was 25/06/2016". He obtained the letter when preparing for the Tribunal hearing which was adjourned. In his email to AD dated 20 May 2016, the Respondent asked a question:

> "In the meantime I would be grateful for your reply as to disclosure of documents."

The Respondent stated that he had not heard from AD for months and assumed that was the end of it. A year had passed before he was served with the Tribunal papers. The Respondent stated that he did not know at the time that he had lost access to the email account. The last hearing had looked into the date he changed his email address on MySRA and it was after 25 June 2016. In re-examination, the Respondent added that when the firm went into liquidation the firm's servers and boxes were moved. They had left very expensive premises in the City for an address in Southend. There was also an issue regarding the archive company because it was owed money which was only resolved in 2018 when a staff member of the Applicant became involved because the company was threatening to destroy documents. The Respondent stated that he paid as best he could for storage; he was fighting bankruptcy regarding personal guarantees to the bank. There were 2,000 boxes even when they were moved. He paid £10,000.00 to the former archiving company, for removers and to a new company. The new provider wanted to re-box the documents so they could be in stackable boxes. They gave him

the opportunity to have the documents indexed but he did not have the money to pay for it. He just wanted to secure the boxes. He had no idea what was in the 2,000 boxes which were stacked in a minimal space. To put them in another space to look at them would cost more money and he felt it would be a fairly futile exercise.

69.5 The Respondent stated that after the servers were moved he had a PST file (Personal Storage Table). He had had one for his personal emails. The servers in Southend which had all the accounting software, invoices and ledgers and likely had the ongoing correspondence documents, became corrupt. He tried twice to have them fixed as evidenced by another letter in the new bundle from the same IT company dated 6 December 2016 saying it could not repair the server. It was possible to send it to a data recovery company "and this would be an extremely costly process" and there was no guarantee it would work. He did not have the money to do that. That was the first time he became aware of the problem with the server at Southend. The Respondent stated that he did not have access to JS's email other than where he was copied in nor to H-J's email since the Office 365 account was turned off. In re-examination by Mr Collins, who put it to the Respondent that he had access to documents for 3 and a half months prior to September 2017, the Respondent responded that there were scans of the document histories and they did not relate to the accounts side of software. Also, they related to the entire firm. The Respondent said there were 2,000 boxes relating only to the AM litigation.

69.6 The Tribunal had regard to the evidence including the oral evidence, the submissions for the Applicant and by the Respondent. The Respondent was in contact with the regulator and on 20 May 2016 sent an email with enclosures to AD. It included a question about disclosure of documents. On 23 May 2016, he emailed AD again with his firm's letters of 11 May 2012 to the clients C and P and another letter of 20 May 2013 to G Solicitors and again raised the disclosure issue. On 24 May 2016, the Respondent sent a lengthy letter to AD of the Applicant addressing the allegations which concluded:

> "Should you require any further information or clarification or wish me to respond to the other matters raised in ms (sic) [C's] letter please do not hesitate to contact me."

AD then emailed the Respondent on 5 July 2016 by which time the email account had been terminated on 25 June 2016. The Respondent had testified that he did not know of the termination at the time. The Respondent also testified that at some point he gained access to 2,000 boxes of documents relating to the case. A solicitor had an obligation to tell the regulator where to make contact with them and the Respondent made no contact with the Applicant. While the Tribunal felt that the Respondent might be criticised for not contacting the Applicant after sending his lengthy response letter, it could not exclude the possibility that he genuinely believed that his response had brought the matter to a close and that his actions did not amount to a breach of Principle 7. The Tribunal found allegation 1.4 not proved on the evidence to the required standard.

Previous Disciplinary Matters

70. The Respondent had appeared before the Tribunal in case number 11371-2015 in August 2016. There were 7 allegations against the Respondent. Those which were found proved were as follows:

"1.1 The Respondent used, or permitted the use of, the client account of Lorrells LLP, Solicitors, inappropriately by utilising it as a banking facility for a client contrary to Rule 14.5 of the SRA Accounts Rules 2011 ("SAR");"

"1.3 In acting in the manner alleged in allegation 1.1 …above, the Respondent failed to act with integrity and failed to behave in a way that maintains the trust the public placed in him and indeed (sic) provision of legal services contrary to Principles 2 and 6 of the SCC;"

The seventh allegation, one of dishonesty fell away as it related to 3 allegations found not proved. The Respondent was ordered to be suspended from practice as a solicitor for the period of 3 months and to pay costs fixed in the sum of £35,000.00.

Mitigation

71. The Respondent referred to the Tribunal's Guidance Note on Sanctions and submitted that there had been no aggravating factors, no dishonesty or misconduct involving the commission of a criminal offence. As to whether his conduct was deliberate and calculated, there had been a carefully made decision to act after deliberation between experienced lawyers about the extent of the firm's retainer. The benefit to the firm had been a fee of £2,000.00 for drafting the loan agreement. Either way, LC would have gone ahead with the loan and the firm would have received the fees so this was not a deliberate decision to undertake misconduct to obtain a windfall for the firm. He had made a judgment call with which the Tribunal disagreed. It was a straightforward simple issue but one carefully considered. It was not misconduct continuing over a period of time and no vulnerable person was involved. There had been no attempt to conceal what had happened. As to co-operation with the Applicant, the Respondent had replied to the first of AD's letters and gave him documents that showed for example that the money had not been posted on the litigation ledger and he did not try to hide anything from AD. He did not get back to AD because he had no access to his email. The Respondent stated that he had not deliberately ignored AD's correspondence or tried to avoid answering any further questions. As to whether the conduct was material and he ought reasonably to have known the conduct complained of was a breach, it was a careful decision. The Respondent had relied on a very experienced solicitor of 40 years who prepared a note for the Respondent about conflict.

72. As to the previous findings, the dishonesty allegation was not found proved. It referred to various allegations most of which were not proved. The one allegation he had admitted to at the earliest instance was client account being used as a bank account. This related to acting for a business man for whom the firm undertook a great deal of work. He lodged £1.25m with the firm which he wanted to be paid over to an FSA regulated company in tranches of £300,000.00 every month because he was concerned the company would become insolvent and his attempts to save it would not work. Ultimately it did fail. There had been no loss to anyone it was just that the Tribunal found there was no underlying transaction which the Respondent accepted at the outset. He had defended an allegation of lack of integrity which was found proved. There was also an issue of whether a letter to directors referred to as "29b" constituted an undertaking and whether the letter had been withheld from the Applicant during its investigation. It was not in the Applicant's file and when it was relied on the Applicant

alleged it was fabricated. The Forensic Investigator attended the hearing and brought with him 2 files which the Respondent had not seen. After legal argument the Tribunal decided to allow the files to be inspected overnight the document the Respondent was accused of withholding from the Applicant was found in the file. Notwithstanding that, the Applicant refused to drop the allegation. The Tribunal found the relevant allegation not proved. The Respondent drew attention to the fact that the Applicant's costs claim had been halved by the Tribunal. The sanction was a 3 month suspension.

73. As to what the Respondent described as the final aggravating factor in the present matter, the impact on those affected, he submitted that even on the Applicant's case under the CFA Ms C was liable for the firm's fees although she denied it. There was no suggestion the firm had billed when it was not entitled. The Tribunal pointed out that there was no evidence the firm had billed Ms C to which the Respondent replied that she was charged for services provided. There was no allegation that she had lost that money or did not have to pay it. The Respondent also disputed that Ms C had lost her properties which the Tribunal pointed out could not be debated before it. The Respondent had not felt there was any misconduct and so had not notified the regulator. This had been a one-off instance of an instruction taken. He put no pressure on her to take the loan; she was given the opportunity to find £18,000.00. She instructed K Ltd to sign the necessary document. At all times the Respondent was merely trying to keep C's case on track.

Sanction

74. The Tribunal had regard to its Guidance Note on Sanctions and to the mitigation offered by the Respondent. Some of that mitigation constituted a re-assertion of matters in dispute or arguments which the Tribunal had found unconvincing in considering the allegations. In assessing the seriousness of the misconduct, the Tribunal considered the Respondent's culpability. His motivation had been to keep a client who was a good source of work happy at the expense of another; the fact the firm did all S Ltd's work did not mean that work could not be removed. Furthermore, the Respondent regarded the loan as a pot of money to fund the litigation. The conduct was not planned but the Respondent was cavalier as to the interests of one client against another. He regarded Ms C as sophisticated and he overlooked that the basic standards of client care applied to her just as to any other client. The Respondent had direct control of and responsibility for the circumstances and was dealing with at least one aspect of Ms C's case personally. He was named on the client care letter as the partner "responsible for the general conduct and any major decision affecting this matter with the assistance of [JS]…" In spite of what the Respondent said in mitigation, he had caused harm by his action; the client entered into a loan agreement with a punitive rate of interest without advice. She ended up in default. The Tribunal was particularly concerned that the Respondent had acted for 6-7 months incurring large fees and disbursements of nearly £300,000.00 without giving any timely account to the client of what he was doing. He displayed a cavalier attitude as to the effects on the client of his behaviour. This was an aggravating factor as was the fact he acted in this way over a period of time. He ought reasonably to have known that he was in material breach of his obligations to protect the public and the reputation of the legal profession; he said himself he was a very experienced solicitor. The Tribunal did not consider that there were any relevant mitigating factors. The Tribunal considered that the Respondent's actions had been a classic example of a solicitor departing from the complete integrity, probity and trustworthiness expected of a solicitor with the commensurate harm to the reputation of the profession and he had acted in this way on more than one occasion as his previous

appearance at the Tribunal showed. As to the previous disciplinary matter, the presentation of the earlier case had been problematic; the Tribunal hearing the case described it as at times having verged on shambolic; but the Tribunal noted that the earlier division found:

> "The Respondent's inability to produce documents meant that he had not helped himself. Either he had never had the documents or they were poorly kept and could not be found. The documents produced from the FIO's [Forensic Investigation Officer's] files were exceedingly relevant but they were copies from the Respondent's own files."

This appeared to be a pattern with this Respondent. In the previous matter, as with S Ltd, he had been very close to a client; he did not exercise balanced judgment. The earlier Tribunal had found that he had "wanted the work and tried to keep Mr YY happy". The Respondent had been found to lack integrity in that case also. It appeared he had viewed the earlier client and Ms C as pools of money. The Tribunal wished to make clear that there was no suggestion of the Respondent being able to learn by his previous appearance as the conduct the subject of the allegations in this matter had already occurred when the events which were the subject of the earlier hearing took place. The Respondent had met the other client in early 2013 and been instructed in late May 2013. However having had the experience of appearing at the Tribunal in the interim the Respondent did not display any insight into his misconduct at this hearing. His demeanour towards the Tribunal was as cavalier as that towards his client. He viewed the findings as a difference of opinion with the Tribunal preferring its judgment to his. It had been suggested for the Applicant that the Respondent was incompetent. The Tribunal disagreed; he was competent as a lawyer but disregarded the interests of his client if he saw fit.

75. As to sanction, the Tribunal regarded this matter as far too serious for no order or a reprimand. The Respondent had been found to have lacked integrity with 2 clients in different circumstances which demonstrated that he had a particular approach to how he conducted his practice. The previous Tribunal had considered a short suspension to be appropriate. This Tribunal felt that the misconduct here was also too serious for a fine. There was no indication that restrictions or a further suspension would prevent the Respondent, who was currently practising as a barrister, from acting in the same way again if he decided to return to practise as a solicitor. Dealing with client or own client conflict was an important part of a solicitor's role and vital to protecting clients whether vulnerable or sophisticated; any client needed to be fully and properly advised on their options; this client had been operating under the pressure of costly and complex litigation with imminent deadlines. The Tribunal determined that for the protection of the public and the reputation of the profession the Respondent must be struck off.

Costs

76. The Applicant applied for costs in the amount of £35,700. The Respondent had submitted a Personal Financial Statement during the hearing. Mr Collins opposed its admission at this late stage of the proceedings. The Tribunal noted that it was not signed or supported by evidence as required by Standard Directions. The Respondent withdrew his application to rely upon it. He had no comments to make upon the costs claimed. The Tribunal bore in mind that not all the allegations had been found proved but the most serious had. The allegations arose out of one set of facts and the Tribunal did not

consider that those not proved had added significantly to the costs. It found the Applicant's costs to be reasonable and awarded the amount claimed to the Applicant.

Statement of Full Order

77. The Tribunal Ordered that the Respondent, MARK HARVEY LORRELL, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £35,700.00.

Dated this 10th day of August 2018
On behalf of the Tribunal

J. Martineau
Chair