The Respondent appealed the Tribunal's decision dated 15 April 2021 to the High Court (Administrative Court). The appeal was heard by Mr Justice Freedman on 16 November 2021. The appeal was dismissed. Allanson v Solicitors Regulation Authority [2021] EWHC 3178 (Admin)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12131-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ROGER BRIAN ALLANSON Respondent

Before:

Mr P S L Housego (in the chair)
Mr P Jones
Mr P Hurley

Date of Hearing: 25 January – 1 February 2021

Appearances

Natasha Tahta, barrister of QEB Hollis Whiteman, 1-2 Laurence Pountney Hill, London EC4R 0EU, instructed by Capsticks LLP for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

1. The Allegations against the Respondent were that, whilst in practice as a partner at Allansons LLP ("the firm" or "Allansons"):

1.1 Between December 2016 and 30 January 2019 the marketing material provided by the Respondent to potential litigation funders was misleading in that the litigation funding brochure gave the impression that:

1.1.1 there was no or little risk to the litigation funders of losing their original investment;

1.1.2 funders would receive their returns within approximately 6 to 18 months;

1.1.3 the £4,000 provided by the litigation funder would pay for the initial expert report and Allansons LLP would cover all other costs;

1.1.4 there would be no need for Allansons LLP to raise further funding in order to issue court proceedings;

1.1.5 more than one barrister had assessed the likelihood of success in court of any of the claims to be 75%;

1.1.6 Allansons LLP had a proven track record in using AMS's methodology;

and in using such material the Respondent breached any or all of Principles 2 and 6 of the SRA Principles 2011 ("the Principles") and Outcome 8.1 of the SRA Code of Conduct 2011.

1.2 The Respondent misused funders' monies, in that:

1.2.1 by agreement with PSP the firm retained either £952.50 or £152.50 of each £4,015 of funding;

1.2.2 the Respondent transferred around £121,974.44 of the funders' monies to his personal account on 14 August 2018;

1.2.3 the Respondent transferred around £1,535.91 of the funders' monies to the firm's office account credit card on 14 August 2018;

1.2.4 the Respondent transferred around £25,493.61 of the funders' monies to an unknown recipient on 14 August 2018;

1.2.5 the Respondent transferred around £48,996.00 of the funders' monies to a second unknown recipient on 14 August 2018;

1.2.6 the Respondent transferred around £20,000 of the funders' monies to HJ Ltd on 16 August 2018 for introduction and consultancy advice;

1.2.7 the Respondent transferred around £16,500 of the funders' monies to PSE on 17 August 2018 for "card merchant charges";

1.2.8 the Respondent transferred around £72,460 of the funders' monies to QLP ("Quill Pinpoint") on 31 October 2018 to pay the firm's PII insurance premium;

1.2.9 between 16 January 2019 and 22 January 2019 the Respondent transferred around £40,000 of the funders' monies to introducers;

and in doing so the Respondent breached any or all of Principles 2 and 6 of the Principles and Outcome 11.1 of the SRA Code of Conduct 2011.

1.3 Between December 2016 and 31 January 2019 the Respondent failed to adequately manage the progression of MMP claims and in failing to do so, the Respondent breached any or all of Principles 4, 5, 6 & 8 of the Principles and Outcomes 1.5 & 7.10 of the SRA Code of Conduct 2011.

1.4 The Respondent sent emails to Mr AL, a litigation funder, on 25 February 2019 at 06.34 and 11.05 that were inappropriate and in doing so breached Principle 6 of the SRA Code of Conduct 2011.

1.5 Between 31 August 2018 and 5 March 2019 the Respondent failed to maintain properly written up accounting records and in doing so breached any or all of Principles 4, 6 & 8 of the Principles and Rule 1.2 (e) and 29.1 of the Accounts Rules.

1.6 Between December 2016 and March 2019 the Respondent failed to maintain client ledgers for over 4,000 clients in the MMP claims and in failing to do so the Respondent breached any or all of Principles 4, 5, 6 and 8 of the Principles and Rule 29.4 of the Accounts Rules.

1.7 [as amended] Between 1 July 2017 and 31 December 2018 the Respondent failed to maintain accurate accounting records in that, at 31 December 2018, the Yorkshire Client Account Bank Reconciliation contained:

1.7.1 Approximately 1,530 unreconciled transactions totalling £572,104.15;

1.7.2 Approximately 155 unreconciled adjustments totalling £165,347.39;

and in failing to do so the Respondent breached any or all of Principles 6 & 8 of the Principles and Rule 29.1 of the Accounts Rules.

1.8 The Respondent failed to remedy each or any of the following breaches of the accounts rules identified by the Firm's accountants in their 2017 report, namely:

1.8.1 the bank reconciliations included unknown adjustments;

1.8.2 the bank reconciliations included unreconciled items;

1.8.3 the bank reconciliations showed a difference between the total of client balances and the total of balances shown on the client ledger on both testing dates;

and in failing to remedy those breaches promptly or at all the Respondent breached any or all of Principles 6 & 8 of the Principles and Rule 7.1 of the Accounts Rules.

1.9 Between November 2017 and September 2018 the Respondent failed to complete client account reconciliations every five weeks. In failing to do so the Respondent breached any or all of Principles 6 & 8 of the Principles and Rule 29.12 of the Accounts Rules.

2. In addition Allegations 1.1 and 1.2 were advanced on the basis that the Respondent's conduct was dishonest. Allegation 1.1 was further advanced on the basis that the Respondent's conduct was, in the alternative to dishonesty, reckless. Dishonesty and recklessness were alleged as an aggravating feature of the Respondent's misconduct but they were not an essential ingredient in proving the Allegations.

3. In addition Allegation 1.3 was advanced on the basis that the Respondent's conduct demonstrated manifest incompetence. Manifest incompetence was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the Allegation.

Preliminary Matters

4. Application for proceedings to be stayed for abuse of process

4.1 The Respondent made an application to "stay/strike out" all or part of the Allegations. The Tribunal treated this as an application to stay the proceedings as the basis of the Respondent's submissions was that the Applicant had committed an abuse of process.

Respondent's Submissions

4.2 The Respondent had set out detailed written submissions in his application dated 13 January 2021. The Respondent developed these in oral submissions before the Tribunal. The totality of the Respondent's submissions are summarised below.

4.3 The Respondent referred the Tribunal to R v Maxwell [2010] UKSC 48 as the leading authority on abuse of process. The Respondent told the Tribunal that his application was made under the second limb of Maxwell, namely that it would offend the Tribunal's sense of justice and propriety to allow the proceedings to continue. The Respondent told the Tribunal that he did not suggest that he could not have a fair hearing.

4.4 The Respondent submitted that the Applicant was, on the one hand, bringing these proceedings against him while, on the other hand at the same time refusing claims by funders to the Solicitors Compensation Fund. The Respondent submitted that AL was not willing to give a witness statement and that this was known to the Applicant as far back as March 2020, before it presented the case to a solicitor member of the Tribunal for consideration of whether to certify that there was a case to answer. The Applicant had not disclosed this fact in the papers presented for certification and it had also not disclosed that the Applicant considered the funders' monies as a trade debt of Allansons. The Respondent submitted that the Applicant had not acted in a fair-minded way. He referred the Tribunal to the Applicant's Enforcement Policy and

to Beckwith v SRA [2020] EWHC 3231 (Admin). He submitted that this was authority for the submission that the Applicant had to maintain the standards that it demanded of those that it regulated.

4.5 The Respondent submitted that the Applicant had "handed" him a defence in relation to the lack of a witness statement and the Solicitors Compensation Fund issue but had chosen to proceed regardless. He submitted that the Applicant had "tried to make victims of those they are supposed to be protecting".

4.6 The Respondent had therefore made an application at a hearing on 24 November 2020 before a different Division of the Tribunal for the matter to be referred back to the solicitor member for re-consideration of certification. That application had been refused.

4.7 The Respondent also raised issues relating to disclosure and what he submitted were failures by the Applicant to comply with the directions of the Tribunal. The Respondent described the Applicant's conduct towards the Tribunal to be "disgraceful" and "disrespectful". The Respondent noted that the Applicant had made two unsuccessful attempts to amend the dates pleaded in the Rule 12 statement.

4.8 The Respondent submitted that if the Tribunal acquiesced in the Applicant's conduct then it would be undermining its own integrity and independence.

Applicant's Submissions

4.9 Ms Tahta opposed the application for a stay of proceedings.

4.10 Ms Tahta submitted that the only point made by the Respondent that was even capable of amounting to an abuse of process was his complaint that the solicitor member of the Tribunal, who certified that there was a case to answer, had been misled by the Applicant. Ms Tahta reminded the Tribunal that the burden of proof lay on the Respondent to show that there had been an abuse of process. This required him to prove that there had been a deliberate decision taken to "hoodwink" or deceive the solicitor member. Ms Tahta submitted that there was no evidence of such a decision.

4.11 Ms Tahta submitted that the decision of the Adjudicator in respect of the claims under the Compensation Fund was not relevant to this case and therefore were not part of the bundle sent to the solicitor member considering the question of certification. Ms Tahta submitted that there was clear evidence to support the Allegations that had been made against the Respondent and that even if this material had been included, it would have made no difference to the certification decision. Ms Tahta noted that the Respondent had indicated that he was going to seek a judicial review of the Tribunal's decision of 24 November 2020 but had not in fact done so.

4.12 Ms Tahta did not accept the submissions made by the Respondent in relation to the Applicant's conduct, but even if the Tribunal concluded otherwise, Ms Tahta submitted that this fell far short of "prosecutorial misconduct" and could not amount to an abuse of process. There was a public interest in the matters proceeding given their gravity.

4.13 Ms Tahta noted that the Respondent had used the term "no case to answer" in his written application and submitted that the appropriate time for such an application to be considered would be at the conclusion of the Applicant's case rather than at the start of the hearing.

Respondent's Further Submissions in Reply

4.14 The Respondent told the Tribunal that he could not seek a judicial review as he had to exhaust all avenues first and this was one of them.

4.15 The Respondent reiterated his earlier submission and described the Applicant as having "watered down" his complaint before addressing it. He accused the Applicant of having "tricked its way into the hearing" and invited the Tribunal to "dismiss this nonsense now".

The Tribunal's Decision

4.16 The appropriate test when considering a submission of abuse of process was set out in Maxwell at [13]:

> "It is well established that the court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will offend the court's sense of justice and propriety (per Lord Lowry in R v Horseferry Road Magistrates' Court, Ex p Bennett [1994] 1 AC 42, 74 g) or will undermine public confidence in the criminal justice system and bring it into disrepute (per Lord Steyn in R v Latif [1996] 1 WLR 104 112 f)."

4.17 The Tribunal noted that the burden was on the Respondent to demonstrate a reason to take the significant step of staying the case for abuse of process.

4.18 The Respondent had accepted that he would have a fair hearing and so the question for the Tribunal was whether it would offend the Tribunal's sense of justice and propriety to hear the case in the circumstances. In order for a stay to be justified there must have been behaviour that would offend public confidence in the process. This was rare, particularly in non-state matters.

4.19 The Tribunal also noted the limits of its own jurisdiction; it did not act as a quality control mechanism for the SRA. Its role was to ensure that hearings were fair and that allegations of professional misconduct were determined on the evidence. There was no evidence of witness intimidation or falsification of evidence in this case. The Applicant's case relied solely on what the Respondent had said or done (or failed to say or do).

4.20 For the purposes of determining the application for a stay, the Tribunal took the Respondent's complaints about the Applicant at their highest, while making no finding of fact that they were so. The Respondent's allegation of improper conduct by the Applicant was largely, but not solely, concerning the alleged delayed compliance with directions made by the Tribunal. The Tribunal found that even if all the procedural failures alleged had occurred, and the Tribunal made no finding of fact to that effect, they were not so egregious as to amount to an offence to public conscience such as to justify a stay of proceedings.

4.21 The Respondent had made much in his submissions about the apparent contradiction between the SRA's attitude when administering the Solicitors Compensation Fund and the decision to bring proceedings against him. The Tribunal found that this was not a relevant factor. The issue of the Compensation Fund related to the processing of claims from funders to be compensated for what had occurred. It was not relevant to the issue of what the Respondent did or did not do from the perspective of professional conduct and compliance with the SRA Code of Conduct and the SAR. Whether the monies were a trade debt or not, monies had passed through the Firm and the Respondent had obligations for which he could be asked to answer. The Tribunal was therefore satisfied that this was not relevant to the decision to certify. The Tribunal, comprising a different Division, had ruled on this issue on 24 November 2020. At that stage the Respondent had sought an adjournment to enable him to lodge an application for judicial review. The adjournment had been refused, but that would not have precluded the Respondent from lodging such an application anyway. He had not done so and now sought to argue that he was exhausting all his avenues first. That suggestion was erroneous as this Division did not sit in an appellate capacity over the decisions of previous Divisions.

4.22 The same point about certification applied to the Respondent's complaint that AL's unwillingness to be a witness in the proceedings was something that should have been disclosed to the solicitor member. The Tribunal was not satisfied that the decision would have been any different in light of such information. If the Respondent considered that AL's non-assistance significantly weakened the Applicant's case then he was entitled to make a submission of no case to answer at the close of the Applicant's case (which in the event he did not). The Tribunal would consider any such application in the usual way, but it was not a basis for staying the proceedings. There was no evidence of deception on the part of the Applicant, let alone deliberate deception. The making of such an Allegation did not amount to evidence.

4.23 In relation to the disclosure issues, the Tribunal noted that the Respondent had not suggested that he was unable to cope as a result of the late disclosure of his laptops or that this made the hearing unfair. The Tribunal also noted that redactions had been made to the material at the Respondent's request.

4.24 The Tribunal noted that much of the Respondent's application for a stay was in fact a recitation of his defence to the Allegations, which he would have the opportunity to present fully in the course of the hearing.

4.25 The Respondent's application for a stay of proceedings on the grounds of abuse of process was therefore refused.

5. Application to amend Allegation 1.7

5.1 The Applicant applied to correct a typographical error in which the sum of £572,104.51 should have read £572,104.15. There was no objection to this proposed amendment and the Tribunal granted the application.

6. Application for further redactions to the bundle

6.1 The Respondent applied for a series of redactions to the hearing bundle. The Respondent's basis for seeking redaction and the Applicant's response are summarised briefly below, followed by the Tribunal's ruling.

	Document	Respondent's Submission	Applicant's Submission
1	Paragraphs 111-113 of Rule 12 statement – reference to AL's exchanges with Counsel FC's clerk and receipt of an email from PP investments.	These passages referred to Mr AL and so were hearsay and inadmissible. The material was prejudicial and irrelevant. No hearsay notice had been served. The response AL received was is being used by the Applicant to support its Allegation that the LFB contained information from Counsel. It did not assist the Tribunal to know what Counsel's clerk wrote.	A hearsay notice was served on 4 November 2020. The relevant email is covered under that notice. All of these emails in the bundle are relevant and will be referred to in opening. The Tribunal can decide what weight to put on the email. This does not make it inadmissible and there is no reason to react that email.
2	Paragraph 114 of the Rule 12 statement; *"The impression given in the email from Allansons is that those 15 cases were part of the claims that Allansons had taken on*."	This was opinion evidence and was irrelevant. It strayed into the Tribunal's realm and should be removed.	This was the Applicant's case and it could have been criticised if it had not put this in the Rule 12 statement. It was for the Tribunal to decide if it agreed or not. The proposed redaction was opposed.
3	Paragraph 116 of the Rule 12 statement – reference to Respondent writing to AL enclosing ATE certificates	This was information gleaned by AL from ATE insurer. It was being presented as if it was true but it could not be proved. It misdirected the Tribunal as it was based on misconstrued thinking by AL.	The paragraph described what the email showed and was therefore factual. It was based on what FI found in the files. The proposed redaction was opposed.
4	Paragraph 118 of the Rule 12 statement – the Applicant's	This was opinion evidence and should not be before the Tribunal	The Rule 12 statement had to make clear the facts and matters that supported each

	Document	Respondent's Submission	Applicant's Submission
	submissions on Allegation 1.1.1		Allegation – to do otherwise would be unfair to the Respondent. The proposed redaction was opposed.
5	Paragraph 15 of the FI report	This contained references to disputed SRA records. This was another attempt to introduce irrelevant hearsay.	N/A – Tribunal did not require to hear from Ms Tahta.
6	Paragraph 122 of the FI report	Opinion evidence on the part of the FIO that was a matter for the Tribunal	The FIO was outlining why she went into areas where she found marketing material that was inaccurate. She was drawing conclusions from the evidence and would be giving evidence before Tribunal. The proposed redaction was opposed.
7	Paragraph 129 of the FI report	Same basis as objection to paragraphs 111-113 of the Rule 12 statement above.	Same position adopted as to the objection to paragraphs 111-113 of the Rule 12 statement above.
8	Paragraphs 199-204 of the FI report	This was part of the interview with the Respondent in which the opinions of AL were discussed. It was unfair to include this material.	Those questions in the interview were perfectly properly and mostly referred to emails that the FIO had in her position when interviewing the Respondent. The emails were relevant and the proposed redaction was opposed.
9	Sections of page 25 of the interview	The point about SRA records was raised again and lacked relevance.	The proposed redaction was opposed.
10	Sections of page 35 of the interview	This related to comments about AL. The Applicant was seeking to paint a picture against the Respondent and this was unhelpful and irrelevant.	It was the Respondent who had referred to AL. it was also relevant to the emails which would be addressed in opening. The material is relevant, admissible and referred to the Allegations. It was for the Tribunal to determine the weight to attach to the evidence. The proposed redaction was opposed.

	Document	Respondent's Submission	Applicant's Submission
11	Sections of pages 63-64 of the interview	There was nothing helpful about this part of the evidence and AL's view could not be tested.	This was not a basis to exclude evidence. The proposed redaction was opposed.
12	Sections of page 71 of the interview	This related to AL – same points made about evidence relating to AL.	N/A – Tribunal did not require to hear from Ms Tahta.
13	Paragraphs 50-51 of the Intervention Report	This related to AL – same points made about evidence relating to AL.	The middle part of the sentence at paragraph 50 could be redacted. Paragraph 51
14	Paragraphs 52-53 of the Intervention Report	This related to AL – same points made about evidence relating to AL.	The proposed redaction was opposed.

The Tribunal's Decision

6.2 The Tribunal reviewed each of the sections that the Respondent sought to have redacted and noted the submissions of both parties. The Tribunal's decision follows the numbering of the table above for ease of reference.

- **1.** The Tribunal was satisfied that all these emails were relevant. A hearsay notice had been served and the Respondent refers to the material in question in his own documentation. The Tribunal would determine what weight, if any, to attach to the evidence, but that was not a matter of admissibility and there was therefore no reason to exclude or redact these documents.

- **2.** The Tribunal concluded that the Respondent was under a misapprehension about the nature and purpose of a Rule 12 statement. It was the Applicant's responsibility to fully set out its case in the Rule 12 statement, and it would be criticised for not doing so. This was essential to ensure that a Respondent knew exactly what was alleged so that s/he could have a proper and fair opportunity to meet the totality of the case against them. In this case the Applicant had done this and so the submissions contained within the Rule 12 were not inappropriate. The Tribunal was well able to appreciate the difference between facts and submissions. There was no basis to redact these parts of the Rule 12 statement.

- **3.** The Respondent had submitted that this was information gleaned by AL and set out as if it is true. This was part of the Applicant's case that the funder was not insured under the ATE policy. There was no basis to redact these parts of the Rule 12 statement.

- **4.** There was no basis to redact these parts of the Rule 12 statement for the same reasons as set out above at 2.

- **5.** The SRA records were said by the Respondent to be incorrect. The statement itself is correct, because that is what the records showed. It was open to the

Respondent to challenge that in his evidence and in cross-examination. There was no basis to redact these parts of the FI report.

- **6.** This section of the FI report did no more than set out the SRA's case and it was open to the Respondent to rebut it. It was a precursor to the subsequent subparagraphs. The FIO could give evidence on this matter and the Respondent would have the opportunity to cross-examine her. There was no basis to redact these parts of the FI report.

- **7.** This objection was made on the same basis as above at 1. The Tribunal saw no basis for redactions for the same reasons as set out above in relating to 1.

- **8.** These were questions asked of the Respondent by the FIO, about the emails which were the subject of an Allegation. There was therefore no reason to redact them.

- **9.** The Tribunal noted that the Respondent took issue with being described as a sole member but the issue was about sole responsibility. There was no basis to redact that material.

- **10.** This formed part of the Applicant's case and there was no reason to redact this material.

- **11.** The only objection raised by the Respondent was that this material was unhelpful. This was not a basis on which to redact evidence.

- **12.** There was no basis to redact this material. It was the content not the author that was said to be relevant.

- **13.** The Applicant had agreed to make a small redaction as set out above. The Tribunal agreed that this was appropriate. Save for that matter, there was no basis for any further redaction for the reasons already given in relation to material relating to AL.

- **14.** The objection was that the material was not relevant. That was not a reason to redact.

6.3 The Tribunal therefore refused all the Respondent's applications for redactions, save for item 13 in part, as set out above.

6.4 The fact that the redactions had been refused did not mean that the Tribunal necessarily accepted the evidence, merely that it declined to exclude it. At the conclusion of the hearing the Tribunal would consider what weight, if any, to attach to all the evidence in the matter, conscious that the burden of proof lay on the Applicant.

Factual Background

7. The Respondent was admitted to the Roll on 15 February 1986. The practice was established in 1993 with the Respondent as a sole practitioner. In 2008 the Firm

became a Limited Liability Partnership, Allansons LLP, with a head office in Bolton and branch offices in Wigan and Watford. At all relevant times, the Respondent was a member at the Firm (Allansons LLP). He was the Firm's Compliance Officer for Legal Practice ("COLP") from 27 December 2012. On 4 April 2019 he updated his MySRA record to confirm that he ceased to be COLP on 22 October 2018. Between 1 December 2017 and 4 March 2019 the Respondent was the only member of the Firm.

Allegations 1.1-1.4

8. The Firm started taking on claims relating to allegations of breach of contract by mortgage providers in December 2016. The Respondent stated in interview to the FIO that although the vast majority of the claims were taken on from January 2018 onwards, there were approximately twenty claims that had been taken on sometime earlier. By the 31 January 2019 the Firm had taken on at least 7,773 cases.

9. In 2007/2008 the Respondent had been introduced to Mr BT. Mr BT was the director of a financial auditing company, MAS Ltd. Mr BT had developed a software programme that claimed to show that mortgage calculations provided by mortgage lenders had been incorrect and had resulted in overpayment by customers. This software was known as "Checker Reports".

10. MAS Ltd obtained an opinion from Counsel, PC, as to the value of the Checker Reports in court proceedings. The Respondent and Mr BT looked for a case in which they could test the use of the mortgage checker report. Mr BT introduced Brothers H to the Respondent. Brothers H owned a company which had commercial mortgages on a number of properties with Santander. They had defaulted on their mortgage repayments and Santander were taking possession proceedings to enforce the security for the debts under the mortgages.

11. Following a complaint to the Financial Ombudsman Service by Brothers H, Santander had recalculated the interest based on their contractual rate in the original Mortgage offer letter, and refunded an overpayment of £29,032.27. Mr BT used the Checker software to carry out an audit of Brothers H repayments against the lending criteria. This assessed that Santander's calculations were still incorrect and that they had overcharged Brothers H by £114,211.70. The Respondent wrote to Santander on 21 December 2012 enclosing Mr BT's report. In its response, Santander wrote on 5 April 2013, that "It is not agreed that the loan account should be reduced by the sum of £114,000 as the recalculation method to reach this figure is incorrect". Two of the properties were sold by Santander and the bank then gave the Brothers H the opportunity to make an offer for immediate payment of the amount that the bank would realise by selling the final property. This was how that matter resolved, and to that extent Brothers H paid less than Santander had said was due.

12. The Respondent proceeded to act for clients in claims for miscalculated mortgage payments claims ("MMPs"). The Respondent took these cases under conditional fee agreements, agreeing to take 25% of any payments achieved.

13. On 7 July 2017, The Respondent entered into a contract with PSP who was to act as "Administration Agent" for the claims. The Respondent needed funding to pay for the costs of the reports to be done on new claims and, to pay for processors to manage the claims process. He therefore looked for litigation funding and produced a brochure, in conjunction with CP, director of PSP, to attract litigation funders and to explain what the process would be for those people who were interested in becoming litigation funders. The Respondent set up a system whereby individuals could fund a minimum of three claims at an amount of £4,000 per claim. There was an additional charge of £15 administration fee per claim. There was no maximum number of claims that could be funded by any one individual, and some individuals funded over £100,000 in pursuit of claims. The FIO noted that Mr AL had funded £248,000 in pursuit of claims.

PSP contract

14. Under the contract with PSP, Allansons retained £152.50 from each case funded. Allansons was required to pay PSP a fee of £3,062.50 for each Litigation Funding Agreement ("LFA") Allansons entered into, as well as 17% of any award received by any of the claimants. The 17% was to be paid out of the 30% that Allansons had contracted with the claimants under the CFA. The 17% was to be divided between PSP, who would receive 4%, the Lead Processor (ALL) who would receive 8% and the Lead Provider (SGL) who would receive 5%. The litigation funders would also receive 5%, which would leave 8% of the original 30% for Allansons.

15. Schedule 1 to the contract provided for the procedure which would be undertaken in finding and processing claims and matching litigation funders to specific claims. As part of the process, following introduction by introducers, litigation funders were sent the marketing material which included a web link to follow should they wish to enter into an agreement. The litigation funders were then automatically sent the LFA to sign online. The LFA stipulated that the "monies invested in Allansons" would be utilised "specifically to pay for the Checker expert reports and necessary case costs only".

The Litigation Funding Brochure ("LFB")

16. The LFB made the following representations about the MMP scheme:

- the estimated return for the litigation funder was 40% over an estimated 18 months;

- there were only two possible outcomes of each claim: settlement, which was estimated to take up to a year; or a court hearing, which was expected to be a year to 18 months before resolution;

- "The £4,000 funding covers the fees of an initial expert audit report which is refundable if the claim is unsuccessful. We cover all other costs (our legal fees, other disbursements, etc) and recover these plus the cost of the initial expert report as part of the claim against the lender. If the claim is unsuccessful the claimant's insurance policy covers all non-refundable disbursements";

- "In cases where the lender chooses to go to court and they win, your initial £4,000 will be recouped from an insurance pay-out so you will not lose any money, although you will not make a profit either";

- "The obvious question that arises is: what are the chances of success? The best answer we can give to that is that we have barrister opinions from [PC] and [FC] that the chances of success in court of any one of our mortgage breach of contract cases is 75% (which also means that there is a high chance of settlement)";

- "Allansons is active in making personal compensation claims across a range of sectors and has secured maximum compensation for thousands of clients. In the mortgage overpayment world, a relevant example case has been the success in saving the livelihoods of Brothers H who were in hock with a lender…to the tune of more than one million pounds. Allansons, using AMS's methodology, showed that there was a huge overpayment discrepancy. This stopped the receiver who had been appointed and led to debt reduction and negotiation, thus saving the brothers from an ignominious impecunious end. They are still in business today".

17. The number of claims and litigation funders increased significantly from January 2018, and by 31 January 2019 the Respondent had accepted approximately 7,773 clients with MMP claims. Of those 4,773 were allocated to litigation funders. This figure had been calculated by the Applicant by reference to the amount the Respondent had accepted from litigation funders. The Respondent had been asked by the FIO how much money, as of 31 January 2019, the firm had received from investors wishing to invest in MMPs and his response was £19,094,806.31. This figure equated to just over 4,773 cases at £4,000 each, or just over 4,755 cases at £4,015 each, if the administration fee of £15 was included.

18. In his interview with the FIO the Respondent stated that there were approximately 5,000 active cases, and a further 3,000 cases that had been "parked". The "parked" cases had arisen because the Respondent had ceased work on approximately 3,000 claims, which were based on mortgages that used a Single Variable Rate of Interest ("SVR"). The Respondent explained to the FIO that the reports in those cases, written by Mr BT, the Mortgage Checker Reports on which Mr BT had received Counsel's opinion, were based on an argument that the Respondent no longer accepted, and were assessed by him to be "risky". Those 3,000 cases had been supported by Litigation Funders and the Respondent explained to the FIO that he had had to reallocate new cases to those funders. The Respondent told the FIO that he had instructed a new auditor, Mr W from FAS, to write reports on 3,000 new cases for no fee.

Office 3 Account

19. The Respondent set up the Office 3 account with the Yorkshire Bank to deal with the litigation funding for the MMP claims.

20. On inspection of that account between 8 May 2018 and 22 January 2019, and following answers from the Respondent in respect of the role of the recipients of the monies, the FIO established the following transfers had taken place:

- £20,000 to HJ Ltd on 16.08.18 for introduction and consultancy advice;
- £16,500 to PSE on 17.08.18 for "card merchant charges";
- £72,460 to Quill Pinpoint on 31.10.18 for Allansons PII insurance premium;
- £3,200 to SG on 16.01.19 as an introducer payment;
- £5,600 to TGM on 16.01.19 as an introducer payment;
- £18,400 to PP on 16.01.19 as an introducer payment;
- £4,800 to SR on 22.01.19 as an introducer payment;
- £8,000 to A on 22.01.19 as an introducer payment.

21. In addition a total of £121,974.44 was transferred directly to various accounts in the Respondent's name on 14 August 2018.

22. The Respondent had been asked by the FIO why he had made those payments to himself and in his response he had stated that they were monies paid under agreement. This explanation was elaborated on as follows:

> "In the light of the success of attracting funding it proved necessary to keep me "alive" in order to ensure the cases progress to a conclusion for the sake of all involved therefore I have been allowed to use some of their funds to meet those obligations and while it is a company with several income streams it was easier given the payments are into Allansons Account and then into [P] so to save time and costs with returning funds to me deduction from the account has occurred which will be sorted out at case conclusion"

23. The Respondent gave the same explanation for the transfers to PSE for the card merchant charges; to HJ Ltd for the consultancy and introduction advice; and to Quill Pinpoint for the payment of the PII insurance premium. He also relied on this explanation in respect of three further transfers made from the account on 14 August 2017 to unknown recipients totalling £76,025.52.

Management of the MMP claims

24. At the time of the Respondent's interview with the FIO on 5 March 2019 none of the 4,773 claims that had been funded had been settled, no Part 36 offers had been made (or received) and no court proceedings had been issued. The Respondent explained to the FIO that he was in the process of seeking further funding in order to pay for the court fees needed to issue court proceedings.

Emails to Mr AL

25. Mr AL had become concerned as to the progress of matters and so he began regularly contacting the Respondent.

26. In an email to Mr AL sent at 06.34 on 25 February 2019, the Respondent had written:

> "The fact you make wild assumptions to support your personal hostility towards me makes damages for defamation top of the agenda for the meeting yet to come. Mark Twain once said "it's better to keep your mouth shut and appear stupid than open it and remove all doubt". I can't think why that sprang to mind, but curiously it did. Still want to meet?".

27. In another email to Mr AL sent later the same day at 11.05 the Respondent had written:

> "You are unable to accept that you are making wild and untruthful accusations that I have been prosecuted and found guilty. I have not but to level the accusation and then repeat it "if it quacks like a duck…" is the behaviour of the person Mark Twain had in mind. It is not me who needs the legal advice and I suggest you take it before we meet".

Allegations 1.5-1.9

28. These Allegations concerned alleged breaches of the SAR.

Allegation 1.5

29. The FIO concluded that between 31 August 2018 and 5 March 2019, the Respondent, failed to maintain properly written up accounting records in that 85 client account ledgers were shown as being overdrawn on 31 August 2018, 19 October 2018 and 15 March 2019. An examination of a sample of seven of these ledgers showed that the ledgers were showing as overdrawn when they were not.

Allegation 1.6

30. The FIO had requested client ledgers relating to the MMP claims and been provided with an excel spreadsheet in respect of 26 clients. There were no details as to dates of invoices or payments and no client ledgers.

Allegation 1.7

31. The FIO was provided with a Bank Reconciliation print out in relation to the firm's Yorkshire Client Account, which was dated 31 August 2018 and she obtained a further printout on 31 December 2018. Her analysis of the bank reconciliations showed that there were unreconciled transactions and adjustments in significant sums, which dated as far back as 1 July 2017.

Allegation 1.8

32. The FIO inspected the Firm's 2017 and 2018 accountant's reports, both of which were qualified. The FIO concluded that three of the breaches identified in the 2017 accountants report were still continuing at the time of her investigation up to March 2019. These breaches included:

- the bank reconciliations including unknown adjustments;
- the bank reconciliations including unreconciled items;
- the bank reconciliations showing a difference on both testing dates;

33. The Applicant's case was that the Respondent had failed to remedy these breaches promptly and they were repeated in the 2018 accountant's report, dated 31 July 2018, as well as ongoing at the time of the SRA's investigation into the firm between September 2018 and March 2019.

Allegation 1.9

34. The FIO noted that the reporting accountant had noted that client account reconciliations had not been prepared since 30 November 2017 and the reporting accountant had stated that he/she had informed the Respondent of the requirement to prepare reconciliations at least every five weeks and that the Respondent had advised the accountant that he would ensure that they were prepared on a monthly basis going forward.

35. The FIO had requested the most recent reconciliation from the Respondent on 24 September 2018 and was provided with one dated January 2018. This had been signed by the Respondent even though it did not reconcile.

Live Witnesses

36. Victoria Jordan – FIO

36.1 Ms Jordan confirmed that her report was true and stood as her evidence. In cross-examination Ms Jordan was asked by the Respondent whether she had mentioned any allegation of misuse of client monies in the email that was sent to him before her visit to the office. Ms Jordan explained that her role had been to go on site and that the accounts were always checked in any investigation. Ms Jordan confirmed that in March 2018 the SRA had received an anonymous complaint. She explained that the complaint would have been dealt with by another department initially and if they felt that a person needed to go on site than it would be referred to her department for a visit to be arranged. The Respondent asked Ms Jordan what work would have been done between the receipt of the complaint and the matter being passed to her. Ms Jordan did not know. The Respondent asked Mr Jordan why she had not contacted the Financial Conduct Authority. She stated that she was dealing with the information that she already had before her.

36.2 The Respondent took Ms Jordan through a number of sections of the evidence gathered in the investigation where he had given explanations about the MMP scheme. In relation to the alleged breaches of the accounts rules the Respondent asked Ms Jordan if she agreed that action was being taken to deal with the issues on the accounts. Ms Jordan did not agree with this. She stated that the books of account were such that she was not able to rely on them and she described the Respondent's accounts as being in disarray. Ms Jordan confirmed that there had been no complaints from any client alleging that money had been misappropriated. Ms Jordan agreed that she had been able to obtain reports from Quill Pinpoint who had been open and helpful with her.

36.3 Ms Jordan told the Tribunal that she had made contact with Mr AL and that there had been no Part 36 letters sent on any of the files funded by AL. The Respondent asked her if she recalled him telling her that there had been a strategy to 'cherry pick' cases that covered all the issues and all the lenders. Ms Jordan confirmed that the Respondent had made reference to that. She explained that her report raised the issue because the update to the funder which AL received, made reference to part 36 letters.

37. The Respondent

37.1 The Respondent had not filed a witness statement in these proceedings, and he relied on his written Answer as well as the answers that he had given to Ms Jordan during the investigation as part of his evidence. The Respondent told the Tribunal, however, that the interview with Ms Jordan took place under difficult circumstances and that some of his answers had not been as clear as they could have been. He confirmed that there was nothing untrue in any of the material that he relied upon.

37.2 In cross-examination in relation to Allegation 1.1, the Respondent was asked by Ms Tahta if he understood that the Allegation was that the LFB gave a misleading impression, even if it was not stated in terms. The Respondent stated that he did understand this but described this as a subjective impression. The Respondent noted that there were no witnesses stating that they were misled. Ms Tahta asked the Respondent whether it was the case that he had given no thought to the impression that could be given when drafting the brochure. The Respondent stated that there were no funders to say what impression it gave to them.

37.3 The Respondent stated that the people that the brochure was directed at were people already considering if they should place monies into such a scheme. He was taking into account who it was that they were dealing with and he told the Tribunal that they were not an "average Joe" walking past a betting shop. Ms Tahta asked the Respondent if he was therefore saying that the impression given depended on the state of knowledge on the part of the person reading it. The Respondent replied that the brochure was similar to an advertisement. If somebody was attracted by an advert it was because it was for something that they already knew about. The Respondent stated that they checked whether the prospective funders had taken independent legal advice and insisted that the marketing material did not lead them into something that they did not want to do. There was therefore no misleading impression given in the brochure.

37.4 Ms Tahta put to the Respondent that the impression was given that there was virtually no risk to a funder of losing the £4,000. The Respondent agreed that there was virtually no risk, which was not the same as no risk. He compared it to insuring your house against being struck by lightning. The Respondent agreed that the LSB gave the impression that there was little risk to the £4,000. The Respondent also accepted that the £4,000 represented an original investment and that each case had to be considered on its individual merits. He further accepted that the contractual terms of each mortgage had to be considered before an allegation of breach could be made. The Respondent denied that this was a matter for legal opinion and not the opinion of an accountant. Ms Tahta asked the Respondent about the cases that that had to be "parked" because of the issue with the SVR. The Respondent denied that this had only become apparent when he had received the opinion of counsel SM. Ms Tahta put to the Respondent that if he had obtained Counsel's opinion on any one of the affected cases in December 2016, he would have discovered at that stage that there was a problem with those cases. The Respondent accepted this was a possibility but only on that one point. Ms Tahta put to him that this affected 3,000 cases. The Respondent stated that there were 800 cases which no longer met the criteria and the remaining 2,200 cases had a reduced quantum attaching to them.

37.5 Ms Tahta asked the Respondent if he had drawn up the contract with PSP. The Respondent stated that he had not. Ms Tahta asked the Respondent if he was suggesting that when he ran the cases he could receive 'kickbacks' from agencies who commissioned the report. The Respondent stated that he had not personally done so but he had been approached and there was nothing wrong with it. He denied it was a kickback and described it as a small amount to keep going. He stated that it did not mean that the report fee being charged was inappropriate. He confirmed that BL were aware that the actual fee charged by PSP was less than the amount of the invoice. The Respondent confirmed that he had been paid £952.50 or £152.50. The Respondent told the Tribunal that the £800 has been paid by PSP to the introducers. Ms Tahta took the Respondent to an email he had sent to Mr AL in which he had written "no commissions excessive or otherwise" has been paid to agents. Ms Tahta put to the Respondent that this was a lie. The Respondent denied this and stated that the commission had not been paid by him. He had not made any payments directly as they were not his agents. Ms Tahta asked the Respondent if he considered that to be an honest response to a funder who was concerned that a percentage of his funding may have been given as a commission. The Respondent stated that he believed it was. AL had put his money into this and had then got cold feet.

37.6 Ms Tahta put to the Respondent that the impression was given that more than one barrister had assessed the chances of success as being greater than 75%. The Respondent agreed that this was the impression that was given in the LFB. Ms Tahta put to the Respondent that this was misleading. The Respondent stated that Counsel AS had said there was still a 75% chance and Counsel SM had said the same thing in more nuanced terms. Miss Tahta put to the Respondent that apart from the four cases that he had sent to Counsel SM, he had not had any of his cases assessed individually by a barrister. The Respondent agreed with this but stated that there was nothing wrong with it. He stated that it was in Counsels' interest to say that every case had to be assessed individually, but he was also entitled to rely on his own legal knowledge and expertise. Ms Tahta put to the Respondent that Counsel SM had said that her opinion only applied to the four cases that she had reviewed, and that Counsel would have to review each case on its merits. The Respondent agreed that this is what she had said, but stated that if the other cases were the same, then common sense dictated that the same advice would apply. He denied that counsel SM had specifically warned against that. Ms Tahta took the Respondent to the email from SM dated 18 March 2019 in which she had said that the impression given in the LSB was incorrect and misleading. The Respondent accepted that she had said this but noted that the cases that were being run at that stage did not include the 800 non-viable cases relating to SVR.

37.7 In relation to the reference to a proven track record in using AMS methodology, the Respondent accepted that this was the impression given in the LFB. Ms Tahta put to the Respondent that in the Brothers H case, the bank had accepted that there been a miscalculation and had refunded £29,000 on 2 October 2012, before the Respondent's involvement with the Checker report in December 2012. The Respondent told the Tribunal that "plenty" had been "going on" between September and December 2012 and stated that the lender had accepted its mistake around the same time as the Respondent's involvement. The Respondent agreed that the checker report had claimed that the overcharged interest was £114,000 and that the lender had never accepted those calculations as being correct. The Respondent stated that the mathematics had been verified and the lender had not come back with their own calculations. The Respondent

confirmed that he considered the Brothers H case as amounting to a "track record." He also referred to Consumer Credit Agreements (CCA) cases that the firm had dealt with in the past. Ms Tahta put to the Respondent that this was the first time he had sought to rely on those cases. The Respondent maintained that the Brothers H case alone did amount to a proven track record, but he was making the point that the checker reports had been used in the CCA cases as well.

37.8 In relation to Allegation 1.2 the Respondent agreed that his case was that the use to which the £4,000 was put was, in short, a matter for PSP.

37.9 The Respondent confirmed that he had drawn up the LFA. Ms Tahta put to the Respondent that the LFA made clear that the funds were to be used solely for the clients whose details were on the schedule or such cases as were substituted, and so not for general coverage. The Respondent denied this. He told the Tribunal that the money was for clients of the firm and he went on to state that the SRA adjudicator dealing with the compensation fund had reached the same conclusion. He told Ms Tahta that the Applicant could not "talk with a forked tongue". Ms Tahta asked the Respondent if he was saying that clause 1.1 meant that any monies could be used for the Respondent to "stay alive" to run all the cases in general. The Respondent stated that in the agreement PSP were engaged to provide the report that was charged at £4,000. The money was recovered through either a lender losing the case, the client (whose loan was being challenged) walking away or an ATE insurance claim. In order for that to happen the firm had to remain in business. It was the involvement of the SRA that had caused it to fail. Ms Tahta asked the Respondent if he appreciated that there was a difference between taking money to survive because it was in everyone's interests and what was allowed under the contract regarding the reasons for which the money was given in the first place. The Respondent agreed but told the Tribunal that the two were not mutually exclusive. In response to a question from the Tribunal, the Respondent stated that the litigation funder did not need to agree to this. It was not the funders' money, it was PSP's money.

37.10 Ms Tahta took the Respondent to the monies that were owed to HJ. The Respondent confirmed that these were monies owed by him. He declined to tell the Tribunal what the money was for as he did not believe it was relevant. The same applied to the insurance premiums and to the sums referred to at Allegation 1.2.7 to PSE.

37.11 Ms Tahta put to the Respondent that the introducers' monies that were paid, referred to in Allegation 1.2.9, were done in the interests of expediency. The Respondent agreed this was probably the case. Ms Tahta put to the Respondent that all the uses listed in Allegation 1.2 were all dishonest misuses given the terms of the LFA. The Respondent denied this.

37.12 In relation to Allegation 1.3, Ms Tahta put to the Respondent that each of the claims were relatively simple. The Respondent accepted that once they were set up the claims themselves were pretty simple but understanding the workings and dealing with the lender was not as simple. Ms Tahta suggested that ultimately the claims were a matter of writing to the lender with a clear expert report and a covering letter. The Respondent stated that the firm did not necessarily tell the lenders all of the details but they gave the lender an opportunity to go to the mortgages that were being referred to and review them. Ms Tahta took the Respondent through the case of JC by way of example and put

to the Respondent that his handling of the case had been manifestly incompetent. The Respondent denied this.

37.13 In relation to Allegation 1.4, the Respondent told the Tribunal that he had been "trying to get AL to wind his neck in" and that he thought that the way he had phrased the email was quite an amusing way to do it. He denied it was threatening. Ms Tahta asked the Respondent if he considered that it was an appropriate email for a solicitor to send in the course of his business. The Respondent told the Tribunal that the firm was not open at 6:30am and that during correspondence, AL had apologised for previous accusations made and after that relations had improved. In respect of the second email the Respondent described it as "entirely appropriate and sensible".

37.14 In relation to the alleged breaches of the SAR, the Respondent told the Tribunal that the accounts rules required prompt rectification if there was an error and he told the Tribunal that it was unfair for the Applicant to suggest that he had to admit the breach before he could say that he had rectified them. He accepted that the accounts were not in "apple pie order" but stated that they had been in the process of getting them into the right order. Ms Tahta asked the Respondent if he accepted Allegation 1.5. He stated that he carried the responsibility due to the way the rules worked. He was not doing the accounts work and he never had been. He had employed people to do it, but he carried the overall responsibility for those who had breached the rules. In relation to Allegation 1.7 the Respondent told the Tribunal that his answer was not the same as Allegation 1.5. Quill Pinpoint were working on this and in those circumstances the Firm was compliant. The problem was that the books required a lot of work to be done to show where the entries had been made but there was no money missing, and although Ms Jordan had said that she could not rely on the accounts, there was always enough money. The Respondent stated that the bank reconciliations had been done but there were matters to be explained, but these explanations were being given and therefore met the requirements of the SAR. There was no money missing from the client account, but the Respondent accepted that they were not in perfect order and he accepted his responsibility for his team not having done it. The rules allowed the Respondent time to do this. The Respondent told the Tribunal that if somebody was getting matters back into line and are doing their best to comply, that that must equate to compliance with the rules.

37.15 In relation to Allegation 1.9, Ms Tahta asked the Respondent if he was suggesting that he was a licensed body, or a multidisciplinary practice. This was in response to the Respondent's case that the monies were out of scope. The Respondent told the Tribunal that he was not suggesting anything. He stated that this was not office money and it was not client money and therefore it must be out of scope. He told the Tribunal that the Applicant was estopped from arguing anything else. The Respondent denied again that these were office monies.

37.16 In relation Allegation 1.6 Ms Tahta put to the Respondent that this was money given to the Firm to fund client claims and should therefore have been recorded in client ledgers. The Respondent denied that this was the case.

37.17 In response to questions by way of clarification from the Tribunal, the Respondent stated that he could not gainsay anything that Ms Jordan had put in her report. He stated that while she may have cherry picked the information that suited her purpose, she had

got the correct information and he could not say that the figures were wrong. On a different day the figures may have been different.

37.18 In response to a further question from the Tribunal about the fact that the accounts were qualified, the Respondent told the Tribunal that the accountants never gave the practice an unqualified report and they always found something. It was not the client account that had not been rectified but the pattern of behaviour.

37.19 The Respondent was asked about the notes of the meeting that took place on 21 June 2018, and Ms Tahta put to him that these notes suggested that he should not be taking money from new funders to repay the cases belonging to the older funders. The Respondent reacted angrily to this, describing it as an outrageous slur. He accused Ms Tahta of suggesting that he was a criminal and denied any wrongdoing.

Findings of Fact and Law

38. The Applicant was required to prove the Allegations on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

39. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of both parties, which are briefly summarised below.

40. **Allegation 1.1**

40.1 **Allegation 1.1.1**

Applicant's Submissions

40.1.1 Ms Tahta took the Tribunal to the following sections of the LFB:

"Section 01

- "each claimant has an insurance policy in place covering them in case of failure for any part of your investment which is not otherwise recoverable"

Section 03

- "All of the money you invest is recoverable" and "If the case is lost, and the money we have laid out is not refundable, then a claim will if necessary be made against the claimant's insurance policy to cover the disbursements funded by your investment."

Section 04

- "In the unlikely event that we lose in court, any part of your investment which is not otherwise refundable is protected by the claimant's insurance and we will pay this over to you as soon as the insurance claim is paid."

- "The £4,000 funding covers the fees of an initial expert audit report which is refundable if the claim is unsuccessful."

- "In cases where the lender chooses to go to court and they win, your initial £4,000 will be recouped from an insurance pay-out so you will not lose any money, although you will not make a profit either."

- "In the unlikely event that a case you fund goes to court and we lose, we will make a claim on your behalf against this policy, and you will receive your full £4,000 investment back within about two weeks of the claim."

Section 08

- FAQs – "What are the risks of investing? You might not receive a return on your investment. To mitigate your risk there is ATE insurance in place in the event a case fails."

40.1.2 Ms Tahta submitted that these statements clearly gave the reader the impression that there was no risk, or little risk, of the litigation funders losing their original investment. This was inaccurate and the insurance broker itself thought that the claims in the LFB were misleading and had informed the Respondent of the same in two emails in June 2018. Ms Tahta submitted that there were 13 scenarios in which the funders could lose their investment:

- the lenders refused to settle and the claims never reached court;

- the Respondent failed to be able to pay the premium for the ATE funding;

- the insurance company refused to pay the £4,000 as it wasn't "reasonably and properly incurred";

- the insurance company refused to pay the £4,000 as it included "any commission or payment payable for the benefit of your Appointed Representative (or any associated person or organisation)";

- the insurance company refused to pay the £4,000 as the case had been brought without the "reasonable" opinion of the Appointed Representative that it had prospects of success;

- the insurance company refused to pay as the £4,000 disbursement is "increased or caused by the Appointed Representative";

- the insurance company refused to pay as the £4,000 disbursement was not "made wholly, exclusively and necessarily….to pursue your action";

- the Respondent failed to be able to pay the court fee to issue court proceedings;

- the Respondent was unable to find Counsel who would take the case on under a conditional fee arrangement;

- the case failed (or even succeeded) in court and the Judge enquired into the details of the £4,000 disbursement for the "expert report";

- the Respondent ceased to act for the claimant for any reason, (as in fact happened);

- the insurers failed for any reason;

- the insurance broker had suggested in his email of 20 June 2018 that the funders may have a risk of adverse costs, separately to losing their original investments;

40.1.3 Ms Tahta submitted that the impression given to the litigation funders that "there was no or little risk" to the litigation funders of losing their original investment was clearly inaccurate and misleading.

Respondent's Submissions

40.1.4 The Respondent relied on the evidence he had given and invited the Tribunal to accept it. The Respondent had also served a skeleton argument which he also relied on in relation to his closing submissions. The Tribunal also had regard to the Respondent's Answer.

40.1.5 The Respondent reiterated a number of the complaints he had raised during the abuse of process submissions. These had been dealt with by the Tribunal as a preliminary matter at the start of the hearing and so are not repeated here as they were not relevant to the Tribunal's determination of the Allegations. The Respondent told the Tribunal that he remained of the view that he could have a fair hearing.

40.1.6 The Respondent made a number of overarching submissions that, although not particularised as such, were directed to all aspects of Allegation 1.1 and these are summarised here once to avoid repetition. The Tribunal had regard to all of the Respondent's submissions when considering each aspect of the Allegation.

40.1.7 The Respondent submitted that while he had been at fault on occasion, he had not taken advantage of funders and had acted in the best interests of his clients at all times. He submitted that he had not lacked integrity and referred the Tribunal to Beckwith v SRA [2020] EWHC 3231 (Admin) and submitted that he was not required to be a "paragon of virtue".

40.1.8 The Respondent told the Tribunal that of 813 clients, only one had come to him directly and so there had been no marketing as the vast majority had come through introducers. The funders were sophisticated and not risk-averse.

40.1.9 The Respondent drew a lengthy analogy with the operation of a bookmakers, bets being placed in relation to horseracing and various intervening events that had an effect on the outcome of the race. In this analogy, the Respondent was the bookmaker, the LFB was the advertisement, the miscalculated mortgage claims were the horses, the trainers were the lenders, the £4,000 was the stake and the Applicant was the Betting Board of Control. In essence, the Respondent's argument was that the scheme he was operating was no different to bets being placed on a horse where the bookmaker knew that "horses had been nobbled".

40.1.10 In relation to Allegation 1.1 specifically, the Respondent denied that the marketing material was misleading and he relied on his answers given in cross-examination. He submitted that nobody had in fact been misled.

40.1.11 In his Answer the Respondent denied that the marketing material stated that there was "no" risk to funders' capital. He stated that all cases were funded and protected by the ATE insurance policy.

40.1.12 The Respondent had stated in his Answer that Mr BT carried £12m professional insurance cover and Allansons carried PII cover to meet the £4,000 per case in the event of negligence.

40.1.13 The Respondent had stated that no money was accepted before a litigation funder had signed an agreement and before each funder had been spoken with, a scripted conversation was held requiring them to understand that they should consider taking independent legal advice and that there was no guarantee of a win.

40.1.14 The Respondent had denied that funders were not told their returns would be received in six to 18 months. They were told six months was the expected negotiation period and were told that were Court proceedings to be necessary, the 18 month timescale from commencement would apply. He submitted that these timescales were clearly stated as approximate. If litigation funders misled themselves this was unfortunate and inadvertent and certainly not intended.

40.1.15 The Respondent denied that the representations that formed the basis of Allegation 1.1.3 or 1.1.4 were misleading and submitted that the marketing material did not assert what was alleged.

40.1.16 The Respondent submitted that Counsel AS, supported by another member of PC, had provided advice to the effect that the likelihood of success in Court of any of the MMP cases would be 75%. Counsel SM had been asked to comment specifically on one head of claim, where a miscalculation arose from the application by a lender of an interest rate based on LIBOR which did not occur on the day of application. Due to a clause in some mortgage contracts SM had advised that claims under that particular head were at risk of failing (the SVR cases). However, she had rated the chances of success in all other cases as being 65%-85%.

40.1.17 The Respondent maintained that Allansons had a proven track record. The Respondent denied that he had breached Principles 2 or 6 of the Principles. He also denied acting dishonestly.

40.2 **Allegation 1.1.2**

Applicant's Submissions

40.2.1 Ms Tahta took the Tribunal to the following sections of the LFB:

Section 01

- "the high returns upon success for the litigation funder: 5% of the award within an estimated 18 months;"

Section 03

- "There are two possible outcomes after we contact the lender:
  Settlement (expected to be up to a year for resolution)
  Go to court (expected to be a year to 18 months for resolution)"

Section 04

- "The time it is likely to take for the case to be resolved will be between 6 to 18 months" (this was caveated in small print with an asterisk at the bottom of the page where it states "these are estimates and are not binding due to timescales being beyond our control");

- "if there is a settlement or we win in court, you will earn, on average, more than 40% on your money within 6 to 18 months" (this time there was no caveat)

- "Therefore in cases where the lender settles, we estimate that your £4,000 investment will return a £1750 profit over a period of up to a year. In cases where the lender chooses to go to court and we win, we estimate that your £4,000 investment will also return a £1750 profit but over a period of a year to 18 months" (this was given the same caveat as above);

40.2.2 Ms Tahta submitted that the clear impression given by these statements in the brochure is that litigation funders would receive their return in approximately 6-18 months. Ms Tahta submitted that this timescale was inaccurate. She referred to the Respondent's comment in his interview where he had stated "I – the, the science behind the eighteen month estimate with six month negotiation and the usual eighteen month period for a case going through court system. So, it's actually a two year um proposal at the beginning." Ms Tahta described that timescale as "wildly inaccurate" as no cases had settled, nor had any court proceedings been issued by the time of the intervention on 24 May 2019. Given that the Respondent knew that a more accurate timescale was 6-24 months the impression given in the LFB of a 6-18 month return on investment, was misleading.

40.2.3 The Respondent had not raised any funds for issuing court proceedings or any of the related court costs, and had not the means to pay them. Ms Tahta submitted that the Respondent must have known this when the LFB was produced.

<u>Respondent's Submissions</u>

40.2.4 These are set out above.

40.3 **Allegation 1.1.3**

Applicant's Submissions

40.3.1 Ms Tahta took the Tribunal to the following sections of the LFB:

Section 03

- "The litigation funding arrangement…covers the money laid out to others, and we cover the legal fees."

Section 04

- "The £4,000 funding covers the fees of an initial expert report audit report which is refundable if the claim is unsuccessful. We cover all other costs (our legal fees, other disbursements etc) and recover these plus the cost of the initial expert report as part of the claim against the lender."

40.3.2 Ms Tahta submitted that the LFB clearly gave the impression that the £4,000 provided by the litigation funder would pay for the initial expert report and that Allansons would cover all other costs. It was clear from the contract that the Respondent had with PSP that only part of each £4,000 invested was used for an expert report. At least £150 was kept by the Respondent himself and a further £800 was either paid to the introducer or kept by the Respondent. A large part of the rest was paid to other third parties, including SGL, ALL, Trading IB, and others.

40.3.3 Ms Tahta also noted the transfers to the Respondent's personal accounts to pay his office credit card, the Firm's insurance premium and introducers. This was dealt with in more detail in relation to Allegation 1.2.

40.3.4 In an email from the Respondent during the investigation, he had stated; "PSP have agreed that there is profit within the disbursement that can be utilised to pay the introducers per agreement early…"

40.3.5 These transfers were made between August 2018 and January 2019 at a time when the LFB was still being used to raise further funds. Ms Tahta submitted that the impression given in the brochure that the £4,000 provided by the litigation funder would pay for the initial expert report and that Allansons would cover all other costs was inaccurate and misleading.

Respondent's Submissions

40.3.6 These are set out above.

40.4 **Allegation 1.1.4**

Applicant's Submissions

40.4.1 Ms Tahta submitted that there was no mention of further funding being required in the LFB nor any mention of the cost of issuing court proceedings. The time scales referred

to in the LFB were predicated on court proceedings following straight on from a failure to reach a settlement. Ms Tahta referred the Tribunal to the section in the LFB which stated that "if the case goes to court then we will fight it…". The LFB also stated at Section 03 that "…also legal fees in working to reach a settlement with the lender or prosecuting the case in court should the lender not settle. The litigation funding arrangement, which is the subject of our offer to you, covers the money laid out to others, and we cover the legal fees."

40.4.2 Ms Tahta submitted that the clear impression given was that Allansons would be able to bring the cases to conclusion without requiring further funds.

40.4.3 Ms Tahta submitted that this impression was clearly misleading, as could be seen from the Respondent's interview in which he explained that he was trying to raise money from DF (a commercial lender) to "get a pot" to finance the court fees for the commencement of proceedings (X200) and that he was approaching an insurer who might provide ATE funding and "actual credit for the court fees" for twenty cases.

40.4.4 Ms Tahta submitted that the Respondent, as an experienced solicitor, must have known when he started the scheme that, if lenders refused to settle, he would need further funds to finance court proceedings. He knew this by the time of the 21 June 2018 meeting and yet the LFB continued to be used to raise further funds until March 2019.

Respondent's Submissions

40.4.5 These are set out above.

40.5 **Allegation 1.1.5**

Applicant's Submissions

40.5.1 Ms Tahta referred the Tribunal to Section 04 of the LFB where it stated:

> "The obvious question that arises is: what are the chances of success? The best answer we can give to that is that we have barrister opinions from [PC] and [FC] that the chances of success in court of any one of our mortgage breach of contract cases is 75% (which also means that there is a high chance of settlement)"

40.5.2 Ms Tahta submitted that this gave the clear impression that at least two barristers had assessed the likelihood of success in court of any and all of Allansons claims to be 75%. Two Counsel were asked to give opinions, Mr AS from PC who was instructed by Mr BT in relation to his Checker Report and Ms SM from FC who was instructed by ALL (and specifically Mr MW) in relation to four sample cases, which used Mr MW's Mortgage Audit reports.

40.5.3 The first opinion from AS was positive in principle about the Checker Reports, but stated that:

- "It is not self-evidently, within the remit of a legal Opinion to venture any comment on the accuracy of the software."

- "The merits of each case can only be sensibly assessed on an individual basis."

- "In principle, however, if a case of miscalculated interest and/or arrears is properly prepared in accordance with the outline above, damages for breach of contract must logically follow: in that situation the chances of success, in my opinion, must be at least 75%."

40.5.4 Ms Tahta submitted that this showed that although he gave a 75% chance of success in principle, AS caveated that advice by stating that each case must be assessed on an individual basis.

40.5.5 The second opinion, from SM, did not assess the Mortgage Audit reports, created by MW, at all. She also stated that each case must be assessed on its own merits:

> "In particular, since my assessment of the merits of a potential contractual claim depends on the express and implied terms of the contractual arrangement between the mortgage lender and the customer, it should not be understood as referring to contractual arrangements on different terms or involving other mortgage lenders or customers which I have not had an opportunity to consider."

SM went on to give her opinion of four specific examples that had been sent to her.

40.5.6 Ms Tahta submitted that the LFB gave the impression that at least two barristers had assessed the success in court of any one of the breach of mortgage contract claims at 75%. Ms Tahta submitted that this was inaccurate in that both barristers had stressed that each claim for breach of mortgage contract had to be considered on its own merits, and none of the claims other than the specific examples sent to each barrister were considered on their merits.

40.5.7 Ms Tahta submitted that it was also inaccurate in that, as a result of the SM opinion, the Respondent had realised that all of the BT Checker Report cases had poor prospects of success in court and yet he continued to rely on the opinion from AS in respect of the Checker Reports when he knew that none of the ongoing cases would be based on those Reports. The impression given in the LFB was therefore clearly misleading.

40.5.8 Ms Tahta noted that SM also thought this was misleading, as was shown by her email to the Respondent, dated 18 March 2019, in which she described the LFB "incorrect and misleading". SM had required the Respondent to remove the reference to her chambers and to contacts all recipients of the LFB clarifying that FC had not provided the prospects represented in it.

40.5.9 Ms Tahta took the Tribunal to a draft reply from the Respondent in which he wrote:

> "If read correctly, I have not given anyone the impression you or your chambers have said 75% success rate even though one of your colleagues has given such an opinion."
>
> "As the brochure is online only it is not possible to know who has viewed it nor to be able to write directly to them as you wish. Those whom I can be sure have read it will be suitably advised of your position."

Respondent's Submissions

40.5.10 These are set out above.

40.6 **Allegation 1.1.6**

Applicant's Submissions

40.6.1 Ms Tahta referred to Section 06 of the brochure where it stated:

> "In the mortgage overpayment world, a relevant example case has been the success in saving the livelihoods of Brothers H who were in hock with a lender…to the tune of more than one million pounds. Allansons, using Audit Mortgage Service's methodology, showed that there was a huge overpayment discrepancy. This stopped the receiver who had been appointed and led to debt reduction and negotiation, thus saving the brothers from an ignominious impecunious end. They are still in business today."

40.6.2 Ms Tahta submitted that this clearly gave the impression that Allansons had a proven track record using the methodology developed by AMS, but that the reality of the situation was different and that the suggestion in the LFB was inaccurate and misleading. The background to the Brothers H case is set out above.

40.6.3 Ms Tahta submitted that the Respondent must have known that the impressions given in the brochure were misleading, and the LFB was written to create an impression that this was a risk free, high likelihood of success, high return, investment opportunity.

40.6.4 In respect of the whole of Allegation 1.1, Ms Tahta submitted that the Respondent had lacked integrity and had failed to maintain the trust the public placed in him and in the provision of legal services. Ms Tahta referred to Wingate & Evans v SRA [2018] EWCA Civ 366 in relation to integrity. She submitted that the Respondent should have been careful to ensure that he did not mislead the funders in anyway in the LFB.

40.6.5 Ms Tahta submitted that the Respondent had also failed to achieve Outcome 8.1 in that he had produced misleading marketing material. Outcome 8.1 stated; "your publicity in relation to your firm…or for any other business is accurate and not misleading, and is not likely to diminish the trust the public places in you and in the provision of legal services."

40.6.6 Ms Tahta further submitted that the Respondent had been dishonest. She relied on the test for dishonesty in Ivey v Genting Casinos [2017] UKSC 67, which applied to all forms of legal proceedings, namely that the person had acted dishonestly by the

ordinary standards of reasonable and honest people. Ms Tahta submitted that as an experienced solicitor of 30 years' standing, the Respondent must have known that one or more of the impressions listed in Allegation 1.1, given by the marketing material was misleading. The Respondent was involved in creating the LFB and approving its content and allowed it to be sent to potential litigation funders despite the misleading impression it created. Ms Tahta submitted that ordinary, decent people would consider this behaviour dishonest.

Respondent's Submissions

40.6.7 These are set out above.

40.7 The Tribunal's Findings

40.7.1 The LFB gave the very clear impression that the only risk was that there would be no profit. The LFB gave the impression that if the case was lost then the ATE insurance policy would pay out and if the insurance policy failed, the broker would be obliged to pay. If the broker did not do so, then the FCA would indemnify them.

40.7.2 The cost to funders was £4,015 a case, paid to Allansons office account. Funders were not clients of the Respondent, but their contract was with him. Each funder had to have a minimum of three cases. The Respondent received into his office account 4,755 amounts of £4,015, which was a sum which exceeded £19m. All but one came through introducers, who charged a fee, payable when the funder paid Allansons. The money was mostly paid to PSP, to whom the Respondent had sub-contracted the running of the litigation, including the preparation of the reports on which the litigation was to be based.

40.7.3 The LFB stated that £4,000 was for the cost of the specialist litigation report, which he said two barristers had advised would mean that every case had a 75% chance of success, and necessary case costs only. In fact, 3000 cases relied on SVR, which was not a sound basis for a claim (because the setting of the SVR was the exercise of a discretion afforded to the lender in the mortgage deed). For the affected funders, the Respondent substituted other claims.

40.7.4 The Tribunal examined the LFB carefully. This was clearly a brochure in which the Respondent had involvement in its production. In the section of the LFB headed "Key Features" the top feature was "security" with a padlock sign next to it. The LFB made reference to the safety of the totality of the initial investment in the following way:

> "Each claimant has an insurance policy in place covering them in case of failure for any part of your investment which is not otherwise refundable".

40.7.5 The Tribunal was satisfied that this was a reference to any part of the investment being ultimately protected.

40.7.6 The LFB went on to state that:

> "All of the money you invest is recoverable - either from the lender in the case of a settlement or a court win, or (if not otherwise refundable) from an insurance claim on the claimant's policy in the event of a court loss".

40.7.7 The Tribunal was satisfied on the balance of probabilities that the impression was given that there was no risk at all. The ATE in fact covered the disbursements but the clear impression was that it was the £4,000 investment that would come back even though this was not a disbursement. The LFB was clear that the £4,000 was refundable if the case was unsuccessful and that "all other costs" were covered by Allansons. At another section in the LFB it stated in terms "…you will not lose any money, although you will not make a profit either" in the event of the lender winning in Court. This gave the clear impression that there was no risk in this investment.

40.7.8 In the FAQ section of the LFB, in response to the question; "What are the risks of investing?" the answer is given as follows:

> "You might not receive a return on your investment. To mitigate your risk there is ATE insurance in place in the event a case fails".

40.7.9 There was no reference anywhere in the document (or anywhere else) to possible loss of the money, described as an "investment", not as a gamble.

40.7.10 The Tribunal was satisfied on the balance of probabilities that the LFB gave the misleading impression that there was no risk to the money paid to Allansons and found the factual basis of Allegation 1.1.1 proved.

40.7.11 In relation to the timescales, the LFB referred to 12-18 months, with some caveats. The table included in the LFB showed that the maximum period was 18 months. The Tribunal noted that no case had produced a return in 2½ years and it was implausible that every case was covered by the caveat. The delays that happened were due to matters within the Respondent's control.

40.7.12 The Tribunal was satisfied on the balance of probabilities that the LFB gave the misleading impression that 18 months was the maximum period of time for the investment, and found the factual basis of Allegation 1.1.2 proved on the balance of probabilities.

40.7.13 In relation to what was covered by the £4,000 that formed the basis of Allegation 1.1.3, the Tribunal noted the Respondent's submissions about clause 1.4.2 of the LFA, but also noted that this Allegation related to the marketing materials, specifically the LFB. The LFB stated:

> "The £4,000 funding covers the fees of an initial expert audit report which is refundable if the claim is unsuccessful. We cover all other costs (our legal fees, other disbursements etc) and recover these plus the cost of the initial expert report as part of the claim against the lender."

40.7.14 There was therefore no indication that the £4,000 would cover anything else beyond the initial expert audit report. The clear and categorical impression was given that all other costs were covered by Allansons. There was no reference to paying

commissions, no reference to paying the office credit card bill or to paying funds to himself or other third parties. Plainly the cost of the report was less than £4,000, as money was paid to introducers, and to Allansons, from it.

40.7.15 The Tribunal was satisfied on the balance of probabilities that the LFB gave the misleading impression that the £4,000 would be spent exclusively on the initial expert audit report and that all other costs would be covered by Allansons. It therefore found the factual basis of Allegation 1.1.3 proved on the balance of probabilities.

40.7.16 In relation to Allegation 1.1.4, the Tribunal noted that there would always need to be significant funds on hand to start Court proceedings. This could include obtaining an overdraft or raising funds from other investors. The Tribunal noted that the Respondent had been looking at alternative sources of funding and the question in relation to this Allegation was whether he was entitled to do that based on what was in the LFB. The Tribunal was not satisfied that the LFB could be taken as saying that the Respondent would not go elsewhere to seek additional funding. The Tribunal found that the Respondent had not given adequate (or any) thought as to how he would pay the Court fees, for example. However, this was distinct from an impression being given in the LFB that he could or would not seek any additional funding of any sort. The Tribunal did not find that the LFB did give such an impression and so there was no need to consider whether it was misleading. The Tribunal therefore found the factual basis of Allegation 1.1.4 not proved on the balance of probabilities.

40.7.17 Allegation 1.1.5 related to the impression given as to Counsel's advice.

40.7.18 The LFB stated that:

> "The audit report that we use in these breach of mortgage contract claims has been given a 75% chance of success in Court by barrister [sic]"

40.7.19 The reference to the 75% chance of success as advised by a barrister was repeated in the LFB. The Tribunal reviewed the advice provided by each Counsel.

40.7.20 AS wrote:

> "xiv) The merits of each case can only be sensibly assessed on an individual basis. In cases of illegitimate charges, secret commission, breach of the Consumer Credit Act, or mis-selling under s.150 of the FSMA 2000, it would be foolish to attempt any generalised estimate.
>
> xv) In Principle, however, if a case of miscalculated interest and/or arrears is properly prepared in accordance with the outline above, damages for breach of contract must logically follow: in that situation the chances of success, in my opinion, must be at least 75%"

40.7.21 SM wrote:

> "I have been provided with 4 case studies or scenarios involving [lenders details]. I refer to that material below, and this Opinion is obviously based on and circumscribed by it. In particular, since my assessment of the merits of a

> potential contractual claim depends on the express and implied terms of the contractual arrangement between the mortgage lender and the customer, it should not be understood as referring to contractual arrangements on different terms or involving other mortgage lenders or customers which I have not had an opportunity to consider".

40.7.22 SM further reiterated her position in an email to the Respondent, specifically in response to the reference to 75% success prospects as advised by Counsel in the LFB. In that email she stated:

> "The Extract is further inaccurate and misleading (insofar as it refers to [FC]) and does not represent my assessment of the merits for advancing the proposed mortgage claims."

40.7.23 The Tribunal agreed with SM's view about how her advice had been mischaracterised. The Tribunal, having reviewed the advice provided by both Counsel, was satisfied on the balance of probabilities that the impression had been given that they had assessed the chances of all cases at 75%. It was further satisfied that this was significantly misleading as both Counsel made abundantly clear the limitations of their advice and the caveats to any reference to 75%. The Tribunal therefore found the factual basis of Allegation 1.1.5 proved on the balance of probabilities.

40.7.24 Allegation 1.1.6 related to the reference to the Firm's "proven track record" in using this methodology. On the Respondent's case, the track record appeared to rely on the Brothers H case. The Tribunal did not consider this case to have been a success by reason of the Checker report and its methodology. The £29,032.27 that was refunded by the lender, against an assertion that the overcharging was in excess of £114,000, took place following a report by the Ombudsman and before the Checker report had been produced. The report was then used in subsequent negotiations and the lender's claim reduced a bit further, settling with the debtor for the amount the lender would get if it sold the property. However, the report did not "stop the receiver" as the reduction was the result of negotiation. The Tribunal was satisfied on the balance of probabilities that the LFB gave the impression that there was a successful track record in relation to these types of cases. This was misleading because a track record would usually be expected to infer a series of cases rather than a single one and also because the single one that was relied upon had not, in fact, been successful, as was implied by the Respondent. The Tribunal therefore found the factual basis of Allegation 1.1.6 proved on the balance of probabilities.

Principle 2

40.7.25 In considering the alleged breaches of Principles and Outcomes, the Tribunal considered these in relation to Allegations 1.1.1, 1.1.2, 1.1.3, 1.1.5 and 1.1.6. It did not consider them in relation to Allegation 1.1.4, which had not been proved.

40.7.26 In considering whether the Respondent had lacked integrity, the Tribunal it applied the test set out in Wingate and Evans v SRA and SRA v Malins. At [100] Jackson LJ had stated:

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

40.7.27 The Tribunal had found that the assertions contained in the LFB gave a misleading impression on several important aspects of the scheme and the proposed investment. The Respondent had been personally involved in the drafting of the LFB and he had maintained in his evidence that the representations contained therein gave the intended impression, though he denied any of them had been misleading. The Tribunal found that the Respondent knew that the LFB was misleading on these crucial aspects. The Respondent knew that there was a risk that was greater than "little or no risk" to the investors £4,000 as he was heavily involved in the implementation and operation of the scheme. The Tribunal also found that the Respondent knew that the 6-18 month time estimate was misleading. The Respondent was an experienced litigator and would have known that lenders could try to prolong matters. He also had experience of difficulties progressing matters through the Courts from his CCA work. Furthermore, some of the delays were caused by matters within his control, including the failure to issue any Part 36 letters and deficiencies in the letters before action, so the caveat he attached to the time estimate did not cure the misleading impression, because it stated that the time estimate would only be exceeded by matters outside the Respondent's control.

40.7.28 The Tribunal found that the Respondent knew that the reference to the £4,000 covering the initial report and the rest of the costs being covered by Allansons was also misleading. He was outsourcing the work to PSP, and their work was, to his knowledge funded by the £4,000. He was party to the agreement with PSP about how the funds could be utilised. The fact that some of the £4,000 was being used for purposes other than the initial expert report was within the Respondent's knowledge. The Tribunal did not accept the reason given by Mr Allanson was other than misleading. The reason he gave was that the litigation funder paid PSP £4,000 for the report, and it was nothing to do with the litigation funder that PSP acquired the Checker report for very much less. The whole thrust of the marketing of Mr Allanson was that the Checker report was the reason why the cases would win, that it cost £4,000, and Allansons would acquire it and then recover that cost as a disbursement, or through insurance. That was not what happened.

40.7.29 In relation to the description of Counsels' advice, the Tribunal found that the Respondent knew precisely what each Counsel had said and, crucially, what they had not said. The contents of the respective opinions, which the Respondent had read, were perfectly clear and were not accurately reflected in the LFB. The Tribunal therefore found that the Respondent knew that the LFB gave a misleading impression in this respect.

40.7.30 On the matter of the "proven track record", the Tribunal rejected the submission that one case could demonstrate a track record. This was therefore misleading in itself. It was a matter of plain logic that in order to establish a track record there would need to be some sort of established pattern, which could not be achieved with one case. In

any event, the case that the Respondent relied on in support of this claim in the LFB, the Brothers H case, did not represent the sort of success that he had suggested it had. The Tribunal reviewed the contemporaneous correspondence and noted that the lender had not accepted a figure anywhere close to that claimed by the AMS methodology and the methodology had been rejected. Insofar as the lender had accepted that an overcharge had occurred, this was not on the basis of the checker report and indeed pre-dated it. The Respondent had handled the Brothers H case and therefore knew the sequence of events and the outcome of the case. The Tribunal therefore found that he knew that the impression given in the LFB on this point was misleading. His explanation (that the Checker report had improved his negotiating hand, and therefore demonstrated its success) was not likely to be true (because the Bank settled for the value of its security), and even if it was true, it was not evidence that the Checker report had any beneficial evidential value before a Court. None of this was in the LFB, which in effect claimed that the Checker report had been a "silver bullet" which had solved Brothers H's problem with the Bank.

40.7.31 In respect of each of these elements of Allegation 1.1, the Tribunal rejected the Respondent's oral evidence on the basis that it did not address, or was undermined by, the documentary evidence and the circumstances in which the LFB was produced. The reality was that the Respondent's involvement in the scheme was so comprehensive that he knew precisely how it was operating, how the monies were being utilised, what Counsel's view of it was and how the Brothers H case had been resolved. The Respondent was therefore well placed to ensure that the LFB was scrupulously accurate. The Tribunal found that the Respondent knew that the LFB was misleading but did not consider it to be important. The Tribunal therefore found that the Respondent had lacked integrity. The breach of Principle 2 was therefore proved on the balance of probabilities.

Principle 6 and Outcome 8.1

40.7.32 It followed as a matter of logic that the trust the public placed in the Respondent and in the provision of legal services was diminished when a solicitor was involved in providing misleading marketing material to potential litigation funders. Although the LFB was not designed to attract client work, it was still a practice document (bearing his practice name and speaking of an "investment" in Allansons. It was misleading. The breach of Principle 6 and the failure to achieve Outcome 8.1 was therefore proved on the balance of probabilities.

Dishonesty

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

> "the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ….. When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is

> whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

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

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

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

40.7.35 The Tribunal had made findings as to the Respondent's state of knowledge in respect of each element of Allegation 1.1, save for 1.1.14, as set out under its findings in respect of Principle 2 above. In summary, the Tribunal found that the Respondent knowingly provided marketing material that he knew gave a misleading impression to potential investors. The Tribunal was satisfied on the balance of probabilities that in each instance this would be considered dishonest by the standards of ordinary decent people.

40.7.36 The Tribunal therefore found Allegation 1.1 proved in full including the Allegation of dishonesty, save for 1.1.4, which was not proved.

41. **Allegation 1.2**

Applicant's Submissions

41.1 Ms Tahta invited the Tribunal first to decide to what legitimate use the Respondent could put the funders' monies under the LFA and to then look at the transactions and decide whether each of them came under that legitimate use.

41.2 Ms Tahta submitted that each of those transactions was outside the LFA and constituted a misuse of those monies.

41.3 Under Schedule 2 to the contract with PSP, PSP were responsible for setting up and maintaining the Introductions Platform that also allowed introducers to track the progress of their introductions. In an email to AL on 27 September 2018, the Respondent had written:

> "No commissions, excessive or otherwise have been paid to agents. I do not have any agents."

Ms Tahta submitted that this email to AL was dishonest.

41.4 Ms Tahta referred to Clause 1.4.2 of the LFA which stipulated that Allansons would "utilize (sic) the monies invested in Allansons by the Funder to enable them to provide the service hereunder and specifically to pay for the Checker expert reports and necessary case costs only". Ms Tahta drew attention to the important word "only". She submitted that this was a clear reference to disbursements that were recoverable under an ATE insurance scheme, as the marketing material so assured potential funders. There was no mention of payments to introducers, or payments to Allansons within either the LFB or LFA. Ms Tahta noted that the name of the introducer was included in clause 1.1 of the LFA and submitted that it was hard to see the reason for this if the Respondent was not paying, or agreeing to pay, the introducer a commission.

41.5 Ms Tahta took the Tribunal to the following clauses in the contract with PSP:

- Schedule 1 clause 3.1; the procedure for third party payments stated that Respondent would retain £152.50 from each case funded. £2.50 of the £152.50 was said to cover the VAT chargeable on the administration fee. The Respondent was therefore to retain £150 of each £4015. Ms Tahta submitted that this was contrary to the LFA and LFB.

- Clause 5.1 in the main section of the contract itself stipulated that PSP's fee was £3,062.50 for each funding agreement. This left £952.50 of each of the Funders £4015 payments per case funded.

41.6 Ms Tahta took the Tribunal to the email exchanges between the Respondent and the FIO in February 2019. In those exchanges she had asked the Respondent how much money was invested by litigation funders up to the end of January 2019. The Respondent had replied that the figure was just over £19 million. This equated to 4755 cases funded at a cost of £4015 per case. Each individual funder had to fund a minimum of three cases, amounting to £12,045.

41.7 The Respondent was asked how much the Firm had received and retained from that money and he told the FIO that it was "Nil".

41.8 Ms Tahta submitted that this was untrue, and that the Respondent retained at least £152.50 of each £4,015, which was a substantial sum.

41.9 The Respondent had been asked to list the introducers and to provide any fee arrangement he has with them. The Respondent did so and stated that the fee arrangement was 20% "payable at case close". Ms Tahta submitted that this was unlikely for four reasons:

- the introducer's job was done once the litigation funders had committed their funds;

- the introducers had been specifically given access to an Introductions Platform in order to track the progress of the commitment by their clients (the litigation funders);

- the introducers had no contract with the litigation funders and would not have been able to track the progress of the cases funded by those particular funders;

- the introducers were critical to the scheme – without litigation funders the scheme was redundant. It was highly unlikely that introducers would have introduced the scheme to further individuals if they had to wait an indefinite amount of time for commission when the people they had introduced to Allansons had provided the funds upfront.

41.10 Ms Tahta submitted that contrary to his email to Mr AL, and contrary to his response to the Forensic Investigator – the Respondent did pay introducers directly from the UK bank account containing the funders' monies. The Respondent had set up a specific bank account to deal with the litigation funding for the MMP claims, the Office 3 account. On inspection of that account up to the end of January 2019, the FIO found that, as well as very large transfers to PSP in Poland, there had been a number of transfers to UK bank accounts and credit cards, which she asked the Respondent about. These transfers, and the Respondent's explanation of them to the FIO are set out in the factual background above and in the Respondent's evidence.

41.11 Ms Tahta submitted that all of these uses of the funders' monies fell outside the LFA and the LFB and were therefore a misuse of those monies. Ms Tahta further submitted that payments to himself, or to pay off the office credit card, were clearly to the Respondent's own benefit and ordinary decent people would consider this to be dishonest. The Respondent had also breached Principles 2 and 6 and failed to achieve Outcome 11.1.

Respondent's Submissions

41.12 The Respondent submitted that the Applicant was prevented from arguing that this was funders' monies. They were investments into the Firm to enable it to provide the service to its clients. The Firm had taken on 4755 cases and in exchange for the £4,000, each funder had been allocated a case, which the Respondent maintained was a "fair bargain" and he therefore denied taking advantage of the funders. The Respondent had told the Tribunal that he needed funds to keep the Firm "alive" so that he could continue to run the cases, which PSP had agreed to supply from their own portion of the litigation funders' money. He denied that this was use of the litigation funders' money for it was PSP's money, available to them as they had acquired the Checker report for less than £4,000. It was an advance on the money that he would be due on the successful conclusion of cases – which had not occurred because, he said, the SRA had prevented this by closing his firm. It was, he said, therefore not a misuse of the litigation funders' money and he reiterated that they were no longer to be regarded as the funders' monies. He accepted that he had an account within PSP to be credited with money he would have been due under their arrangement. He was not a stranger to the activities of PSP, but integral to it, especially as PSP was processing the claims on his behalf, via ALL.

41.13 The Respondent again relied on his answers in cross-examination in support of his case.

41.14 The Respondent denied breaching Principles 2 or 6 and denied acting dishonestly.

The Tribunal's Findings

41.15 As a preliminary point, the Tribunal rejected the Respondent's submission that the Applicant was "estopped" from arguing its case in respect of Allegation 1.2. This had been argued and determined as part of the abuse of process submissions, which the Tribunal had also rejected.

41.16 The Tribunal reviewed the LFA and considered this against each use of the funders' monies that formed the basis of Allegations 1.2.1-1.2.9.

41.17 The Tribunal found that the funding agreement with PSP and the retention of the sums by the Firm was not permitted by the terms of the LFA or what was said in the LFB. The Tribunal reviewed Clause 1.4.2, which permitted the Firm to:

> "utilize the monies invested in Allansons by the Funder to enable them to provide the service hereunder and specifically to pay for the Checker expert reports and necessary case costs only."

41.18 This did not extend to the Respondent retaining the sums set out at Allegation 1.2.1. The funds were therefore misused in that the LFA did not permit the retention of those monies by the Firm.

41.19 The Respondent did not dispute making the transfers set out at Allegations 1.2.2-1.2.9. The question was therefore whether, in making those transfers, the Respondent had misused those monies. The Respondent's case was that it was no longer funders' money at all. The money however came into and went out of the Office3 account. In some cases funders were not allocated cases for some months afterwards. In the meantime the monies were sitting in that office account of Allansons. The funders had been told that their £4,000 investment per case was for the initial expert report and nothing more. The Tribunal rejected the Respondent's evidence that this could extend to covering his own costs to enable him to stay afloat as this was not borne out by the LFB or the LFA. There was no reasonable interpretation of those documents that could lead to the conclusion that the Respondent was entitled to spend some of these monies on his own expenses, including payments to HJ and his own credit card and to make payments to his personal bank account. The Respondent had declined to explain the nature of the monies owed to HJ on the basis that he did not consider it to be relevant. Had there been an innocent explanation it would have been forthcoming. The money he utilised never left Allansons accounts. It was not paid back to him by PSP, but was received by him from litigation funders, into the account he had for that purpose, and then paid out by him for his own advantage, unknown to the litigation funders. That is not rendered a proper use of litigation funders' money because PSP agreed to it. That was not what the litigation funders had paid for, especially given the categoric assertion by the Respondent that Allansons would deal with the processing of the claims and the money was solely for the Checker report.

41.20 The Tribunal was satisfied on the balance of probabilities that each of the uses of monies set out in Allegation 1.2 were a misuse of funders' monies and so found the factual basis of Allegation 1.2 proved.

Principles 2, 6 and Outcome 11.1

41.21 The Tribunal found that misusing monies paid to a solicitor for a particular purpose (and whether or not the person paying the money to the solicitor was a client or not) was a clear example of a lack of integrity. The sums involved were substantial, including over £120,000 that was paid into his own account. The Respondent was under a duty to act in an entirely proper and transparent manner with regards to the funds, but on repeated occasions he had misused them. The Tribunal found this to be a clear lack of integrity on each occasion on which he misused those funds. It therefore followed that he had failed to maintain the trust placed in him, in breach of Principle 6.

41.22 The Respondent had been dealing with third parties as the funders were not clients. The Tribunal found that he had taken advantage of them by using their funds for purposes other than those allowed for in the LFA.

41.23 The Tribunal found the breaches of Principles 2 and 6 and the breach of Outcome 11.1 proved on the balance of probabilities.

Dishonesty

41.24 In assessing the Respondent's state of knowledge, the Tribunal noted that in addition to drafting the LFB, the Respondent had drafted the LFA and would therefore have been fully familiar with the terms. He knew what the monies were stated to be used for under the LFA and he knew that this was the basis on which funders had given him their money. The Respondent was also fully aware of the ways in which the monies had been used and so knew that this amounted to a misuse of those funds. The Tribunal was satisfied on the balance of probabilities that this would be considered dishonest by the standards of ordinary decent people.

41.25 The Tribunal therefore found Allegation 1.2 proved in full including the Allegation of dishonesty.

42. **Allegation 1.3**

Applicant's Submissions

42.1 Ms Tahta submitted that the progression of the claims was the Respondent's responsibility, despite the delegation of the "processing" of the claims to an outsourced processing agent, ALL. The Respondent, in interview, claimed that ALL did not do anything without consulting him, and yet he was unaware that ALL had applied for dissolution at Companies House in September 2018 and had been dissolved in January 2019. The successor company, JPS, did not sign a contract with the Respondent. In fact, it refused to do so. The Respondent's account was that this did not matter as they were in fact doing the work on an agreed basis. The Tribunal did not agree with this analysis.

42.2 The Respondent had no access to the case files which were on computers in Watford and he could not access them from his office. Despite this, Ms Tahta submitted, the Respondent was satisfied that he had sufficient control over the agents.

42.3 Ms Tahta submitted that following factors were integral in the failure of the Respondent to adequately progress the claims:

- the critical failure to properly test Mr BT's Checker report at the outset of the scheme;
- the subsequent "parking" of 3000 SVR claims with the need to replace them and start afresh;
- the constant failure to send appropriately drafted letters of claim – despite having been provided with an appropriate draft version drafted by AS;
- the failure to properly test Mr MW's mortgage audit report;
- the administrative failures to respond promptly to letters from lenders;

42.4 Ms Tahta took the Tribunal to the following points arising from the FIO's analysis of 67 cases;

- None of the 67 cases had any Part 36 offers made by the time of the intervention in late May 2019;
- The letter before action on each of the files exhibited by the investigator was inadequate;
- In some cases, the case was delayed due to a failure to have sent an appropriate authorisation to act form, as well as what she described as a "litany" of other errors;
- In some cases the audit log was not attached to the letter before action or even the letter claiming to attach the report;
- In some cases the last correspondence on the file was in mid-January 2019, and in another an authority to act was signed four months before any correspondence was sent to the lender;
- Most of the files contained letters before action stating that "Failure to respond in such manner may result in our requesting the full report on the audit, which will incur further costs in addition to the £4,000 already incurred at this stage" when this was supposed to be the full report;
- None of the files had an individual Counsel's opinion as to its merits despite the Firm's email to Mr AL on 29 June 2018 stating that these would be actioned and sent to him by the end of next week;
- One file had an authority to act that was signed 9 months before the letter before action was sent to the lender and another had one signed 4 months before the letter before action was sent;

- The most common cause of delay was that the letter of claim was insufficiently detailed and the lenders were unable to understand what claims were being made, and how those were supported by any calculations. This was a matter that had been highlighted by AS in his opinion and his addendum draft letter before action;

- The Respondent chose to produce vague letters of claim so as to hide the fact that the disbursement of £4,000 had already been made for a full audit report;

42.5 Ms Tahta submitted that it was clear that the Respondent failed to adequately manage the progression of the MMP claims from December 2016, when the first claims were taken on, until the end of January 2019. Very little constructive progress had been made on any of the MMP claims, and this was borne out by the fact that by intervention on 24 May 2019 not a single claim had settled, nor had the Respondent issued court proceedings in a single claim, and nor had he the finance to fund Court fees for the number of claims he had.

42.6 Ms Tahta submitted that by failing to adequately manage the progression of the claims the Respondent had breached Principle 4 in that he was not acting in his clients' best interests, who, despite being on conditional fee agreements, were entitled to effective progression of their claims. Ms Tahta also submitted that the Respondent had also breached Principle 5 by providing a poor standard of service to his clients, and Principle 6 in that his failure to progress such a substantial number of claims, was likely to undermine the trust the public placed in solicitors and in the provision of legal services.

42.7 Ms Tahta further submitted that the Respondent also breached Principle 8 by failing to set up adequate systems of supervision and control over the companies to which he had outsourced the processing of the claims. He had also failed to achieve Outcomes 1.5 or 7.10.

42.8 Ms Tahta further submitted that the Respondent had demonstrated manifest incompetence and she referred the Tribunal to Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin), for the applicable test.

Respondent's Submissions

42.9 The Respondent submitted that criticism of him for not lodging claims demonstrated an ignorance of the CPR, which required efforts to be made to avoid litigation. The improvement in report writing to enable the lenders to better understand the case against them was a sensible step. The Respondent submitted that he was acting consistently with the marketing materials and with the CPR. The Respondent told the Tribunal that the FIO had noted that in respect of AL's cases, they were within the 12 month period referred to in the LFB. The requirement of additional funds was not detrimental to the funder who was only exposed to the level of £4,000. The Firm was providing access to justice and one funder had even nominated it for a Law Society award.

42.10 The Respondent again relied on his answers in cross-examination in support of his case.

42.11 The Respondent denied this Allegation in its entirety, including the Allegation of manifest incompetence.

The Tribunal's Findings

42.12 The Tribunal noted that in the 18 months that this the scheme was running, the Respondent did not recover a penny from any lender. He had not issued any claims, nor had he made sent any Part 36 offer letters. He had collected from litigation funders, and paid out, over £19m. In not one case had any lender indicated any intention to do other than reject the claims. In not one case had the Respondent provided a detailed exposition to a lender of why there was a good claim and how it was particularised. The letters before action had not been in the proper form, leading to their rejection.

42.13 The Respondent had not told the clients whose cases had been "parked" that this had occurred and it was only later that he established that 800 were fully parked and another 2,200 could go ahead but with a reduced quantum. This was evident from his answers to Ms Jordan in his interview. He had not told the clients of any of this, or been frank with the litigation funders about the difficulty with the SVR cases.

42.14 In 2019 the Respondent had changed tactic, and sought to issue 20 test cases. The Tribunal found that his previous strategy had been to try to overwhelm lenders with a mass of large claims with the threat of a further £4,000 for a detailed report, when there was only ever one report. The Respondent did not have the money to pay the Court fees and was seeking funding to do so. It was at this point that SRA intervened. The Respondent's case was that by doing so they caused the litigation funders to lose their money, as the claims could not be progressed. At the time of the intervention however, the Respondent was continuing to accept large amounts of money from new litigation funders, despite knowing that his promised time frame was not borne out by his experience to date. The Tribunal did not accept that this could afford him any defence.

42.15 The Tribunal was satisfied on the balance of probabilities that the Respondent had failed to adequately manage the progression of the MMP claims and so found the factual basis of Allegation 1.3 proved.

Principles 4, 5 and 8 and Outcome 1.5

42.16 The Respondent's failure to manage the claims adequately was clearly not in the clients' best interests and did not reflect a proper standard of service. In addition, the Respondent had not carried out his role in the business effectively by reason of his inadequate management of these matters, of which there were thousands. The Tribunal found the breaches of Principles 4. 5 and 8 proved on the balance of probabilities.

Principle 6

42.17 The trust the public placed in the Respondent and the provision of legal services was clearly undermined in circumstances where there was a wholesale failure to adequately manage such a large number of cases. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

Outcome 7.10

42.18 It was unclear to the Tribunal how this Outcome, which related to outsourcing, was engaged. The outsourcing in itself was not the problem, it was the nature of that outsourcing in relation to the LFA that was the issue. The fact that outsourcing took place did not preclude supervision by the Respondent or SRA. The Tribunal found the failure to achieve Outcome 7.10 not proved.

Manifest Incompetence

42.19 The Tribunal considered whether the Respondent's conduct amounted to incompetence that was so clear and obvious as to rise to the level of manifest incompetence. This was not a failure on one or two files but a systemic failure on thousands of files, funded to the tune of over £19m. The failures were basic and repeated, and the Tribunal was satisfied on the balance of probabilities that it clearly amounted to manifest incompetence. It therefore found this aspect of Allegation 1.3 proved.

43. **Allegation 1.4**

Applicant's Submissions

43.1 Ms Tahta submitted that the first email was clearly an inappropriate email for a solicitor to send to anyone in the course of his business. The second email was threatening and abusive in tone and, again, inappropriate. Ms Tahta submitted that by sending such emails, the Respondent had breached Principle 6.

Respondent's Submissions

43.2 The Respondent submitted that the emails were "a model of restraint" and nothing in them was untrue, misleading, derogatory or threatening. The use of the Mark Twain quote was a tactic designed to reduce the temperature. This had worked and AL had apologised for his own remarks in the correspondence leading up to these emails.

The Tribunal's Findings

43.3 The Tribunal found that the two emails were clearly inappropriate. They were intended to make AL look stupid and his suggestion that he might bring a claim for defamation was not appropriate, or even possible as there was no publication to anyone else. Even if the Respondent had been defamed the answer was not to write emails in the way that he had. The Tribunal rejected the Respondent's case that the emails were jocular. The Tribunal also rejected the suggestion that because one of them was sent at 6.34am that it was not sent in the course of business. The timing of the email was completely irrelevant; it was the content that mattered. The fact that Mr AL may have subsequently apologised (although there was no evidence other than the Respondent's oral evidence that he had) did not detract from the fact that the emails were inappropriate and offensive. The Tribunal found that they undermined the trust the public placed in the Respondent and the provision of legal services. The Tribunal therefore found Allegation 1.4 proved in full on the balance of probabilities, including the breach of Principle 6.

44. **Allegation 1.5**

Applicant's Submissions

44.1 Ms Tahta submitted that the FIO's analysis demonstrated that between 31 August 2018 and 5 March 2019, the Respondent, failed to maintain properly written up accounting records in that 85 client account ledgers were shown as being overdrawn on 31 August 2018, 19 October 2018 and 15 March 2019.

44.2 Ms Tahta submitted that this was a breach of Principles 4, 5 and 6. To act in his clients' best interests and to provide a proper standard of service the Respondent should have ensured that the client account ledgers were accurate. The public trusted solicitors accurately to account for client monies and the large number of client ledgers which the Respondent failed to accurately maintain was likely to undermine that trust. Ms Tahta further submitted that the Respondent breached Principle 8 and that in order to run his business effectively and in accordance with proper governance and sound financial and risk management Principles the Respondent needed to maintain all client ledgers accurately.

Respondent's Submissions

44.3 The Respondent again made a number of overarching submissions that, although not particularised as such, were directed to all aspects of Allegations 1.5-1.9 and these are summarised here to avoid repetition. The Tribunal had regard to all of the Respondent's submissions when considering each Allegation. These submissions were set out in the Respondent's Answer and in his closing submissions and he again relied on his answers in cross-examination.

44.4 The Respondent submitted that the SAR should be viewed as a whole. The SAR allowed time for errors to be rectified and because the Respondent had been working to rectify them, he was not in breach. The term "prompt" in relation to rectification had not been defined, but the Respondent compared the 17 months that he was being criticised for to 17 months that he submitted it had taken the Applicant to resolve matters.

44.5 The Respondent had stated in his Answer that Allansons had taken over another firm and many of the problems stemmed from poor work practices at that firm that had continued. The Respondent had taken steps to deal with the problems including replacing the practice manager and the accounts team. Quill Pinpoint had been engaged to work on reconciliation and rectification of the accounts.

44.6 The Respondent stated that between September 2018 and January 2019 the FIO had attended Allansons "virtually on a daily basis" until January 2019. She had been provided with access to all records of accounts and to the staff as well as to Quill Pinpoint records. The FIO had not expressed any concerns and had, he said, conceded that the overdrawn client accounts were technical issues. The monies in client account were sufficient to meet the apparent overdrawn accounts. In addition, neither she nor Allansons received any complaints from any clients in relation to client monies. The Respondent told the Tribunal that no clients lost any money. He submitted that no monies had been used for purposes other than those intended by the clients.

44.7 In relation to the alleged failure to maintain client ledgers in MMP claims, the Respondent denied that this amounted to a breach of the SAR as ledgers were only required where there were transactions to record.

44.8 The Respondent stated that he accepted that the accounts "remained a work in progress", he denied all the Allegations in their entirety.

44.9 The Tribunal's findings in respect of Allegations 1.5-1.9 are set out in full following Allegation 1.9.

45. **Allegation 1.6**

Applicant's Submissions

45.1 Ms Tahta reminded the Tribunal that the FIO had requested client ledgers relating to the MMP claims and was provided with an excel spreadsheet in respect of 26 clients. There were no details as to dates of invoices or payments and no client ledgers, other than 8 ledgers that dated back to December 2016. The MMP claims operated between December 2016 and March 2019, during which period Mr Allanson accepted litigation funders' monies to finance work on at least 4,755 claims. As part of this financing Mr Allanson paid out sums of monies to third parties and used an office account to deal with the monies that he received and paid out. Further he agreed with the litigation funders that he would claim his disbursements and fees at the conclusion of each client's case. Ms Tahta submitted that all of these dealings should have been recorded against each specific client in a client ledger. In failing to maintain client ledgers for over 4,000 clients in the MMP claims the Respondent had breached Principles 4, 5, 6 and 8 and Rule 29.4 of the Solicitors Accounts Rules 2011.

Respondent's Submissions

45.2 These are set out above following Allegation 1.5.

45.3 The Tribunal's findings in respect of Allegations 1.5-1.9 are set out in full following Allegation 1.9.

46. **Allegation 1.7**

Applicant's Submissions

46.1 The FIO's analysis of the Firm's Yorkshire Bank Client Account, are set out above. Ms Tahta submitted that the bank reconciliations demonstrated that the Respondent had failed to maintain accurate accounting records in that, at 31 December 2018, the Yorkshire Client Account Bank Reconciliation contained the unreconciled transactions set out in the factual background above.

46.2 Ms Tahta submitted that the Respondent had therefore breached Principles 6, 8 and Rule 29.1 of the SAR.

Respondent's Submissions

46.3 These are set out above following Allegation 1.5.

46.4 The Tribunal's findings in respect of Allegations 1.5-1.9 are set out in full following Allegation 1.9.

47. **Allegation 1.8**

Applicant's Submissions

47.1 Ms Tahta noted that the FIO inspected the Firm's 2017 and 2018 accountant's reports, both of which were qualified. Three of the breaches identified in the 2017 accountants report were still continuing at the time of the 2018 report and at the time of her investigation up to March 2019. Ms Tahta submitted that the Respondent failed to remedy these breaches promptly and in failing to do so the Respondent breached had Principles 6 and 8 and Rule 7.1 of the SAR. Ms Tahta submitted that members of the public trusted solicitors to remedy breaches of the SAR promptly when they were made aware of them.

Respondent's Submissions

47.2 These are set out above following Allegation 1.5.

47.3 The Tribunal's findings in respect of Allegations 1.5-1.9 are set out in full following Allegation 1.9.

48. **Allegation 1.9**

Applicant's Submissions

48.1 The FIO had requested the most recent reconciliation from the Respondent on 24 September 2018 and had been provided with one dated January 2018, which had been signed by the Respondent on 22 August 2018 even though it did not reconcile.

48.2 Ms Tahta submitted that in failing to do account reconciliations every five weeks the Respondent breached Principles 6 and 8 and Rule 29.12 of the SAR.

Respondent's Submissions

48.3 These are set out above following Allegation 1.5.

The Tribunal's Findings

48.4 The Tribunal's findings in respect of Allegations 1.5-1.9 are set out in full here. Although the Tribunal considered each Allegation in turn, there was a considerable degree of overlap and so to avoid repetition the findings are set out in one place.

48.5 The Respondent had accepted all the facts that the Applicant relied on in relation to Allegations 1.5-1.9. In his oral evidence he had confirmed that he did not dispute the figures set out by Ms Jordan following her investigation. The Respondent did dispute that these facts amounted to breaches of the SAR. The Tribunal found on the balance of probabilities that failing to maintain properly written up accounting records (Allegation 1.5), failing to maintain accurate accounting records (Allegation 1.7) and failing to complete client account reconciliations every five weeks (Allegation 1.9) did amount to breaches of the SAR in the respective terms pleaded in the Rule 12 statement. The Tribunal rejected the Respondent's case that because he was seeking to put matters right he could not be in breach. This was not supported by any reasonable interpretation of the SAR or any guidance note issued to it. The Tribunal noted that no money was actually missing and no complaint had been made about misappropriation. However, this was not a defence to breaches of the SAR.

48.6 The Respondent had argued that the litigation funders' monies were out of scope and that Allegation 1.6 was not in fact engaged. He therefore accepted he had not maintained client ledgers but his case was that it was not necessary to have done so. Rule 29.4 was as follows:

> "All dealings with office money relating to any client matter, or to any trust matter, must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account."

48.7 The monies were not out of scope for the reasons put to the Respondent in cross-examination by Ms Tahta. They were clearly office monies relating to a client matter and therefore Rule 29.4 was engaged. The Tribunal found the breach of Rule 29.4 proved on the balance of probabilities.

48.8 In relation to the alleged failure to remedy the breaches (Allegation 1.8), Rule 7.1 required the Respondent to rectify the breaches promptly upon discovery. The Respondent had not successfully rectified the matters at all, even though he had taken some steps to do. The breaches had been identified by the accountants in 2017 and had not been rectified as late as March 2019. The Tribunal found the factual basis and the breach of Rule 7.1 proved on the balance of probabilities.

Principle 4 (Allegations 1.5 and 1.6)

48.9 It was clearly not in the best interest of clients for the Respondent to fail to maintain properly written up accounts or to maintain client ledgers when he should have done. These rules were in place to protect clients and the failure to adhere to them was not in their best interests. The Tribunal found the breach of Principle 4 proved on the balance of probabilities in relation to Allegations 1.5 and 1.6.

Principle 5 (Allegation 1.5)

48.10 The Tribunal found the breach of Principle 5 proved on the balance of probabilities on the basis that failure to act in a client's best interests did not amount to a proper standard of service as it was a core duty.

Principle 6 (Allegations 1.5-1.9)

48.11 The Tribunal found that the trust the public placed in the Respondent and the provision of legal services depended on strict compliance with the SAR. This was a fundamental duty on a solicitor and in each of these Allegations the Respondent had failed to discharge that duty. The Tribunal found the breach of Principle 6 proved on the balance of probabilities in relation to each Allegation.

Principle 8 (Allegations 1.5-1.9)

48.12 The Respondent was fully responsible for ensuring the Firm complied with all the requirements of the SAR. The failure to do so meant that the breach of Principle 8 was proved on the balance of probabilities in relation to each Allegation.

Previous Disciplinary Matters

49. There was one previous finding at the Tribunal in respect of the Respondent.

50. On 20 December 2018 the Tribunal had made the following Order in respect of the Respondent:

> "The Tribunal Ordered that the Respondent, ROGER BRIAN ALLANSON, solicitor, do pay a fine of £17,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00."

51. This Order was made following the Respondent's admission to the following Allegations:

> "1. The Allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that:
>
> 1.1 Between November 2015 and 30 June 2017, by allowing the client account of Allansons LLP ("the Firm") to be used to administer payments in respect of debt management plans when there was no underlying legal transaction, he breached or failed to achieve any or all of:
>
> 1.1.1 Principle 6 of the SRA Principles 2011 ("the Principles");
>
> 1.1.2 Principle 7 of the Principles;
>
> 1.1.3 Principle 8 of the Principles; and
>
> 1.1.4 Rule 14.5 of the Solicitors Accounts Rule 2011 ("SAR").
>
> 1.2 Between 10 June 2016 (at the latest) and 1 December 2016 (at the earliest), by allowing improper payments in the total sum of £890.90 to be made out of the client account of the Firm he breached any or any of:

1.2.1 Principle 6 of the Principles;

1.2.2 Principles 8 of the Principles; and

1.2.3 Rule 20.1 of the SAR.

1.3 Between August 2015 and July 2017, he caused or permitted a sum in excess of £600,000 representing monies paid in settlement of requests for fees for work to be undertaken by the Firm to be held in the client account and not in the office account of the Firm. In doing so he breached any or all of:

1.3.1 Principle 6 of the Principles;

1.3.2 Principle 7 of the Principles; and

1.3.3 Rule 14.2 of the SAR.

1.4 Between 3 May 2016 (at the latest) and 15 March 2017 (at the earliest), by paying client money, or allowing client money to be paid, into the Firm's office account as opposed to its client account, he breached any or all of:

1.4.1 Principle 7 of the Principles;

1.4.2 Principle 8 of the Principles; and

1.4.3 Rule 14.1 of the SAR.

1.5 Between November 2016 (at the latest) and February 2017 (at the earliest), by allowing client ledgers to have an overdrawn balance, he breached any or all of:

1.5.1 Principle 6 of the Principles;

1.5.2 Principle 7 of the Principles;

1.5.3 Principle 8 of the Principles; and

1.5.4 Rule 20.6 of the SAR.

1.6 Between November 2011 and 30 June 2017 being a manager of the Firm, he failed to maintain accounting records properly written up to show this Firm's dealings with client and office money and thereby breached any or all of:

1.6.1 Principle 7 of the Principles;

1.6.2 Principle 8 of the Principles;

1.6.3 Rule 1.2(e) of the SAR; and

1.6.4 Rule 29.1 of the SAR.

1.7 Between January and June 2017, he failed to conduct client account reconciliations every five weeks as required by the Solicitors Accounts Rules 2011 and thereby breached any or all of:

1.7.1 Principle 6 of the Principles;

1.7.2 Principle 7 of the Principles;

1.7.3 Principle 8 of the Principles; and

1.7.4 Rule 29.1 of the SRA SAR.

1.8 Between 6 October 2011 and July 2017, by failing to manage his business effectively and in accordance with proper governance and sound financial and risk management Principles he breached either or both of:

1.8.1 Principle 6 of the Principles; and

1.8.2 Principle 8 of the Principles.

1.9 Between 24 July 2017 and 31 January 2018 at the earliest, by failing to comply with his legal and regulatory obligations to provide all information and documentation requested by the Legal Ombudsman as part of the investigation into a complaint against his Firm by a former client, he breached, or failed to achieve either or both of:

1.9.1 Principle 7 of the Principles; and

1.9.2 Outcome 10.6 of the SRA Code of Conduct 2011 ("the Code").

1.10 Between 9 March 2018 and 10 July 2018, by failing to respond to an Explanation with Warning letter dated 9 March 2018 from the SRA asking for an explanation of his conduct in failing to cooperate with the Legal Ombudsman, he breached, or failed to achieve, either or both of:

1.10.1 Principle 7 of the Principles; and

1.10.2 Outcome 10.6 of the SRA Code of Conduct 2011 ("the Code")."

Mitigation

52. The Respondent told the Tribunal that he was disappointed with its findings, which he described as unjustifiable. The Respondent submitted that he had been enabling access to justice, as he had done throughout his career, whether it be helping taxi drivers or parents obtain proper representation. The Respondent told the Tribunal that

all he had wanted to do was help people, as he had always done. The Respondent strongly denied being dishonest and criticised the Tribunal for finding him to be so.

53. The Respondent told the Tribunal that he had very little by way of mitigation. He invited the Tribunal not to strike him off the Roll and to keep any suspension as short as possible.

Sanction

54. The Tribunal had regard to the Guidance Note on Sanctions (December 2020). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

55. In assessing culpability, the Tribunal found that while the Respondent said that he was motivated by a wish to help others, he had primarily been motivated by financial gain. He had been motivated to mislead in order to attract "investment". This was a misnomer. The money was in fact to be used (to his knowledge and contrary to his representations to the litigation funders) to fund the progress of the work though people to whom he outsourced the work, and over whom he had little if any control. His conduct was entirely planned. The litigation funders had placed their trust in the Respondent when they had given him the funds and he had failed to honour that trust. The Respondent was an experienced solicitor. The Tribunal noted that he had not misled the SRA.

56. In assessing the harm caused, the Tribunal considered that there was tremendous harm to the profession and to the litigation funders who were misled. There was harm caused to the clients as their claims had not been advanced. The Tribunal considered that all of this harm was completely foreseeable. The misuse of the funders' monies was an extremely serious matter and the departure from integrity was very significant.

57. The misconduct was aggravated by the Respondent's substantial dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

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

58. In addition, the conduct was deliberate, calculated and repeated. It had persisted over a period of time, during which time litigation funders had been taken advantage of. There had been concealment of wrongdoing as was clear from the correspondence with the litigation funders, including AL. there had also been concealment by way of the misrepresentations in the LFB. The Respondent ought reasonably to have known that he was in material breach of his obligations (it is not necessary to state that he did so know). The Respondent also had a previous finding against him at the Tribunal.

59. The Tribunal was unable to identify any mitigating factors.

60. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a strike-off. The protection of the public and of the reputation of the profession demanded nothing less given the persistent and serious nature of the misconduct.

61. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Respondent had not advanced any and the Tribunal identified none. The Tribunal found there to be nothing that would justify a lesser sanction. The only appropriate and proportionate sanction was that the Respondent be struck off the Roll.

Costs

Applicant's Submissions

62. Ms Tahta applied for the Applicant's costs in the sum of £103,867.55. Of that figure, £48,500 plus VAT represented the fixed fee for the legal costs. This fixed fee included outlay on Counsel's fees and that of an expert. There were "enormous" amounts of material in this case, only part of which had made its way into the hearing bundle. Ms Tahta submitted that the fees were entirely justified by the amount of work done on the case, which was recorded as 362.5 hours. Once Counsel's fees and the expert fee had been accounted for, that worked at an hourly rate for her instructing solicitors, Capsticks, of £8.33.

63. In reply to a query from the Tribunal, Ms Tahta confirmed that none of the costs of the intervention into Allansons had been included in the costs schedule.

Respondent's Submissions

64. The Respondent strongly objected to the level of the Applicant's claim for costs. He made a number of personal attacks on the integrity of various individuals involved in the preparation of the case. The details of those submissions are not set out here as they were unsubstantiated.

65. The Respondent submitted that Counsel's fee should be assessed at £20 per hour. The Respondent complained of duplication of work and accused the Applicant of showing "utter contempt" to the Tribunal. The Respondent submitted that time spent dealing with disclosure and formulating the Allegations should be discounted entirely.

66. The Respondent submitted that the appropriate level of costs should be no more than £20,000.

67. In terms of his own means, the Respondent told the Tribunal that he did not have a job as the Applicant had prevented him from working, and that he helped a builder sometimes, for £10 per hour. He did not have anything in writing to confirm the levels of debt, but he could provide his bank statements. The Respondent stated that he was dependant on his wife and he did not have any property in his own name, describing himself as "a man of straw".

The Tribunal's Decision

68. The Tribunal considered that this had been a complex case involving many funders and cases. The overall figure of £48,500 plus VAT was reasonable in all the circumstances, having regard to the work done and the volume of material. Had this case been costed on a time basis, there would have been deductions for the redactions and the issues surrounding disclosure. However, in this case experienced Counsel was required and the legal costs were very low overall, for the amount of work that had plainly been required. Insofar as criticisms had been made of the legal costs and way in which case was handled, that might have resulted in a reduction of fees awarded, but the method of calculation was such that the costs were at a level which would cover such a reduction, had a standard method of calculation been used.

69. The Tribunal was satisfied that the investigation costs had been reasonable. The FIO had been required to go through a large amount of complex material.

70. In relation to the Respondent's means, the Tribunal noted that he had received money as a result of the scheme that had not been explained. In the absence of that information the Tribunal could not conclude that the Respondent was unable to pay the costs. The Respondent had made a number of assertions but had not provided supporting evidence. The Tribunal therefore ordered that the Respondent pay the Applicant's costs in full.

Statement of Full Order

71. The Tribunal Ordered that the Respondent, ROGER BRIAN ALLANSON, 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 £103,867.55.

Dated this 15th day of April 2021
On behalf of the Tribunal

P S L Housego
Chair