SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12332-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

RICHARD LONGTON Respondent

Before:

Mrs C Evans (in the chair)
Mrs F Kyriacou
Mrs L McMahon-Hathway

Date of Hearing: 11-13 January 2023 & 3 March 2023

Appearances

Michael Collis, Counsel, employed by Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR instructed by the Solicitors Regulation Authority Ltd ("the SRA") of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Andrew Baker, Counsel of No 5 Barristers Chambers, Fifth Floor 7 Savoy Court London WC2R 0EX instructed by Solomon Solicitors 16 Finchley Road, London NW8 6 EB for the Respondent Richard Longton who was present.

JUDGMENT

Allegations

1. The allegations against Richard Longton made by the SRA are that, whilst in practice at Metis LLP and then Metis Law Ltd (together, the "Firm"), he:

1.1 Between 26 July 2017 and 24 June 2019 acted for both buyers and sellers on a property development scheme, giving rise to actual and or significant risks of conflict of interest. In so doing, he failed to achieve Outcome 3.5 of the SRA Code of Conduct 2011 and breached Principles 2, 6, and 8 and the SRA Principles 2011.

1.2 Between July 2016 and 24 June 2019 provided banking facilities through a client account, in that he allowed payments into, and transfers and withdrawals from, a client account that were not in respect of instructions relating to an underlying transaction or to a service forming part of his normal regulated activities, contrary to Rule 14.5 of the Solicitors Accounts Rules 2011 and Principles 6 and 8 of the SRA Principles 2011.

Documents

2. The Tribunal reviewed all the documents in an electronic bundle agreed between the parties.

Preliminary and Other Issues

3. *Anonymisation*

3.1 Mr Collis advised the Tribunal that he wished to apply for anonymisation of certain individuals and companies under Rule 35(9) which stated:

> "The Tribunal may make a direction prohibiting the disclosure or publication of any matter likely to lead to the identification of any person whom the Tribunal considers should not be identified."

3.2 An anonymisation schedule was attached to the Rule 12 Statement which had been reconsidered in the light of the judgment in the case of Lu v SRA and Mr Collis stated that the Respondent would not maintain the application in totality of the schedule but would ask for certain individuals and companies to be anonymised only. Mr Collis asked that the anonymity of Client F and Client G be maintained. He pointed out that the case of Lu did not involve any clients.

3.3 Mr Collis also referred to an ongoing Serious Fraud Office (SFO) investigation which related to an individual referred to as Mr A, Companies B, C, and M and Mr I, an employee of Company B. The SRA had not consulted the SFO for its views in relation to this matter and was mindful that a news article recently added to the documents referred to two of the companies and this was in the public domain. Mr Collis submitted that perhaps the SRA was being over cautious but he was keen to avoid unintended prejudice to an ongoing investigation or prosecution. All the other people and an entity previously anonymised would be named. There was a certain amount of information in the public domain about Mr A and Companies B and C and the SRA did not know whether the documents in the case contained anything not already in the public domain.

3.4 The Tribunal pointed out that the judgement in the case of Lu discouraged the cautious approach to anonymization which Mr Collis was advocating. Mr Collis responded that Mr Justice Kerr had upheld the anonymization of three individuals whom he stated might have had a contractual right to anonymity along with their employment and he left open the possibility of anonymization if there were sensible grounds for doing so.

3.5 For Mr Longton, Mr Baker submitted that in his view the law was clear; clients F and G were entitled to anonymity as of right, but he did not object to the application in respect of Mr A and the Companies B, C and M and possibly Mr I.

3.6 The Tribunal had regard to the submissions made by Mr Collis and to the judgement in the case of Lu. They were content that clients F and G should remain anonymized. The Tribunal felt that it would have been helpful if the SRA had contacted the SFO, but it had not done so. The Tribunal did not consider that there were good reasons for anonymizing Mr A (Mr Woodhouse) and company B, (Northern Powerhouse Development). He and the company were well known and information about them was already in the public domain. The Tribunal noted that Mr Baker did not object to the anonymization of Mr A and all the companies. However, there was no information before the Tribunal that would suggest that there would be an unintended prejudicial effect if Mr A and the companies were named during the proceedings. Mr Collis accepted that the SRA was being cautious, and the case of Lu discouraged the Tribunal from taking such an approach.

3.7 Given the amount of material that was already in the public domain and the lack of any real evidence supporting Mr Collis's application that to name the individuals and the companies would have a prejudicial effect the Tribunal concluded that it should refuse the anonymity application in respect of Mr A, Mr I and companies B,C and M.

4. *Disclosure issue*

4.1 Mr Collis applied for permission to admit a news article headed *"Law Firms Face £131M Suit Over Negligent Advice"*. He explained that the article appeared to have been published on 31 August 2022 and the SRA's forensic investigation officer had only located it two days previously and forwarded it to Capsticks the day before the present hearing commenced who had then liaised with the SRA. A decision was reached that even though it was publicly available it would be appropriate to disclose it to Mr Longton. It related to a civil claim against the advisors of 43 companies in the MBI group and NPD Group, including Companies B and C. The claim referenced Metis Law which was referred to in the Rule 12 statement as "the Firm" and which was Mr Longton's employer at the time the allegations arose. Mr Collins referred to the 4th paragraph of the article:

> *"The companies are also suing the now-defunct Metis Law and its alleged successor Arma Litigation for £55 million for allegedly negligent advice on potential conflicts of interest, failing to segregate funds raised from investors and other alleged breaches of duties to the company, according to the claim. Arma Litigation is also based in Leeds."*

4.2 Mr Collis submitted that there had possibly been an application to strike out the claim and things might have moved on since the article was published. However, the significance of the paragraph quoted above to the present proceedings was that in relation allegation 1.1 there was an allegation of lack of integrity in Mr Longton having acted for buyer clients and also seller clients regarding a development scheme. The SRA's case was that Mr Longton, after initially acting for buyer clients, also took over acting for the sellers in the same transactions but did not disclose that he was acting on both sides either to the Firm or to his colleagues or his buyer clients. Key evidence in the present proceedings is that of Mr Barker who was scheduled to give oral evidence. Mr Barker worked at Metis Law at the relevant time and is currently working for Arma Litigation, the successor to Metis Law.

4.3 The SRA's position was that the Firm (Metis Law) and Mr Longton's colleagues were unaware of the conflict situation that had arisen as a result of his taking over the seller clients, and this was one of the key factual disputes which the Tribunal would be required to resolve. This information from the article had not previously been seen by Mr Longton and his representatives until it was disclosed on the morning of this hearing. Mr Baker would address the Tribunal to see if more information over and above the article could be obtained.

4.4 Mr Baker submitted that the at the heart of the case was whether Mr Longton alone was a party to the misdemeanours or whether Mr Barker and others at the Firm also knew.

4.5 Mr Baker submitted that Mr Longton accepted the first allegation save in respect to his having lacked integrity and that the status of and evidence in the civil case could have been investigated to see if they bore any relevance to this issue. Given that this was possible due to their notification at this late stage, Mr Barker requested a short adjournment during which the SRA could contact Mr Barker for disclosure of the pleadings in the civil case and Mr Barker's witness evidence as well as details of any strike out application so that the Respondent could consider whether they contained any information that might undermine his evidence in this case.

4.6 These were, theoretically, publicly available documents and if he was refused initially Mr Longton would have to make an application to obtain them.

4.7 The Tribunal queried whether it was relevant that there had been a third-party application for disclosure. Mr Baker responded that potentially this was a separate issue. At present they were dependent on the picture given by Mr Barker. He acknowledged that criticism could be levelled at both sides as the article had been in the public domain since August 2022, but one could not go back in time.

4.8 Mr Baker did not object to a short adjournment while Mr Barker was contacted to see if he had the documents and was willing to forward them to the SRA. Mr Baker submitted that it was not known what had been said about advice regarding conflicts of interest. If the author was Mr Longton, it would not alter the shape or presentation of the SRA's case before the Tribunal but it might be that the evidence in the other matter was entirely consistent with the evidence in this case.

4.9 Mr Collis admitted that if they had known about the article, the Applicant would have considered whether it was appropriate for the SRA to make inquiries or whether disclosing it to the Mr Longton's representatives would be appropriate. Mr Baker responded that they would have obtained the documents one way or the other.

4.10 The Tribunal retired to consider whether it was prepared to adjourn for the pleadings and any witness statement to be pursued. The Tribunal had regard to the submissions which it had heard and it noted that the documents which were sought could have the potential to undermine the Applicant's case.

4.11 The Tribunal noted that this was merely an application for time to be granted not an application for disclosure as the documents were not in the possession of either the Tribunal or the parties and so Rule 26 of The Solicitors (Disciplinary Proceedings) Rules 2019 (SDPR 2019) was not relevant.

4.12 The Tribunal decided that it would allow time for enquiries to be made and it pointed out to the parties that whilst they should be aware of Rule 26 although it was not strictly applicable at this stage.

5. *Declaration of interest by solicitor member*

5.1 Ms Kyriacou had noted that the article referred to the Financial Conduct Authority ("FCA") and she wished the parties to be aware that she was employed by that organisation where she was an interim head of department in the General Counsel's Division. However, she was not involved in the work being done by the FCA in that matter but given the reference to her employer in the article she felt that in the interests of transparency she should disclose her position. Neither party made any objection to her sitting as part of the panel in this case.

5.2 Upon resuming, the parties reported that they had obtained the particulars of claim (totalling 217 pages) from the High Court litigation. The strike out application seemed to relate to a phoenix company which was not relevant to the Tribunal proceedings. It was understood that the only pleadings at present were the particulars of claim.

5.3 Mr Collis submitted that he was sympathetic to Mr Baker's position as he too had not previously seen the documents. Mr Collis added a caveat; in their inquiries with Mr Barker about obtaining any relevant documents, Mr Barker had forwarded onto Capsticks an e-mail exchange between him and Keogh's LLP who were acting for Metis Law in the civil claim which indicated that they had previously provided a copy of the particulars of claim to Mr Longton. Capsticks did not have a date when that took place or the method by which they provided it to Mr Longton, but Capsticks said that despite a request to Mr Longton to attend to discuss the matter no response had been received. Mr Collis, however, could not positively assert that Mr Longton had previously received the documentation.

5.4 Given the volume of the disclosed material Mr Collis suggested that a further adjournment would be required to consider the documents.

5.5 Mr Collis also informed the Tribunal that Mr Barker had not provided a witness statement in the civil proceedings. A witness statement was provided by his colleague Mr Sharma which went solely to the strike out application submitted for Arma Litigation. Mr Collis did not have a copy of that statement.

5.6 In order to allow Mr Baker time to study the documentation which he had not seen before the Tribunal decided that it would adjourn until the morning of the second day listed for the hearing.

Findings of Fact and Law

6. The Applicant was required to prove the allegations to the standard applicable in civil proceedings (the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 respectively of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Factual Background

7. Mr Longton was admitted on 4 January 1999.

8. The managers of the Firm were assisted by fourteen fee earners; and eight support personnel including Head of Accounts, Jackie Douglas ("Mrs Douglas"). The Firm's fee income was from the following areas:

- Litigation - 40%
- Property - commercial - 33%
- Commercial/corporate work for non-listed companies and others - 23%.
- Property - residential - 3%.
- Employment - 1%.

9. The Firm had two directors. Mr Sharma and Mr Barker; each held 50% of the Firm's shares.

10. On 1 May 2018, the Firm changed its name from Metis LLP to Metis Law Ltd following its conversion to a limited company. The change was immaterial for the purposes of these proceedings and references in judgment to the "Firm" are references to Metis in both its incarnations.

11. Mr Rajat Sharma ("Mr Sharma") was head of Commercial Litigation. He had been the Firm's COLP and COFA since 9 April 2019. According to Mr Sharma, he was also the Firm's MLRO. Mr John Barker ("Mr Barker") was head of the Corporate Team. Mr Barker had been the Firm's COLP between 18 December 2012 and 9 April 2019, its MLRO between 21 January 2018 and 29 May 2019, and its COFA between 11 May 2016 and 8 June 2016.

12. Former manager and director, the Respondent Mr Richard Longton ("Mr Longton") had worked at the Firm between August 2012 and 24 June 2019 and had been head of Commercial Property.

13. The allegations related to Mr Longton's conduct when acting on behalf of a property developer, Mr Gavin Woodhouse and his associated companies between 2015 and 2019 in relation to a number of interrelated property development schemes overseen by Mr Woodhouse.

14. The schemes involved the acquisition and development of care homes, student properties, and hotels. The schemes may be summarised as follows:

    a. Like all development projects, these projects required project-financing. Instead of (or as well as) raising finance from traditional lenders, finance was raised from individual investors purchasing single units within the scheme (such as a single hotel room), on an off-plan basis.

    b. The sale of individual units was done by way of ordinary property sale, with an exchange and a completion leading to full registered title in the individual unit. Exchange took place in the ordinary way upon agreement of contracts; completion was triggered by the practical completion of the development work. Because the funds were needed to finance the development, (i) deposit monies were the whole of the purchase price; and (ii) deposit monies could be released by seller solicitors to the property developer/seller immediately, rather than held pending completion.

    c. Once the development was complete, the individual owners would lease their units back to the developer in exchange for an annual payment over a ten year period, ultimately resulting in an expected rate of return on investment of between approximately 12 and 24 percent. The developer would use the income generated from the business (be it a care home, student accommodation, or hotel) to fund these lease payments.

    d. There were approximately 25 separate development projects in total. Each one was run through its own special purpose vehicle ("SPV")/limited company. Mr Woodhouse was the sole director of each of these SPVs. Further, each of the SPVs was wholly owned by either Company C (MBI Consulting) or, later, Company B (Northern Powerhouse Developments). These were in turn wholly owned by Mr Woodhouse so he was the sole director and beneficial owner of all of the SPVs carrying out the development projects.

    e. The sellers (that is the SPVs) were represented by a single Firm of solicitors. Rather than each buyer instructing their own solicitor, there would be a panel Firm (or Firms) of solicitors so that all buyers were using one or a small number of solicitors.

MBI Consulting matters

15. In early 2015, Mr Woodhouse selected the Firm to act as panel solicitor for buyers purchasing individual units in its developments. From February 2015, the Firm acted for investor clients in the purchase of 149 rooms totalling £10,613,000 across thirteen care homes and hotel investment schemes.

16. The MBI Consulting SPVs were initially represented by Linda Heald & Co Property Lawyer. Across the investment schemes, the processes and documentation were similar for all MBI Consulting purchases. Amongst other things:

    a. Deposits were effectively equivalent to the full amount payable upon completion;

    b. Clause 1.3 of the Agreement for Sale made the Agreement (i.e., legal completion) conditional upon the Seller obtaining planning permission, constructing the building, and receiving a certificate of practical completion. The Seller would thus default if it failed to achieve any of these things.

17. Clause 4.2 of the Agreement for Sale provided that deposits would be held as agent for the Seller. In conveyancing practice, paying the deposit to seller as agent means that the seller's solicitor does not need to await completion before releasing the deposit funds received from buyers to the seller, but could instead release the deposit to the seller at any time. This usually means that deposits are released as soon as they have been paid. Thus, pursuant to Clause 4.2 of the Agreement for Sale, the Seller's solicitors were entitled to (and indeed were required to) release the deposits to the Seller as soon as instructed by its client to do so.

18. The Firm drafted a standard report on title for buyers, which advised their clients about this. It stated amongst other things as follows:

> "3.2 You would ordinarily have to pay a deposit of 10% to the Seller. However, you are paying a 12% deposit. The obvious risk is that you are paying the deposit to Seller as agent 5 (see 3.3. below). If the Seller defaults it may be more difficult to get your deposit back. This will be due to you as the Seller is not entitled to retain your full deposit if you [sic] default under the contract.
>
> 3.3 The deposit will be held by the Seller's solicitor as agent for the Seller. This means that the Seller's solicitor may release the deposit to the Seller as soon as the Contract is exchanged. It may be difficult (or even impossible) for you to reclaim the deposit if the Seller does not complete the sale of the Property or becomes insolvent before the sale is completed. ...
>
> 4.6 There is not at present a binding agreement for the Seller to purchase the Estate and therefore any money that you pay will not be secured against a physical property/land. You be [sic] relying on the provisions of the contract requiring the Seller to repay your deposit in the event the scheme does not proceed. As we have confirmed above, the deposit monies you pay will be held as agent and can therefore be released to the Seller immediately after exchange."

19. In July 2017 the Seller's solicitor, Ms Heald, ceased to act for the sellers. The sales matters with respect to two of the developments – Hawthorn Care Village and Clifton Moor Care Village – were at that stage transferred to the Firm from Ms Heald and Linda Heald & Co Property Lawyers. Thus the Firm, having already represented 46 buyers across these two schemes, now represented the Sellers as well.

20. In the event, four out of the thirteen MBI Consulting projects on which the Firm had been instructed (including the two in respect of which the Firm had taken on the seller matters from Linda Heald & Co Property Lawyers) failed to complete: Hawthorne Care Village, Oakesway Care Home, Clifton Moor Care Village, and Room 36 Aparthotel.

Northern Powerhouse Developments Matters

21. Mr Woodhouse went on to establish a further separate group of companies, referred to collectively as Northern Powerhouse Developments. In around July 2016, the Firm accepted instructions to act on behalf of Mr Woodhouse and Northern Powerhouse Developments' group of companies with respect to sales of rooms in hotel investment schemes, and in relation to the acquisitions of the hotels in question.

22. A client care letter dated 4 July 2016 showed that the Firm was retained by Mr Woodhouse, Giant Hospitality Limited, Northern Powerhouse Developments, and *"any companies which you control or direct from time to time."*. By contrast with the MBI Consulting matters, where the Firm had acted (at least initially) as panel solicitor for buyers/investors, in relation to the Northern Powerhouse Developments matters the Firm was acting (only) for the Seller.

23. In total, the Firm acted for Mr Woodhouse and his companies in the sales of 540 units (rooms, lodges and plots) totalling £52,736,850 across fifteen investment schemes. The sales process and documentation were similar across each of the Northern Powerhouse Developments investment schemes.

24. Amongst other things, the Agreement for Sale in respect of one development, St Brides, provided as follows:

> "On or before the date of this Agreement, the Buyer shall pay the balance of the Deposit...to the Seller's Conveyancer as Stakeholder, until (but excluding) the date the Seller exchanges contracts for the acquisition of the Estate (of which the Property forms part). On the Estate Exchange Date, the Seller's Conveyancer may use the Deposit paid on exchange as deposit monies to facilitate exchange of contracts for the acquisition of the Estate. The Buyers funds will be protected by the Guarantee and Indemnity provided with the initial contract pack."

Here too, therefore, at least some of the deposit funds could be released prior to completion. Further, in relation to some of the transactions, the funds were said to be protected by a Guarantee and Indemnity. The Guarantors were all other companies in the same group.

The use of investor funds

25. Buyers' funds were paid to the Firm as Sellers' solicitors. However, the Firm did not generally release those funds directly to the Sellers. Some were indeed used for making payments of deposits for the acquisition of the specific development related to a unit sale. However, the majority were either paid to Northern Powerhouse Developments (the parent company), or applied towards payments of deposits for the acquisition of the specific development related to a unit sale. By way of illustration, the Forensic

Investigation Officer ("FIO") traced the distribution of the net sale proceeds of twenty sample sales.

26. The Firm acted for Northern Powerhouse Developments in respect of fourteen acquisitions. In the event, five out of the fourteen schemes failed to complete, due to the relevant seller SPV's failure to acquire the estate or construct the development. Several companies within the group also subsequently entered into administration. Amongst other things, the administrators had remarked upon the difficulty of having to piece together the intra-group money flows that passed through the Firm's client accounts in order to understand which SPV owed what to whom. The administrators had only been able to do so through the considerable degree of cooperation provided by Mr Longton's former Firm.

27. Northern Powerhouse Developments was subject to extensive adverse media coverage in June 2019. The coverage raised the concern that it raised millions of pounds in investor funds for numerous investment projects, but many of these projects were never completed. At the time of issue of the Rule 12 Statement the SFO was investigating suspected fraud and money laundering in relation to the conduct of business by Mr Woodhouse and individuals and companies associated with him.

28. The SRA received a report dated 26 June 2019 from the Firm in respect of the conduct of Mr Longton. The SRA also received a self-report from Mr Longton on 27 June 2019.

Witnesses

29. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

30. The following witnesses gave oral evidence:

- Joanna Wright, SRA Forensic Investigation Officer
- John Barker
- Mr Longton

31. <u>Evidence of Joanna Wright</u>

31.1 Joanna Wright confirmed that on or around 8 July 2019 the SRA commenced its investigation into the Firm. She agreed that it had initially been commenced by one of her colleagues before being taken over by her and it culminated in a forensic investigation report dated 11 August 2020.

31.2 She had visited the Firm on three occasions between the summer of 2019 and about October of that year.

31.3 Ms Wright was asked to confirm that clients F and G got their money in the end but she pointed out that neither of them was referred to in the FI Report by initials. Mr Collis confirmed there was no financial loss to those clients. (Later in the hearing Mr Collis stated that if the clients F and G had not received their money back it would be very much part of the Applicant's case and it was not.)

31.4 Ms Wright stated that she thought she might have seen the ledger where the sum of £1,320 was placed in late July 2017. It was referred to as Hawthorn General £1,320. She had seen an e-mail from Shannon Jordan when she had instructed that the money should be allocated to that ledger, and she thought she might have seen the ledger; she felt she probably did. She was asked whether she had made any effort to trace through what happened to that amount of money. Ms Wright replied that she saw the e-mail and the response and the £1,320 on the ledger and it did not seem that that money went anywhere else as it was the same balance.

31.5 Ms Wright was also referred to the ledger with the statement about the opening of the file on 31 July 2017 and the reference of 1 August 2017 the conflict and credit checks for Hawthorn General (also, Mr Barker's evidence below). She stated that she had met the accounts manager at the Firm. It appeared that what was entered on the Ledger was entered on every file that she had seen.

31.6 To put the matters in context, Mr Baker said that this document was printed on 8 June 2020. Miss Wright said that was after the other page which she had been shown.

31.7 The first suggestion that Mr Longton had kept ~~these~~ payments or files secret came about in June 2021 where Mr Barker was responding to a letter from the SRA. Ms Wright could not comment on that; secrecy was not something that was in her report. She was not asked to look into secrecy issues. As to whether it was a relevant issue at the time of the investigation Ms Wright stated that at the time of her investigation, she could see that the Firm was in a potential conflict of interest situation because it was acting for the seller and buyers. It was on her radar. She confirmed she took the £1,320 no further because of the evidence available to her at that point. Obviously, the money came across from Ms Heald and it sat on that ledger and not only was there a potential conflict but none of that money was moved to any ledgers opened up for those specific sales matters. So that was the only observation she made on this issue.

31.8 Ms Wright was referred to her FI report where she said:

> *"150. At interview, Mr Barker explained that the funds for NPD's acquisitions included proceeds received on the sales of rooms by NPD's other companies. He explained that he relied upon the Property Team, to ensure that the funds had been properly acquired by NPD. Mr Barker's understanding as explained at interview, was that "there was an authority in place to allow those monies to move from one ledger to another".*

31.9 As to whether Mr Barker had sought to qualify his explanation at any point thereafter, Ms Wright explained that she had not had any contact with him since the interview.

31.10 There was no re-examination by Mr Collis and no questions from the Tribunal.

32. Evidence of John Barker

32.1 Mr Barker gave a witness statement dated 15 August 2022. He is a solicitor and former colleague of Mr Longton. They worked together at Metis Law in 2016, 2017 and 2018.

Cross examination

32.2 The client care letter to Mr Woodhouse and several of his companies dated 4 July 2016 was his document. He agreed he had extensive dealings with Mr Woodhouse during the period set out in the allegations. Mr Barker stated that he was a corporate transaction specialist. He agreed he was involved in corporate share dealings, issues and purchases relating to Gavin Woodhouse and his companies. He agreed that Mr Woodhouse was probably the Firm's biggest client financially and the turnover related to his business was many hundreds of thousands of pounds of turnover in one year.

32.3 Mr Barker agreed that Mr Longton suffered periods of illness whilst he was working at the Firm. He did not remember the exact dates (beginning in February 2017). It was put to him that there was a further fortnight off from 27 April 2017 and again he was ill on 22 September to 8 October 2018. Mr Barker recalled the latter as it coincided with a significant event in his own family.

32.4 Mr Longton resigned from the Firm on 24 June 2019 and on 26 June 2019 there were the first media reports concerning Mr Woodhouse. Mr Barker agreed it was around that time that time the Firm self-reported. Mr Longton was to have also self-report the same day but that for some technical reason it did not occur until the next day.

32.5 In respect of the detailed SRA enquiries Mr Barker agreed that the first time it was alleged that there had been secrecy about the transfer of Ms Heald's files was on 6 September 2021 when he responded to a notice served on him by the SRA.

32.6 Mr Barker stated that he had been interviewed by Ms Wright once. Mr Barker was referred to paragraph 150 of the FI Report dated 11 August 2020 (quoted above). Mr Barker agreed with the first two sentences of the above quotation. He stated that he had not seen a transcript of the interview but agreed that the third sentence sounded like something he had said or would say although he had not seen this document.

32.7 Mr Barker was referred to his interview with the FIO where the transcript showed that he said:

> *"No, now in terms of, well in terms of how the money is physically transferred - I hadn't really given it that much - at the time I hadn't given it that consideration. I've just been working on the basis that there was an authority in place to allow those monies to move from one ledger to another.*"

Mr Barker agreed he said that, and he meant that there was an arrangement between Mr Longton and Mr Woodhouse as to how those funds would be moved or allocated from file to file; that was how it was understood it was going to be happening.

32.8 Mr Barker agreed that he had been the COLP and for a period the COFA of the Firm, the latter for a period of four weeks while they identified someone to take on the role. It was a transitional arrangement, but he had certainly been the COLP. He rejected the suggestion that the structure of Mr Woodhouse's companies was very complicated; it was large but not complicated in the sense that there was a single shareholder and a single director. He agreed that for each company, Mr Woodhouse was either the direct owner or the beneficial owner. It was a fair assessment that the companies were essentially Mr Woodhouse.

32.9 It was put to him that he had been involved in drawing up relatively complicated shareholding and share purchase agreements with him or his company. He agreed and stated that he acted on the transactions and the acquisitions of some of the various hotels; normally in the main they were share purchase acquisitions with which he was involved.

32.10 Mr Barker agreed that there was an allegation on foot in respect of which the parties had been provided with Mr Barker's agreement with the statement of claim in which a civil allegation was made against Metis and the "phoenix" company which had arisen from it.

32.11 He agreed that it was an immensely complicated civil action involving the liquidators of many companies and Metis and another Firm. He stated that the claim was very large in which a defence had not yet been prepared and served. Mr Baker put it to Mr Barker that part of the claim related to five separate schemes for share issuing in relation to particular hotels purchased by Mr Woodhouse in one of his guises: the Pennine Manor Hotel, the Esplanade Hotel, the Gilsland Spa Hotel and the Dunsmore Hall Hotel where Mr Barker was involved with Mr Woodhouse in complex share transaction issues. Mr Barker stated that he had advised on three of the four transactions, acting for the acquirer of the shares relating to those particular hotel entities.

32.12 Mr Barker agreed that Mr Woodhouse was a very good and important client of the Firm and he might have been its largest client.

32.13 He agreed he had been involved in drafting the client care letter. It was put to Mr Barker that Mr Woodhouse's company structure was such that there often financial transfers between one company to another. Mr Barker stated that they were many ledgers and agreed there were transfers from one ledger to another. He agreed that neither he nor anyone else had seen anything irregular or untoward regarding what was happening at that time regarding the movement of funds upon the direction of Mr Woodhouse.

32.14 Mr Baker put it to him that looking back many of these things were irregular but at the time no one saw anything wrong with those transactions taking place. As to whether there were any transactions which he authorised that he would now be more circumspect about, Mr Barker stated that he certainly did not see anything wrong but with the benefit of hindsight he would not be involved in this kind of work ever again. He agreed that money was transferred from one ledger to another at the direction of Mr Woodhouse because he was the company in reality for each of his SPVs and he added he was the director as well.

32.15 As to the allegations about the transfer of clients in July 2017 from Linda Heald's Firm Mr Barker stated that he was not clear what the allegations were in the Tribunal proceedings; he had not seen the papers. He knew who Linda Heald was and understood she was a small, licenced conveyancing practice. It was a fair assessment to say that his Firm was anxious to assist Mr Woodhouse when they thought he was a legitimate businessman who was doing very well and who was "on the up". He agreed that he was aware that the Firm had acted for buyers of rooms at his various developments.

32.16 Mr Barker stated that Mr Longton regarded Mr Woodhouse as a good client and the Firm had wanted to support Mr Woodhouse. Mr Barker agreed he was content acting for Mr Woodhouse in his very complex share operations. He was seen as very good for Mr Longton's business. Mr Barker could see he was a good client for Mr Longton and the Firm but not necessarily for Mr Barker. Mr Woodhouse was not Mr Barker's only client as he acted for many other clients.

32.17 Mr Barker agreed that Mr Woodhouse was a very substantial client of the commercial property division of the Firm. Mr Barker was aware of the relationship with Mr Woodhouse.

32.18 Mr Barker agreed that he and Mr Longton had cause to speak to each other because of the nature of the projects they were working on, and he agreed that sometimes it was a daily subject of conversation between them. Mr Barker worked on somewhere between 11 and 15 transactions some of which completed and some of which did not over a 3 to, 3½ year period. It was not a daily conversation for him because not all of the transactions happened at the same time.

32.19 He remembered that there was a discussion around the retirement of Ms Heald before she retired if she ever did; he was not sure she did retire. He was aware that she had previously acted for the Northern Powerhouse Development Group of companies. He was not involved in the 'rooms' side of the transactions. He did not recall a conversation with Mr Longton to the effect that it would be good if they could acquire that work. He recalled having conversations about acquiring NPD as a client of the Firm.

32.20 As to what acquiring the work would involve, as COLP it would involve engagement, client care letters, identifying the client and looking at the work that the Firm could potentially do for them. He did not specifically recall a discussion about the increase of revenue to the Firm which would result. It would involve the impact for the partners as individuals and for their teams.

32.21 Mr Barker agreed that the Firm operated from an open plan single room in a relatively small office. They had 3,000 square feet of open plan office with meeting rooms. Over the years they had been in different locations in the office. At one point he, Mr Longton and Mr Sharma had been in a small meeting room and at one point they were outside in the open plan environment. He considered this to be an open plan environment.

32.22 Mr Barker stated that he would like to think that this was a situation where there were no secrets between the partners, and they discussed their clients and their work. He agreed it was a large open plan office and they were all working together and there were no secrets: that was what he would have liked to have thought.

32.23 By reference to a plan of the office Mr Barker stated that he and Mr Longton did not sit directly opposite each other but if Mr Barker was able to stand up and Mr Longton could stand up, they could have a conversation.

32.24 Mr Barker stated that if additional business came from Mr Woodhouse this would not necessarily have been the subject of a conversation between him and Mr Longton. There would have been a discussion if it involved the acquisition of a particular hotel. If that was classified as new business, then logically there would be a discussion between them.

32.25 As to the transfer of work from Ms Heald, Mr Barker was referred to an e-mail dated 31 July 2017 timed at 15.42 addressed to All Users which he confirmed would have included him. It came from Mr Ahmed Practice Manager and was addressed to "All Users". It stated:

> "*Hi all*
> *Following monies have come in,*
> *£1,320 ref LINDA HEALD, HAWTHORN TRANSF …*
> *…*
> *[Let me have the description of monies and file number.*
> *Sarfraz Ahmed*
> *PRACTICE MANAGER"]*

As to the line of the message referring to £1,320, Mr Barker did not know who had highlighted it in yellow. He denied that it was a common practice to do that in yellow or red if something was problematic. As to whether he had seen the e-mail he had not, but obviously it had been sent to him because he was on the recipient list. It was put to Mr Barker that Mr Ahmed was seeking reconciliation of the amount. The reference to Hawthorn clearly related to transferring MBI business although if he had not seen it he could not comment. He was also referred to another e-mail the following day at 9.37 from Mr Ahmed to Accounts to Accounts including: *"I am still awaiting on £1,320 in email below."*

And an email on 1 August from Shannon Jordan at 9.44:

> *"Sorry, I'd of replied only I don't know what Rich and Linda Heald have been discussing."*
>
> *"I have just opened a general file NOR2091.050 - can you put it in there for now as monies on account? I think it is going to be used for various reg fees at some point."*

Mr Barker did not believe this email had ever been brought to his attention.

32.26 There was an email dated 27 March 2018 from Shannon Jordan to Andrew Marshall and Mark Beedel of the Firm's Commercial Property Department:

> "*Hello both,*

> *Bit of a situation here, I act for [Client G] who is terminating his Agreement with MBI Hawthorn Care Limited due to them not meeting the Long Stop Date. MBI Hawthorne (sic) Care Limited is one of NPD's companies.*
>
> *Linda Heald (below) acted for MBI Hawthorn Care Limited on this matter, she is saying that she is no longer instructed on this development and we are (which is true)…"*

Mr Barker stated that he did not recall seeing this email before. Mr Barker stated that after Mr Longton left, he was involved in undertaking a very extensive reconciliation of all matters and they carried out their own internal investigation and during the course of that exercise they looked at different files with different things. They created a spreadsheet which was circulated not just to the SRA but also to the administrators of to the companies to try and explain what happened on some of these transactions. During the course of that exercise, he may well have seen an email along these lines but he did not recall seeing this e-mail.

32.27 He had never seen an e-mail from Ms Heald to Mr Longton dated 26 July 2017 which started:

> "*Our Mutual Client: MBI Hawthorn Care Ltd*
> *Property: [Client G]*
> *As part of the transfer of this matter to your company, please find enclosed the electronic documents as follows:"*

32.28 It dealt with a list of nine documents that had been transferred electronically and said:

> *"We will forward the paper file for this matter along with any funds held on account (e.g. Land Registration Fee), as part of the handover from our Firm to yours, in due course."*

32.29 Mr Barker said that he had not seen this e-mail but he understood, with the benefit of hindsight, that these letters did exist and were placed on the Firm's case management system. He expected that the emails had been retrieved from the system. He could only comment on what was on the case management system.

32.30 Regarding the reconciliation of the £1,320 and where and when it happened, he was only aware to the extent that that there was a ledger and he believed it was reconciled onto that ledger, but he did not know the file number. He assumed that the money was placed onto a ledger but there were hundreds of ledgers. As to it being a very specific query from Mr Ahmed extracted from his Firm's records and the fact, he could not help the Tribunal, Mr Barker stated that without the case management system in front of him he could not say which file it had been.

32.31 He denied being fully aware that the Firm had acquired Ms Heald's files. He had not spoken about it with Mr Longton. He understood Northern Powerhouse Developments had outgrown Ms Heald's Firm as an organisation that delivered legal services and that his Firm was going to take on a relationship but not acquire the files. It was put to him that it would be unusual if Mr Longton did not discuss the acquisition of her files with him. He replied that the Firm could not acquire her files; it made no sense. He accepted

that the transfer of documentation was referred to in her e-mail, but he could not assist except in respect of what he could see on the case management system. He did not know whether it would be advantageous to Mr Longton to keep the transfer secret from him and his colleagues; he stated that there were other things that Mr Longton kept secret from him but he did not understand what Mr Baker meant by 'advantage' and Mr Baker said he meant any personal benefit to Mr Longton in not telling Mr Barker about what was going on. Mr Barker said that he could not answer that question.

32.32 Mr Baker put it to Mr Barker that he and his partners were involved in enormously complicated litigation involving tens of millions of pounds and it was clearly to his advantage to deny any knowledge of any breach of rules or regulations by Mr Longton. Mr Barker stated that he had come to the Tribunal to give an honest account of what happened. He could not speak to what Mr Longton thought. He could say what he could see on the files and what he experienced. He could not give an opinion one way or the other as to what Mr Longton was thinking on his involvement in any of these transactions. He totally disagreed that he and Mr Longton had discussed Mr Woodhouse and his company, and that Mr Longton had acquired the work that Ms Heald had been doing in relation to that. He could say that very clearly.

Re-examination of Mr Barker by Mr Collis

32.33 Mr Barker had been referred to the client care letter to Mr Woodhouse, Giant Hospitality Ltd and Northern Powerhouse Developments Ltd dated 4 July 2016 and asked about the amount of work he did in relation to Mr Woodhouse. Mr Barker was asked by Mr Collis about the percentage of his time which he spent on Mr Woodhouse's matters in the period 2016 and 2017. He answered that he did that calculation maybe three or four years previously. Off the top of his head, he said it had been between 10 and 15% or thereabouts. He had worked on 15 projects over a three-year period. As to the percentage of his time he thought Mr Longton spent on matters related to Mr Woodhouse's matters he thought this had taken at least 50% of his time albeit he had not done a precise calculation and there were different measures in terms of fee income and actual hours worked. Mr Barker was referred to a paragraph in the client care letter:

> *"The person with overall responsibility for your matters is Richard Longton…"*

32.34 It was put to him that if that was the arrangement, was there any reason he had sent it to Mr Woodhouse and not Mr Longton. Mr Barker replied that he prepared it because although Mr Longton's relationship with Mr Woodhouse had commenced a little earlier he identified no client care letter had been prepared and so he took it on himself to do it and it was done with a particular acquisition in mind; it was probably his first instruction, but it referenced Mr Longton as well recognising he undertook work for the client too.

32.35 Mr Barker was referred to the e-mail from Shannon Jordan dated 1 August 2017 to the Accounts department answering the query about the amount of £1,320 as to where it should be posted at the end of the month:

> *"Sorry, I'd of replied only I don't know what Rich and Linda Heald have been discussing. I have just opened a general file NOR2091.050 - can you put it in*

there for now as monies on account? I think it is going to be used for various reg fees at some point."

32.36 Mr Barker was asked if he could say where the money was attributed. He said he had missed that there was a file reference and he had actually looked at this in advance knowing he was going to be attending the hearing. He looked at that ledger a couple of weeks previously and that was where the monies were located. He did not know what happened to the funds after they were put under that Ledger.

32.37 Ms McMahon-Hathway, lay member, asked Mr Barker about an e-mail referring to the transfer which appeared to have been sent to an LH Documents address from Linda Heald. Mr Barker was asked if he had access to that address and replied "No". He assumed it was internal; the Firm had different addresses for different property transactions, but he did not recognise it. As to the process for setting up group e-mail boxes. Mr Barker explained that he was in charge of IT. There were two ways: they would either put a support request to their IT provider and it was possible the Firm could set it up themselves creating a mailing list. He did not know if this was an internal or external address. If it was external LH Documents at the Firm, it would have been done by the IT provider. If it was an internal address they, the Firm, would probably have set it up.

Recall of Mr Barker

32.38 Having heard Mr Barker's evidence that he had seen the ledger some two weeks earlier Mr Baker was most anxious that the document be located by the FIO so that he could cross examine Mr Barker upon it. The Tribunal allowed time for Ms Wright to try and locate the document in which she was ultimately successful. A copy was provided to Mr Longton and his representatives. Mr Collis explained that the document was a copy of the client Ledger which had been referred to in the August e-mail from Shannon Jordan to the Accounts team. It informed them that she had opened a general file and that the sum of £1320 should go there.

32.39 There were two versions of the client Ledger of which one had been provided over the table to the FIO when she carried out her investigation in 2020. Mr Collis reminded the Tribunal that he had said inquiries would be made with Mr Barker. His version was dated the previous day and showed the file closed in 2021. A copy of a reconciliation made in 2019 relating to that money showed that it was still in the file in 2019. Mr Collis referred the Tribunal to the relevant reconciliation dated 2 June 2019 and to the version which had been provided to the FIO both of which had been uploaded to CaseLines.

32.40 Mr Baker's submitted that he was keen for the Tribunal to see these documents and would make an application for them to be admitted to which Mr Collis had no objection. Mr Baker pointed out that he had an issue with the contents of the ledger document which had been provided to the FIO. There was an entry dated 1 August 2017 which stated:

"Ledger opened by Jackie Douglas. Conflict check performed. Credit check performed."

32.41 Mr Baker explained that he wanted to pursue a point which he submitted undermined Mr Barker's account that the seller client matters had been transferred to the Firm and not entered on the system and so no conflict checks had been carried out. Mr Baker said that if that point must be made Mr Barker should have the opportunity to respond and put the words on the document into context. The Tribunal commented that Mr Barker would need to have time to look at the document, but Mr Collis said he had looked at it a couple of weeks ago and provided it the previous day.

32.42 The Tribunal gave permission for the documents to be admitted into evidence and agreed to the reordering of the witnesses to allow Mr Barker time to look at the documents and be in a position to give his further evidence remotely.

Mr Barker's further evidence

32.43 Mr Collis drew Mr Barker's attention to two documents one was a copy of the ledger which he had provided to the SRA the previous day with the reference to conflict and credit reference checks having been performed. The other document was an extract from his response to the SRA's notice of intended prosecution which he had submitted and in which he had explained the file opening process at the Firm:

> "*27. Pausing there, before a file can be opened on ML Ltd systems (this being the same during the LLP's tenure) the case handler must carry out anti-money laundering checks, client due diligence and a conflict check. The conflict check is performed by running the name of the prospective client through the Firm's existing client database. If the name already exists in the database this would generate a positive result and a message declining to open the file. In this event, partner and COLP authorisation is required for the Firm to act/for the matter to be opened on the Firm's case-management system. Indeed, the CMS client opening systems had been designed collaboratively between the Firm and EMIS (the software developer) so that proper safeguards were implemented. As time went on, more and more verification checks were added at the request of Mr Sharma or JB fortifying these protections.*
>
> *28. For the HCV sale files to be opened and operable on the system, a partner and JB, as the COLP, would have needed to override the Firm's policies and procedures and digitally certify the Firm acting and the file thus opening when a conflict of interest existed. JB was never approached by Mr Longton or anyone else in the Firm to override conflict and allow the HCV sale files to be opened on the Firm's system and in JB's view the need for COLP authorisation is the reason why the HCV sale files were not opened on the Firm's system. Of course, that the files were not open on the system and the lack of any physical files meant the HCV sale files (and the fact of the transfer) were essentially hidden from view. …"*

32.44 Mr Barker was asked how, what he had said in the response, that no physical files were transferred and were not opened on the Firm's system as matters and so no conflict checks were carried out and what was marked on the ledger could be reconciled. Mr Barker responded that obviously the comments on the ledger were added by the Firm's accounts manager. He could only help the Tribunal about how the Firm's systems worked because he did not ask for those files to be opened or open those files

himself. They were opened in the name of fee earner R Longton but he expected that Shannon Jordan or one of his other assistants that had requested the file to be opened. How it worked in practical terms was that Shannon, if it was her, would have opened the file on the system and it would then have gone to the accounts manager automatically to verify that all the file opening procedures had been dealt with for example was there money laundering documentation on the file or had a conflict check had been undertaken. That was as far as his knowledge went on this file. It looked as if the accounts manager had gone through the process and added that commentary in.

32.45 Mr Barker could not recall if this was automated text or something that she would type in herself. It was the confirmation that the file went live on the case management system. He did not know why the wording "Credit check performed" had been added; that led him to believe that it was a standard entry because there would not have been a credit check. Mr Barker was asked if what he had seen on this ledger changed or impacted on what he said in the response to the notice and he replied that it did not.

32.46 In cross examination, Mr Barker was referred to the ledger and it was pointed out to him that the statement that conflict checks had been carried out conflicted with his previous evidence. He agreed that was the wording and stated that it looked like it had been included on most files once they were opened and it was more of an automated process. He expected that that wording would be included on every file. It was put to him that he was saying that the company systems automatically put something in when it was not necessarily true. He was not saying that; he had just looked at it and he could not say if it was automated or something that the accounts manager would put in. Mr Barker responded that he did not know the answer. He agreed it was a very important point.

32.47 Mr Barker was asked exactly which document he had looked at in connection with the £1,320 a fortnight previously. He said he had looked at the file of papers which he had when the SRA said it intended to prosecute him. He had looked at it and all the associated documentation he had had in response to it.

32.48 There were rafts and rafts of information about this all of which interconnected and crossed over with each other. Over the last two or three years he was aware of lots of files and matters. He had a file and looked at it. He had looked at the ledger This page was a printed representation of a full ledger. He looked at the case management system and looked at the file.

32.49 He was not aware that the rationalisation issue of the £1,320 was particularly important in this case as he had not been aware of the specific charges against Mr Longton. It was put to Mr Barker that Mr Ahmed wanted to know what the £1,320 was and what it was to be attributed to.

32.50 Mr Barker was directed to the final entry on the ledger which showed a debit of £1,320 and the text "*Trf – Re consolidation of Client Monies"* where that amount had finally been put somewhere by someone. He agreed that it could not have been Mr Longton because he had left the Firm by then. Mr Barker knew that he did not do it. He stated that it would be subject to a partner transfer. He expected it was authorised by Mr Sharma but there was underlying data that could probably answer that. He rejected the suggestion that a decision was made relatively shortly after Mr Longton left the Firm

to consolidate the matter because Mr Longton left on 24 June 2019 and the transfer was made four months later. Mr Barker expected that there was another file with cash excesses all relating to the administration and the administrators being appointed. He thought the Firm probably moved all the monies to a single file so they were all in one place. He expected that this was part of the mop up exercise the Firm went through dealing with the administrators. He did not know which file they had been moved to but there was obviously another client matter client to client transfer.

32.51 Mr Barker was asked what had happened between 21 July 2017 and 25 July 2019 to reconcile that money, the entry relating to Linda Heald. He responded that he did not know but from what he could see on the ledger the monies were just held on client account in a file that Mr Longton requested to be set up. The monies had been attributable to that file. He assumed according to the email from Mr Ahmed at some point someone said these monies needed to be placed on this file, but he could not help the Tribunal with who that person had been.

33. Evidence of Mr Longton

33.1 For Mr Longton, Mr Baker submitted that the issues in the case were limited because Mr Longton had made an admission regarding allegation 1.1 but argued whether that demonstrated lack of integrity.

33.2 In respect of allegation 1.2 it was argued that there had been no breach or if it was a breach it was one which was endemic in the Firm. Mr Collis responded that he understood the allegation 1.2 was disputed but felt that the answer sought to qualify the admissions and he would seek to clarify the admissions.

Evidence in chief

33.3 In respect of allegation 1.1, Mr Longton confirmed that he acted for the buyers and sellers and conceded that gave rise to an actual and significant risk of conflict. He did not dispute that what he did was in breach of Principle 6 and Principle 8 of the SRA Principles 2011, and he denied that his actions were done with any lack of integrity (Principle 2). He specifically denied that he kept what he was doing secret from the rest of the Firm.

33.4 In respect of allegation 1.2, Mr Longton denied it and stated that the money was held on account and moved in contemplation of transactions which were ongoing and with the authority of the sole director and shareholder of each company.

33.5 Mr Longton also confirmed that he had been absent from the Firm for two weeks in February 2017 with an eye problem, that he had suffered an accident and was further away from the 27 of April 2017 and suffered from another condition and was absent from 27 September 2018 to 8 October 2018.

33.6 Mr Longton confirmed that he was involved in commercial property work.

33.7 He started working for Mr Woodhouse in 2016 and there was nothing to suggest that there was anything untoward about Mr Woodhouse.

33.8 There was an executive board of which Mr Peter Moore was a member; he introduced Centre Parcs to the work. There were YouTube films which showed Mr Woodhouse with Princess Anne showing her round a proposed ski slope. The profile of the people he was working with gave no indication that he was in anyway not reputable.

33.9 Mr Longton confirmed that in 2016, 2017, 2018 and 2019 Mr Woodhouse was the best client of the Firm; asked whether he was financially the biggest client and brought in some big litigation, Mr Longton stated that certainly this applied in respect of the property team and he was certainly in the top two or three clients for the whole Firm.

33.10 Mr Longton confirmed that he was involved in the documentation in respect of a care village project and that Ms Heald had retired at the end of July 2017. He had then acted in her place.

33.11 After the time the work was transferred on 31 July 2017 there was no further work required to be carried out on the seller's behalf; there was nothing to be done at all as the files had reached exchange of contract stage other than the lease had to be printed out and signed and sent to the Land Registry thus only the execution of the lease was required.

33.12 Mr Longton confirmed that all the purchase money had been paid over by the investor buyer and he stated that he now realised that acting for the buyer and seller was wrong but he did not realise that at the time. He now accepted there was a potential for conflict but stated that it was only a potential at the time, and he could have ceased to act at the point the conflict arose. He would absolutely not ever do it again.

33.13 The passing of the files from Ms Heald occurred electronically; physical files would have been given to the administrative support team of the Firm which consisted of three people who managed file opening call and carried out conflict checks and sent the client care letter and dealt with the administrative side of things. This was not dealt with by fee earners as it was not cost effective to do so at that time.

33.14 Mr Longton confirm that he acted for the sellers of many of Mr Woodhouse's companies. As a partner he preferred to act for sellers rather than buyers. He confirmed that he had discussed the fact that he was going to acquire Ms Heald's files with Mr Barker. They had daily briefings. Mr Barker was keen to look at workflow. Each plot scheme generated income which was material to cash flow at the Firm. There was no further discussion after the files were received. They came in and everyone was aware that money was also coming in. Mr Longton stated that it was untrue that the transfer had been kept secret from other members of the Firm.

33.15 In respect of allegation 1.2 relating to the provision of banking facilities through a client account Mr Longton confirmed that when the files were received, they were entered into a separate Ledger for each account and transaction.

33.16 Each plot sale had a separate ledger. Mr Longton also confirmed that Mr Woodhouse was the beneficial owner of all the companies, and he *was* the companies. Mr Longton confirmed that he would not do anything different from what Mr Barker would do in respect of the transfer of funds. He was the most junior of the three partners and subject to any procedures which were put in place. He acknowledged that he was not aware of

the Law Society warning cards about plot sales at all and he had not been made aware of them at all in training.

33.17 The financial transfers had been made purely for the purchase of a property. When in June 2019 the Guardian newspaper published reports about Mr Woodhouse, they agreed at the Firm they would report on the same day but a mistake had been made in the e-mail address of the SRA for Mr Longton's self-report; it bounced back and was discovered immediately.

Cross examination of Mr Longton

33.18 Mr Longton confirmed that he started work with the Firm in August 2012 and he had started working with Mr Woodhouse around 2016. He agreed that he became Mr Woodhouse's main point of contact in or around May 2016. He was the allocated client partner for that work. Prior to that Mr Longton stated that there had been a fourth partner at the Firm, Mr Cooper, and that Mr Longton had assumed his role when Mr Cooper left.

33.19 Mr Longton was referred to an e-mail dated 21 August 2019 from another partner at the Firm, Mr Sharma. It was an account which he had given to the FIO:

> *"1.3. I believe Mr Cooper and Mr Woodhouse knew each other beforehand having worked together in a previous property business. My recollection is that they both happened to meet each other in a car pack and this chance encounter led to the invitation by Mr Woodhouse for Metis to pitch to him (at that point representing MBI) for the Firm to be nominated to act for potential buyers on the MBI development deals. That pitch was carried out by Mr Cooper and Mr Longton. I recall a number of meetings took place. As I understand it, we succeeded on the pitch as we were competitive in terms of costs and we could provide assurances as to quality of work as Mr Longton had joined us from Addleshaw Goddard. Both partners were responsible for preserving and servicing the relationship with MBI/Gavin Woodhouse whilst I and John (now the remaining commercial partner) would receive updates at weekly board meetings. This, by my recollection, all took place in the mid to late 2015 period."*

33.20 Mr Longton stated that the Firm's goal was to get to the stage of acting for Mr Woodhouse and MBI as its clients. He agreed that the work constituted about 50% of his workload from 2016. He was a consultant prior to being a partner and brought his own work with him.

33.21 The work generated by the Firm mainly related to that of Mr Woodhouse and it kept his whole team involved. It was a growing relationship; he had not known Mr Woodhouse previously, but Mr Cooper did and he introduced Mr Woodhouse to the Firm and because it was property work Mr Longton was asked to get involved.

33.22 The relationship grew stronger with the client and Mr Longton became Mr Woodhouse's principal lawyer. Mr Longton agreed that a colleague had acted for Mr Woodhouse in the purchase of the latter's residence; he recalled it happened but not the specific date.

33.23 Mr Longton also confirmed that on 1 June 2016 Mr Woodhouse gave him a power of attorney set out on the Firm's headed paper. The agreement for the lease with the client F family was dated 23 May 2016 and for client G 30 June 2016.

33.24 Mr Longton was asked whether he had disclosed his professional relationship with Mr Woodhouse to any of the buyer clients when they were buying into the investment, and he replied that he had not.

33.25 At the time he had not considered the extent of the relationship should be disclosed. He agreed and now accepted that there had been a significant risk of conflict but that he had not appreciated it at the time.

33.26 Mr Longton was asked whether he understood from the Rule 12 statement and from Mr Collis's opening that once client F family and client G started raising issues the risk of conflict that it evolved into an actual conflict. Mr Longton stated that at the time he regarded it as an agreed scheme by the scheme's manager but now he could see there was a conflict. He accepted that he should have told one party that they would cease to act but as it came as an agreed scheme, they felt it was quicker and more efficient to go ahead acting for both parties.

33.27 Mr Longton was referred to an email from Mr Dews of NPD about Client G dated 28 March 2019:

> *"Hi Richard,*
> *Can you put a call into [client G] please. He feels that you don't want to represent him and his interests. The last thing we want is him moving to another solicitor. All he wants to do is put his paperwork to bed and sit tight ready for June when his exit is due."*

33.28 It was put to Mr Longton that it was the stated preference of the seller client that he continued acting on both sides and that this affected the way he responded when the conflict started to crystallise. Mr Longton's e-mail to Shannon Jordan, a trainee licenced conveyancer at the Firm, five minutes later stated, *"What's the latest?"* He stated that a colleague was dealing with the actual documentation around that matter, and he was just asking where they were so that he could give meaningful help to whomsoever he needed to help.

33.29 It was put to Mr Longton that according to Mr Barker they had discussions about theoretically acting on both sides of a conveyance and Mr Barker said that one should not.

33.30 Mr Longton agreed they had discussions, but he disagreed wholeheartedly with the rest of the statement. They had conversations about conflict and how to deal with it as a practice and partnership. As to whether he disagreed that Mr Barker had said the Firm should never act on both sides and there were cases when it would be appropriate, Mr Longton stated that as they had had a sale situation where both parties agreed, with a confirmatory note on the file and there were long term relationships with both clients it would be appropriate to act for both sides and in that case the buyer and seller were aware that the Firm was acting on both sides.

33.31 Mr Longton said he had not notified the buyers but stated that he would have expected Ms Heald to have told them as well as telling them where she was sending her file. Assuming she did notify them the Firm never received any objections from the parties.

33.32 It was put to him that if the Firm acted for both sides there was always a risk of conflict. He responded that ordinarily one would put an information barrier in place between the solicitors acting and they would have done that if a conflict had materialised for example Firms might have offices in London and Manchester where there was a physical boundary between the two offices and an electronic barrier where the case management system was shut down to the party acting on the other side. He stated that this was not an unusual situation.

33.33 When asked whether the risk was greater if one was buying off the plan something which was not yet completed Mr Longton stated that this was a matter for the buyer's solicitors, however, there had been nothing contentious in these completions.

33.34 As to the fact that the transactions were not yet completed, Mr Longton did not think that the risk was greater on that account if the buyer clients were properly advised by their original solicitor. He agreed that there was a risk albeit potentially a small one in any conveyancing transaction if a solicitor acted on both sides and if the buyer raised issues.

33.35 He agreed in principle that the risk was greater if the purchase was off the plan and problems could arise, but this had not happened here. The differentiating factor was that advice had already been given; a report on title had already been made and these were sophisticated investors who understood the risks between exchange and completion.

33.36 This was not seen as a property acquisition, and he was not advising them on investment work. Therefore, this was totally different from acting from start to finish in an off the plan transaction and they just had to place a date on a document when it was ready.

33.37 Mr Longton was asked whether he had not considered having regard to the concerns expressed by the client F family and their attempts to chase reimbursement that he might have had concerns that there was an actual conflict. Mr Longton replied that in the underlying contracts in respect of these matters they had not reached the longstop date and it was within the ability of NPD to sort it out.

33.38 Mr Longton stated that no doubt Shannon Jordan drew to his attention a letter from Client G to her dated 22 July 2018 expressing his frustration and concerns which included:

> *"I am weary from the protracted nature of this exit and wish to bring it to a speedy conclusion. Knowing that Metis Law have significant business interests with NPD, I would not expect you to take action against them on my behalf and therefore I may have to move my claim to another legal Firm, in which eventuality I would not accept a non-disclosure agreement."*

33.39 He also stated no doubt NPD was made aware of the letter and it was a catalyst for the client getting repaid. He agreed this brought home to him difficulties with conflict.

33.40 He was not privy to investigations into it and suspected the client was paid out close to that date.

33.41 It was put to him that in May 2018 the problems caused by the Firm acting on both sides of the conveyancing transaction came to pass and yet he continued to act beyond that point.

33.42 Mr Longton said if the client had wanted to go elsewhere, he would not have stopped him. In the event the letter was sent to NPD, and he suspected what happened was that the client was paid out and they therefore ceased to act. Mr Longton stated that there were no conflicts on any other cases.

33.43 As to whether he thought that the client G situation created a significant risk for all the other buyer clients Mr Longton replied that none of the other 40 mentioned raised anything so presumably they were getting returns. There was nothing to say that the contracts could not still complete because the longstop date was 2020, long after he left the Firm.

33.44 Mr Longton was asked about his knowledge of the seller clients finances He denied that the transfer from Ms Heald of £1,320 at the end of July/early Aug 2017 was cause for concern, it was the amount needed to register title. The money had been held on an agency basis which was normal for developers at exchange of contracts. As to whether they should have sent the money to NPD, Ms Heald had the deposits and a global pot of money for the development.

33.45 In respect of the client F family, on 25 September 2017, Shannon Jordan sent an email to the family member dealing with the transaction in respect of an email they had sent late on a Friday afternoon. The client was expressing concerns including about finances and asking where the money was:

> "*If people are divesting from the care home what will happen to our share as clearly it will not be completed due to lack of funds, Graham Rowan of Elite Investors Club suggested they would borrow further monies to complete, if this is the case how is our money protected?"*

33.46 Asked whether these concerns had been escalated to him, Mr Longton replied that there was an application for funds on that particular site. The Firm was told that funding was not going to be an issue and so there was no divestment to another project. Deposits could be repaid or move to a different scheme, or the investor could wait for something to happen.

33.47 If 25 out of 100 were not sold there would be sufficient equity to reimburse an investor or give them a bank security or something else. He was sure that concerns were escalated to him by Shannon Jordan. He was not a party to issues about cash flow but that was not part of his role as this was something for the companies' accountants.

33.48 Mr Longton's attention was drawn to exchanges between Shannon Jordan and client G and an email from Ms Jordan to him dated 1 February 2018 which stated that client G wished to terminate his agreement. In emails with NPD Ms Jordan referred to offers of divestment plus 12% interest which the client wanted.

33.49 It was put to Mr Longton that this was the second of two buyer clients expressing concerns. Mr Langton replied that the client was just making an inquiry, he could have wanted his money back for personal reasons it was not necessarily anything untoward with the transaction.

33.50 On 28 March 2018, the client emailed Mr Dews of NPD:

> *"Hi Ben,*
> *Thank you for taking my call last week. I would like asap to agree the formal terms of termination and the NDA you propose so that there are no surprises for either party on June 30.*
> *I have not heard from Metis Law or seen a draft and unsure if they still wish to represent me. It might be more expedient if I changed solicitor; have you been in touch with them recently?"*

33.51 Mr Longton stated that the reason the client would not have heard from the Firm was because he was only accepting the offer at that point and it was only in that e-mail that he said he would like to agree formal terms and there was no reason for the Firm to be in touch.

33.52 Client G and Mr Dews must have taken it upon themselves to agree Mr Collis pointed out that there had been prior contact. Ms Jordan had emailed Ms Heald on 26 March asking for a draft Non-Disclosure Agreement on the basis that the client wanted to terminate his agreement. Mr Longton stated he had not been copied into Ms Jordan's email.

33.53 Mr Longton agreed when it was pointed out that the email Ms Jordan sent was dated two days before the email the client sent to Mr Dews so the Firm must have been aware of the client's intentions. Mr Longton stated that the client would not have heard from the Firm because they were not instructed. Mr Longton stated that a buyer client saying that he had not yet heard from the Firm was completely different from it being drawn to his attention that one of the buyer clients was unhappy with the situation and that the Firm was not acting in his best interests. He agreed, however, that that was what Mr Dews said to Mr Longton in his email of 28 March:

> *"Hi Richard,*
> *Can you put a call into [Client G] please. He feels that you don't want to represent him and his interests. The last thing we want is him moving to another solicitor. All he wants to do is put his paperwork to bed and sit tight ready for June when his exit is due."*

33.54 Mr Longton stated that he did not recall it as this was four years ago but what he did know was that the Firm solved the problem acting for the mutual interests of the clients. However, he would not do it again but it was a fact that it did work out for both parties for the best.

33.55 As to the seller clients, or Mr Woodhouse requiring any buyer clients exiting to sign an NDA to prevent any criticism of the scheme going public Mr Langton stated that the whole scheme could collapse if one party decided it wanted to exit for whatever reason and it was not unusual in business for an agreement to have a confidentiality clause in the contract.

33.56 As to whether the fact his seller clients were now requiring his buyer clients to sign NDA agreements had raised issues about the risk of conflict or actual conflicts, Mr Lawton stated there was no standard procedure if one was terminating an agreement and it was standard to have confidentiality between the parties.

33.57 Mr Longton was then asked about Ms Jordan's e-mail to Mr Marshall and Mr Beedel of 27 March where she said that there was *"a massive conflict"* and she could not draft the NDA. Mr Longton replied that she was a trainee practitioner in conveyancing and not a commercial lawyer so she would not have had the ability to draft the agreement. He was not copied into her e-mail and had not known that it went to these individuals.

33.58 It was pointed out to him that she had not said that she could not draft the agreement because of a lack of skill. He agreed that she said there was a conflict, but the Firm solved the problem, and the clients got their money back faster than they would if they had gone through the court system where they might not have got their money back. It was better for the solicitors to mediate between the clients. Mr Longton could not remember the exchange of emails including the reference to the massive conflict.

33.59 Mr Longton was referred to his letter of 8 May 2018 to Graham Rowan of Elite Investor Club the organisation which had introduced buyers to the investment schemes. He described the organisation as a sort of high-end estate agents/specialists. He did not know if all the investors used them. It read:

> "*Dear Graham,*
> *Hawthorn Care Village*
> *You will be aware that we now act for the NPD, in respect of these matters owing to the retirement of their former lawyer.*
> *I can accordingly confirm that we will be taking the acquisition of Hawthorn forward with NPD.*
> *The residual balance on NPD's former lawyer's client account has been transferred to us together with the papers they held so they will have no further involvement going forward. 1 am instructed that the funds we are holding (together with further funding that my client has secured) will be utilised towards the acquisition and development of the Property."*

33.60 Mr Longton confirmed that this was the first time the Firm had put anything in writing to Mr Rowan (some ten months after the transfer of the Seller's files) informing him that Metis Law was now acting. He stated that for any files to be released to the Firm from Ms Heald she would have had to obtain the clients' consent. Mr Longton appreciated that the Firm had fallen short and he took the point that even though Ms Heald had been the seller's solicitor the buyers should have been notified. It was put to Mr Longton that the purpose of the letter was to reassure the buyer clients that the scheme was viable. He agreed because in part the letter had said that the Firm had funds, however, he stated that the other purpose was as a general update.

33.61 Regarding his self-report to the SRA it included:

> *"In May 2018 I was instructed by the Client to write a letter to Graham Rowan who was responsible for the Investor club at two nursing home sites (known to investors as: Hawthorne and Clifton Moor) confirming that we held residual funds (a nominal amount). I understood that this correspondence was to go to specific individuals already involved."*

33.62 He agreed that he was writing that letter because he had been told to do so by his seller client. If he had not been so instructed, he would probably not have felt the need to write, therefore the letter was triggered by his instructions.

33.63 He also agreed that the fact that the residual funds held by the Firm was a nominal amount did not feature in his letter to Mr Rowan of 8 May 2018. Mr Longton stated that he had put this in because behind the Firm's back Mr Woodhouse had sent a letter to each investor saying that the Firm was holding several million pounds so in the self-report, he wanted to say that it was holding a nominal amount.

33.64 Mr Woodhouse's letter post-dated his letter to Mr Rowan. Mr Longton said that he was clarifying what Mr Woodhouse had set out in his letter to the investors.

33.65 As to the fact that nothing in the self-report gave any suggestion that he and the Firm were acting for the buyer clients he said that there was no particular reason for this omission and his self-report included the following:

> *"In May 2018 I was instructed by the Client to write a letter to Graham Rowan who was responsible for the Investor club at two nursing home sites (known to investors as: Hawthorne and Clifton Moor) confirming that we held residual funds (a nominal amount). I understood that this correspondence was to go to specific individuals already involved.*
>
> *The Clients(sic) previous external lawyer Linda Heald was retiring. She passed her file and funds that she held to us [We had received residual funds from Linda Heald (the sales proceeds having been sent to the client in accordance with the terms of the contracts.)] We had been instructed in relation to both sites for the acquisition and ultimate leasing of Hawthorn Care and the leasing of Clifton Moor. The letter was to inform the investors that the funds from her files had been transferred and she would not have any further involvement. They should have been specifically addressed to each of those investors; however for ease for the client as there was more than one investor a generic letter was produced. Recently I together with the Firm learnt that the letter has not just been used for that purpose rather the client has been purporting that we hold funds in relation to its investments which we do not. The client's retainer was terminated immediately and we undertook only work required to ensure that investors were not prejudiced. A full investigation has been undertaken by the Firm including myself."*

33.66 Mr Longton agreed that there was no indication in the above paragraphs that the Firm's clients were both sellers and buyers, however, he had had no intention to mislead. He had drafted the letter with the assistance of a regulatory solicitor who had not assisted with the Firm's self-report.

33.67 Mr Longton was asked whether when he sent his letter of 8 May 2018 to the elite investment club he had any concerns about the financial standing of Mr Woodhouse, of the companies or the viability of this particular investment scheme. He stated that he was not involved in the financial side.

33.68 Mr Longton stated that at the time MBI went into administration he and the two other partners were in the process of splitting the business of the Firm as he and the others had fallen out. With reference to clients F and G the lease agreements were with MBI not NPD as to whether he was aware MBI had gone into administration on 22 July 2018 Mr Longton said he was not.

Allegation 1.2

33.69 Mr Longton was asked if any of the movements of money which the Firm had been asked to make regarding Mr Woodhouse's companies had caused him to doubt the viability of any of those companies.

33.70 Mr Longton replied that he was told about arrangements which had been put into existence behind the scenes. Their finance director had been with a large supermarket chain and so he was deemed experienced enough to deal with it.

33.71 Mr Longton was referred to an e-mail dated 11 July 2018 from Mr Atkin of NPD to Ms Jordan about payment for Client G. It informed her that they would be able to make the payment if it came in by a particular date. Mr Longton really did not know whether his attention had been drawn to that e-mail as there were many thousands of emails going through and a number of refinancings with a number of lenders. It was therefore very difficult to know without the background. He stated that the e-mail should not have raised a concern about his seller clients' financial position having regard to reimbursing one of his buyer clients who was seeking to terminate his agreement as it was a cash flow point.

33.72 Mr Longton was referred to the e-mail from client G of 22 July 2018 to Ms Jordan:

> *"Further to our telephone conversation last Friday 20th July, I write to convey my disappointment concerning the lack of progress with NPD for an amicable termination of our sale agreement.*
>
> *It's been a year since I began looking for an exit from Hawthorne Care Village (HCV). In the latter six months of 2017 I attempted to negotiate a divestment to one of NPD's hotel ventures but was unable to agree acceptable terms. So, as you know, in January this year I decided that I would terminate the agreement using clause 1.3.1 and following further discussions with NPD, with help from Graham Rowan of the Elite Investor Club, I agreed in March to wait until the 2nd anniversary of the sale agreement (June 30th) for a settlement of £75k. Accordingly you drew up a deed of termination to which both parties agreed*

June 30th has now passed and we have entered a phase where NPD say they are willing to honour the arrangement but cannot raise the required funds. This makes me nervous as I believed that the original funds raised for HCV were being held (ring-fenced) in a SPV company and would be available to settle my claim. Please see the attached copy of a letter from Gavin Woodhouse to Graham Rowan dated June 25th 2018 confirming that the balance is £3.06 million.

I am weary from the protracted nature of this exit and wish to bring it to a speedy conclusion. Knowing that Metis Law have significant business interests with NPD, I would not expect you to take action against them on my behalf and therefore I may have to move my claim to another legal Firm, in which eventuality I would not accept a non-disclosure agreement.

I hope with your help that this matter can be quickly resolved."

33.73 As to the fact that the client expressly raised concern about the ability of the Firm to take action against NPD, Mr Longton replied that they did have someone else to help them and the matter was resolved.

33.74 Mr Longton did not know if he had been made aware of this document from client G. It was possible that, as the document attached a letter of 25 June 2018 for Mr Woodhouse, that Ms Jordan would have brought it to his attention.

33.75 Mr Longton stated that the Firm took action, and the client was repaid.

33.76 Mr Longton was asked at what point did he become aware that the sellers did not have funds. he replied that this was when the guardian and ITN contacted the Firm.

33.77 He stated that all the clients were aware that the money was with NPD because the deposits were held as agent and went over to the seller. The remainder of the money was with the Firm to undertake the last piece of work which was registration.

33.78 Mr Longton was referred to one of two transfer documents which were available from Ms Heald regarding client G; this was the July 2017 listing the 9 categories of documents being sent by e-mail to Mr Longton at the Firm in respect of Client G. He was asked how that came about and he replied that Mr Woodhouse was made aware that Ms Heald was retiring and given the amount of work that the Firm had done on the other side of the transactions and Mr Woodhouse's relationship with Mr Cooper previously, Mr Woodhouse wanted the Firm to take over the work.

33.79 Mr Longton stated that the e-mail address LH Documents indicated that the Firm did set up a document holding system for the matter and as Mr Barker had said in evidence, he, Barker, was the head of IT and so the documents belong to the administrative team. Mr Longton had no idea who was in the e-mail group LH Documents. He had not set it up; the documents were sent through to the group for the purpose of setting up files and he did the legal work.

33.80 As to whether the paper files ever arrived Mr Longton stated that Mr Barker would have had have been there every day looking at the post and he would be able to say that they did not arrive. He would not have been involved and another partner or office manager could have sent the files to the administrative team on the day they came in.

33.81 Mr Longton said he could not comment as to whether electronic files had ever been opened on the case management system. Also, it was an administrative job to notify buyer clients that the Firm was acting for the seller. He denied he was attempting to 'pass the buck'.

33.82 Mr Longton stated that when the work was transferred from Ms Heald to the Firm it was a point of celebration as the Firm had got its foot in the door to act on the sales which was what they had wanted to do.

33.83 Mr Longton clarified that Ms Jordan received a lot of emails concerning the schemes because she had responsibility for heading up the administrative team. He was referred to an e-mail dated 26 September 2017 from Ms Jordan to the Client F family representative (family member) which stated as follows:

> *"I understand you called on Friday afternoon concerned about your purchase of the above room at Hawthorn Care Village. I have read through the concerns you left with my colleague Emily and also reviewed the Agreement we exchanged on for you.*
>
> *Please see clause 1.3 in the attached Agreement for Lease, MBI Hawthorn Care Limited have to complete on the purchase of the site by the Termination Date, which is 31 December 2020 (please see appendix at the back of the Agreement). I can also see from this Agreement that two years returns by deduction were taken from the purchase price, therefore, you will not receive your first return payment until 23 May 2018, if you do not receive this payment on the date specified please make me aware and I will contact the Sellers solicitor immediately. I can only assume that some of the people you know that have pulled out have accepted the offer of divesting into another project.*
>
> *I hope this eases any worries you may have about the purchase and NPD, I can confirm from my review of the Agreement that NPD have not breached anything. If not, please do not hesitate to contact me."*

33.84 Mr Collins pointed out that in this e-mail Ms Jordan said that she would contact the sellers' solicitors immediately so that it appeared that certainly in September 2017 she did not know that the Firm were the sellers' solicitors. Mr Longton said it might be that she had a lapse of concentration.

33.85 Mr Collins pointed out that on 26 March 2018 Ms Jordan appeared to be under the same impression when she wrote to Ms Heald asking her to draft the NDA. Ms Heald replied that she was no longer instructed. Mr Longton replied that maybe Ms Jordan mistook the file she was working on as there were a lot of properties, and the name could be the same so maybe she misunderstood which property it was.

33.86 It was put to Mr Longton that when it became apparent that Ms Jordan knew she was acting for the seller client her immediate response was to refer to drafting the NDA as 'a massive conflict'. Mr Longton replied that the most useful document was the one with the list of documents. Ms Jordan was the head of administration, and they would have received the documents Mr Langton could not speak for what was in her mind and asked whether he knew who received the electronic documents he stated that he knew they came into the Firm in July.

33.87 Mr Longton disagreed with the suggestion that an e-mail to him from Mr Dews of NPD of 28 March 2018 which directly expressed a preference for the Firm to continue acting on both sides influenced his response to buyer clients in his willingness to act for both sides in the transactions. He also rejected the suggestion that possibly because of a desire to keep an important client satisfied, or one or all three combined, he chose to take steps to prevent others in the Firm knowing he was acting on both sides because he knew they would not agree.

33.88 In respect of allegation 1.2, Mr Longton was referred to extracts from various warning notices in the Rule 12 Statement:

> *"62 The SRA published a Warning Notice, entitled "Improper use of a client account as a banking facility", on 18 December 2014 [pages C4- C9]. The document identified a series of risks of which solicitors should be wary and, under an identified risk of "There must be a reasonable connection between the underlying legal transaction and the payments" the following observations were made: "You should only hold funds where necessary for the purpose of carrying out your client's instructions in connection with any underlying legal transaction or a service forming part of your normal regulated activities. You should always ask why the client cannot make the payment him or herself. The client's convenience is not the paramount concern and, if the client does not have a bank account in the UK, this considerably increases the risks. You should be prepared to justify any decision to hold or move client money to us where necessary" [page C7]"*

33.89 Mr Collis put it to Mr Longton that all the payments could have been made by the companies or by Mr Woodhouse. Mr Longton stated that all the monies were held in contemplation of another transaction which the Warning Notice said a solicitor could do.

33.90 Mr Collis also quoted from the Rule 12 Statement:

> *"64. The 6 August 2018 Warning Notice went further than its predecessor, though, and made the following observations that appear to relate directly to the circumstances in the Respondent's case: "We have also seen Firms making multiple transfers of money between the ledgers of different clients or companies without evidence of the purpose or legal basis for the transfers (such as Board resolutions or contracts). Transfers in such circumstances will be a breach of rule 14.5, particularly if they are simply carried out on request" [page C12]*

33.91 Mr Collis suggested that the paragraph described what Mr Longton was doing. He appreciated it was at the behest of Mr Woodhouse and the seller client companies, but he was simply moving money around in the absence any underlying legal transaction. Mr Longton responded that the rule applied where there was no underlying legal purpose; but here they always had an underlying purpose for the transfer; it was generally to buy a property. It was a form of funding.

33.92 Mr Collis referred to the analysis of the FIO set out in the Rule 12 Statement which set out the extent to which payments had been made towards deposit/development acquisitions not related to sales. Money was moved around for the interests of Mr Woodhouse and his companies where there were not necessarily underlying transactions in which the Firm was instructed. Mr Longton stated that there was always an underlying transaction. If it related to another property it was done in the background, 'in-house' by an experienced Finance Director. The Firm did not undertake banking or facilitating. The companies had an in-house solicitor who dealt with such matters in-house where money was taken from one property and used for purchasing a property in a different project. The funds were held for the sole director and sole owner Mr Woodhouse.

33.93 The Tribunal asked about the table by the FIO in the Rule 12 Statement which indicated that around £400,000 of deposit monies was used for developments not related to the sale. Mr Longton said it might well have been the case in some transactions that the Firm was directed to use money to do that. The Firm was acting on the instructions of the beneficial owner of that money.

33.94 The Tribunal also referred to a letter to Ms Jordan from the solicitors from whom Client G had sought advice which made clear that the client continued to retain the Firm:

> *"I am instructed by our mutual client, [Client G], in connection with the above matter. I am aware that you are instructed by him in connection with the termination of the Agreement for Lease dated 30.06.16 ("the Agreement") and I confirm that [Client G] continues to retain your services in that matter. I enclose a letter of authority from Mr Fitzpatrick which confirms the position."*

And

> *"My assessment of the position is that, until the Deed of Termination has been executed, the Agreement remains in force and [Client G's] rights are governed by the terms of the Agreement (and, in particular, clauses 5.2. and 5.4.). I am aware, obviously, that the Deed of Termination incorporates not only a release and waiver but also a non-disclosure clause which, clearly, are for the benefit of MBI. I am sure it will not be lost on MBI that if [Client G] chooses not to complete the Deed of Termination, they risk losing those benefits."*

33.95 Mr Longton was asked if he agreed that the NDA was for the benefit of MBI. He replied that it was for the benefit of everybody; if one person put it on social media that they had this situation right or wrong there could be a domino effect on the whole thing. Mr Longton clarified that the Firm used a standard PLC clause for the NDA which included what a client could talk about. Mr Longton stated that he probably approved

the draft if he had not actually drafted it himself. The Corporate team was involved. It was a boilerplate document.

33.96 Mr Longton emphasised that there was always an underlying transaction including where deposits were applied to other projects. NPD was entitled to some of the proceeds because the Firm held the money as agents including where the buyer was buying from MBI. There was always a reason for holding money in the Firm's client account in most cases the acquisition of another property. Between exchange and completion investors were entitled to returns even if the acquisition had not completed so the money was held in contemplation of a transaction.

33.97 The Tribunal asked Mr Longton to clarify where certain staff worked; Mr Beedel was a consultant property lawyer and Mr Marshall was Mr Longton's assistant.

Closing

33.98 Mr Baker summarised that there were two very narrow issues to concentrate upon:

33.99 Mr Longton accepted allegation 1.1 except for the allegation of breach of Principle 2 the requirement to act with integrity.

33.100 In respect of allegation 1.2 as to whether banking facilities were provided through the client account and that there were not any underlying transactions. Both strands of this allegation were denied by Mr Longton.

33.101 Regarding the evidence relating to lack of integrity, it was inextricably linked but not encompassed in time to secrecy. The pertinent evidence was that the transfer took place at the very end of July 2017 from Ms Heald's Firm. It was known because there was very clear evidence in the email dated 27 July 2017 relating to Client G listing the documents, that the material was transferred electronically and probably by physical files otherwise why write it?

33.102 Mr Longton had made a very salient point that Ms Heald was retiring and so why on earth would she want the paper files hanging around or having to be destroyed?

33.103 There was a comparable document relating to the other client. The money was clearly paid into the funds on a similar date as the £1,320.

33.104 Mr Baker directed the Tribunal to the relevant evidence. He invited the Tribunal to conclude that the email from Mr Ahmed to All Users of 31 July 2017 asking for "the description of monies and file number" was clear evidence that the Ms Heald matter was given as *"Hawthorn transf"*.

33.105 There was some documentation which was equivocal, whether Ms Jordan was aware of the transfer or not. Mr Baker submitted that she probably was but might have mistaken the actual nature of the transfer that took place. There was evidence that she very clearly was aware of the transaction evidenced in an e-mail of 27 March 2018 to Mr Marshall and Mr Beedel where she said *"she [Ms Heald] is saying that she is no longer instructed on this development and we are (which is true)."* Mr Baker submitted that it was quite clear that there was electronic documentation which supported that the

files were transferred and then it came into the knowledge of a wider group. Looking at the email addressed to the LH Group was pertinent and Mr Longton performed a managerial as opposed to day-to-day role relating to it.

33.106 Mr Baker submitted that the secrecy element was not substantiated and that the account given by Mr Longton at a very early instance should be preferred. The allegation only ever came to light in June 2021 when Mr Barker was trying to *"get off the hook"* in relation to proceedings being brought against him by the SRA.

33.107 Mr Baker submitted that the evidence of Mr Barker was unsatisfactory and that the Tribunal should place no reliance upon it, for example, Mr Barker had said in evidence that the arrangement with Mr Woodhouse had never been discussed, however, in reality, this had been work that the Firm "was after" and, in Mr Baker's submission, it would have been discussed.

33.108 The evidence relating to the £1,320 transfer became pertinent. Mr Baker referred to the ledger which had just been produced on the third morning of the hearing. There was a ledger entry dated 31 July 2017 *"Linda Heald Property Monies on account"*. It also stated against the date 1 August 2017 *"Ledger opened by Jackie Douglas [the Accounts Manager] Conflict check performed. Credit check performed."*

33.109 It was clear that this document which emerged at a very late stage was very strong evidence that unfortunately Mr Barker's evidence was mistaken.

33.110 It was also clear from the entry made by Ms Douglas that the conflict check had been performed. It was also noteworthy that the transfer of these final monies, despite the entries being made that the alerts which were raised on 31 July 2017 by Mr Ahmed asking again for information about the £1,320, were only finally resolved in October 2019 when matters had come to light in June 2019.

33.111 Having regard to the broader further allegation relating to integrity, Mr Baker quoted Mr Longton *"we solved the problem for them by acting mutually, it worked out for the best"*.

33.112 This was not a man who was acting without integrity. Both Clients family F and G received recompense and were not financially disadvantaged. Mr Woodhouse paid money back in one format or the other which as conceded by the SRA.

33.113 Whilst it was accepted by Mr Longton that he had breached Outcome 3.5; Principle 6 and Principle 8 of the Principles, he had acted for both buyer and seller in very limited and almost unique circumstances and ones where he had made an assessment of the risk as being incredibly low. It was merely an engrossment or dating of the lease. His actions did not amount to a lack of integrity and the evidence did not support this allegation.

33.114 Unfortunately, it did come to fruition but that was not through acting with a lack of integrity. Mr Bakers submitted that the plea Mr Longton offered on the basis that the breaches of Outcome 3.5 and Principles 6 and 8 should accurately be reflected in the findings of this Tribunal. Mr Baker submitted that lack of integrity was not sustained.

33.115 In relation to allegation 1.2 Mr Baker submitted that there was compelling evidence that this occurred with Mr Barker's approval. Mr Baker referred to the FI Report paragraph 150:

> *"At interview, Mr Barker explained that the funds for NPD's acquisitions included proceeds received on the sales of rooms by NPD's other companies. He explained that he relied upon the Property Team, to ensure that the funds had been properly acquired by NPD. Mr Barker's understanding as explained at interview, was that "there was an authority in place to allow those monies to move from one ledger to another."*

33.116 Mr Baker submitted that if it was a breach, it was taking place on a regular basis by other members of the Firm including those who had been the COFA and COLP at some stage. The clear unequivocal evidence of Mr Longton was that there was always an underlying transaction. Mr Longton's answer to this allegation had been both credible and truthful and the Applicant.

Findings of Fact & Law

The Tribunal's Findings

34. The Tribunal reminded itself that with respect to the allegation the Applicant must prove its case on the balance of probabilities; the Respondent was not bound to prove that he did not commit the alleged act and that great care must be taken to avoid an assumption (without sufficient evidence) of any deliberate failure or act on the Respondent's part.

35. The Tribunal reviewed all the material before it and had listened with considerable care to the submissions made by the parties.

36. **Allegation 1.1**

36.1 The Tribunal noted that except for the part of this allegation relating to a lack of integrity, Mr Longton admitted that by acting for both sellers and buyers on a property development scheme, this had given rise to actual and or significant risks of conflict of interest.

36.2 The Tribunal found as a fact that this had not been normal or straightforward conveyancing transactions and the risks for the buyers were significant. The unusual nature of the transactions was set out in paragraph 15 of the Applicant's Rule 12 Statement, a description adopted by the Tribunal:

- *The deposits were effectively equivalent to the full amount payable upon completion.*

- *Clause 1.3 of the Agreement for Sale made the Agreement (i.e., legal completion) conditional upon the seller obtaining planning permission, constructing the building, and receiving a certificate of practical completion and the seller would thus default if it failed to achieve any of these things.*

- *Clause 4.2 of the Agreement for Sale provided that deposits would be held as agent for the seller.*

- *In conveyancing practice, paying the deposit to seller as agent means that the seller's solicitor does not need to await completion before releasing the deposit funds, but can instead release the deposit to the seller at any time. This usually means that deposits are released as soon as they have been paid.*

36.3 Essentially, the buyer was at risk of losing 100 per cent of the deposit if the transaction did not complete. The significant risk of conflict of interest materialised into an actual conflict of interest in at least two cases, Client F and Client G.

36.4 The Tribunal found the factual basis of the allegation proved on the balance of probabilities.

36.5 The Tribunal was satisfied Mr Longton's admissions had been properly made and the matters to which he had made admissions had been proved to the requisite standard.

36.6 Mr Longton had failed to achieve Outcome 3.5: *you do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 or 3.7 apply.* Outcomes 3.6 or 3.7 did not apply because Mr Longton had not:

- explained the relevant issues and risks to the clients;

- had no reasonable belief that they understand those issues and risks;

- the clients had not given informed consent in writing to him acting;

- he had not satisfied himself that it was reasonable for him to act for all the clients and that it is in their best interests;

- he had not satisfied that the benefits to the clients of his doing so outweigh the risks;

36.7 To act where there was a breach of conflict in such circumstances was a breach of Principle 6 *(public confidence)*. The public does not expect solicitors to act when there is a conflict of interest particularly where one of the clients, party to the conflict had more power and influence than the other.

36.8 Principle 8 *(effectively running a business and in accordance with proper governance and sound financial and risk management principles)* was breached because although the Firm may have had systems in place for identifying conflicts of interest, and a policy of never acting on both sides of a sale. Mr Longton, upon his own admission, failed, without justification, to comply with the systems.

36.9 In relation to Principle 2 of the Principles the Tribunal reminded itself that in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, it was said that integrity connotes steady adherence to the ethical standards of one's own profession.

36.10 The Tribunal was unconvinced by Mr Barker's evidence as to secrecy. The fact that both parties to the transaction were being represented by the Firm was within the knowledge of a trainee solicitor, and it had caused her concern. Also, there was evidence relating to conflict checks having been carried out in the Firm on the files arriving from Ms Heald. Therefore, if this information had been known at trainee and administrative level within the Firm, then it was more probable than not that in it had been known more widely within the Firm and at partner level, and in this regard the Tribunal preferred Mr Longton's evidence.

36.11 The Tribunal was not persuaded that Mr Longton had acted in a vacuum and without the knowledge of the others in the Firm.

36.12 Mr Longton's loss of focus as to where and to whom his responsibilities lay had resulted in breaches of the Principles set out above.

36.13 Mr Longton took ill-considered short cuts to ease the transactions through (and by doing so blinded himself to the risks). Whilst he had ensured the clients were recompensed and not financially disadvantaged when the risk of conflict crystalised into actual conflict his originating actions had set the process in motion. It was this aspect of his conduct which the Tribunal found lacked integrity. It was a serious error of judgment.

36.14 With respect to the allegation, the factual matrix found by the Tribunal to have occurred, and Mr Longton's admissions the Tribunal was satisfied on the balance of probabilities that his conduct was a breach of Principle 6 and 8 of the Principles, and also a failure to achieve Outcome 3.5.

36.15 The Tribunal was also satisfied to the requisite standard that Mr Longton had breached Principle 2 of the Principles.

36.16 Accordingly, the Tribunal found on the balance of probabilities, the Allegation proved in full.

36.17 The Tribunal noted that within the body of the Applicant's Rule 12 Statement reference was made to a breach of Principle 4 of the Principles *(not acting in the best interests of each client)* however this particular breach of the Principles was not set out in the stem allegation in the first part of the Rule 12 Statement. The Tribunal therefore made no finding with respect to this matter because of the lack of certainty as to whether this formed part of allegation 1.1 when on the face of the pleading it did not.

37. **Allegation 1.2**

37.1 This allegation related to Mr Longton providing banking facilities through the client account and that there were not any underlying transactions.

37.2 The Tribunal Rule noted that Rule 14.5 of the Solicitors Accounts Rules expressly sets out that solicitors not permitted to engage in such activity and the Tribunal reminded

itself of the pertinent parts of Fuglers v SRA in which Mr Justice Popplewell had set out the associated dangers.

37.3 The Tribunal found on the balance of probabilities the facts of this allegation to be made out.

37.4 Mr Longton stated that there had always been an underlying purpose for the transfers i.e., it was generally to buy a property as a form of funding, however, the Tribunal found this mindset to be evidence of his loss of focus. Essentially, he had been using client monies to fund the purchase of other properties for reason other than to assist Mr Woodhouse's business. There had actually been no underlying legal transaction related to the clients whose money he had used for this purpose and they had had no knowledge that their money was being used in this way.

37.5 The Tribunal accepted the Applicant's submission with respect to the evidence, that Mr Longton had used the client account as Mr Woodhouse's banking facility, for reasons of convenience for Mr Woodhouse and the Firm. It was immaterial that this particular breach of the Solicitors Accounts Rules had occurred with Mr Barker's approval.

37.6 Having found the facts proved the Tribunal next considered the alleged breaches of the Principles.

37.7 The reputation of the profession is damaged by solicitors who adopt a cavalier attitude towards the Solicitors Accounts Rules by circumventing them or simply ignoring them. The Solicitors Accounts Rules are designed to protect client money. Mr Longton had not protected client money as he should have done and as he had been obliged to do by the Solicitors Accounts Rules he was therefore in breach of Principle 6 of the Principles.

37.8 In breach of Principle 8 of the Principles Mr Longton had failed to carry out his role in the business in accordance with proper governance and sound financial and risk management principles and had he done so, he would have recognised the risks inherent in using the client account as a banking facility.

37.9 With respect to the allegation and the factual matrix found by the Tribunal to have occurred, the Tribunal was satisfied on the balance of probabilities that his conduct was contrary to Rule 14.5 of the Solicitors Accounts Rules and a breach of Principle 6 and 8 of the Principles.

37.10 Accordingly, the Tribunal found on the balance of probabilities, the Allegation proved in full.

Previous Disciplinary Matters

38. There were no previous Tribunal findings.

Mitigation

39. Mr Baker referred the Tribunal to Mr Longton's 22-year unblemished career as a solicitor and that this had been the first adverse finding against him.

40. Mr Baker asked the Tribunal to take into consideration that the proceedings had been in existence for over 4 years and this was a powerful mitigating factor because during that time Mr Longton had practised as a consultant without issue even though the pressures of this matter had played heavily upon him.

41. Mr Longton had self-reported to the Applicant and he had co-operated fully with its investigation. His admissions with respect to those matters where he accepted his conduct had fallen below an acceptable standard demonstrated insight on his conduct.

42. Due to the extant proceedings Mr Longton had not been able to progress his career as he would have done had this not been in the background. His means were therefore relatively limited and had a family which still needed his financial support.

43. Mr Baker entreated the Tribunal to not impose a sanction which would prevent Mr Longton from working as a solicitor and he urged the Tribunal to consider the imposition of a financial penalty sufficient to mark the seriousness of the misconduct it had found proved.

44. The Respondent did not provide to the Tribunal any character references or testimonials.

Sanction

45. The Tribunal had regard to the observation of Sir Thomas Bingham MR (as he then was) in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> *"to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".*

46. The Tribunal referred to its Guidance Note on Sanctions (10th Edition, June 2022). When considering sanction, the Tribunal was mindful of the three stages it should follow when approaching sanction, namely the seriousness of the misconduct, the purpose for which sanctions are imposed by the Tribunal, and the sanction which appropriately fulfils that purpose in light of the seriousness of the misconduct.

47. The Tribunal assessed the seriousness of the misconduct by considering the level of the Mr Longton's culpability and the harm caused, together with any aggravating or mitigating factors.

48. In assessing culpability, the Tribunal found that Mr Longton's motivation was essentially the financial advancement of the Firm by having and holding on to client of Mr Woodhouse's stature. This objective clouded his judgment and lead him into error.

49. His conduct was planned to the extent that he accepted Mr Woodhouse as a client and brought him into the Firm, however, as set out above he blinded himself to the obvious risk of conflict which later became manifest as actual risk.

50. In allowing the risk of conflict to occur Mr Longton departed from normal practice and he breached the trust placed in him by his buyer clients who had expected and trusted him to safeguard their interests, exclusively.

51. As the partner in charge he had direct responsibility and control over the events which unfolded and as a solicitor of 17 or 18 years' standing, at that time, he had sufficient experience to understand the risks for acting for both seller and buyer, indeed, this was something which had been flagged up by a trainee in the Firm.

52. It could not be said that Mr Longton misled the Regulator, however, his self-report was limited in its scope, and he did not set out in clear terms that he had acted for both buyer and seller clients and that actual conflict had arisen as a result.

53. Next, the Tribunal considered the issue of harm. Mr Longton had acted in a complete negation of the rules. He had placed his buyer clients in a precarious position and misapplied their monies for the benefit of the seller client.

54. Mr Longton overlooked his primary duty to his pre-existing buyer clients. The risk of harm, by ignoring the Solicitors Accounts Rules and engaging in conduct which the rules were explicitly designed to prevent, was entirely foreseeable, predictably so.

55. The damage to the reputation of the profession by such misconduct was significant as the public would trust a solicitor to exercise, care, caution and judgment and to follow the rules set up to protect his clients from exposure to unnecessary risk. He failed to do so.

56. The Tribunal then considered aggravating factors.

57. Absent, dishonesty, criminal activity, bullying and taking advantage of a vulnerable person, the Tribunal found as an aggravating factor that Mr Longton's conduct had been deliberate, calculated and repeated over a period of many months in circumstances where he knew or ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

58. However, to his credit, he had not sought to blame others and he had accepted through his partial admissions that his conduct had fallen short of what his clients and the public would have expected from him.

59. The Tribunal noted that Mr Longton had no previous disciplinary findings recorded against him.

60. The Tribunal next considered mitigating factors and in this regard Mr Longton had voluntarily self-reported to the Regulator, albeit with the limited detail as already noted by the Tribunal.

61. There was no evidence that the Respondent's misconduct was the result of deception by a third party.

62. The misconduct had been a single episode, spread over a period of time, in a previously unblemished career. By his partial admissions, Mr Longton had shown some insight on his conduct.

63. The Tribunal noted that whilst the investigation and the proceedings had taken 4 years to come before the Tribunal it did not consider this a significant mitigating factor, albeit it accepted that during this period Mr Longton had conducted himself without incident or complaint. However, the Tribunal concluded that only limited weight could be given to this when evaluated against the inherent seriousness of the proved misconduct.

64. The Tribunal considered the overall seriousness of Mr Longton's misconduct to be very high in circumstances where obvious risk of conflict became actual risk and significant sums of client money had been put in jeopardy.

65. The Tribunal considered therefore that to make No Order, or to order a Reprimand would not be sufficient to mark the seriousness of the conduct in this case, however, having heard Mr Longton's account, the efforts he made to mitigate the financial loss to his buyer clients, his partial admissions and his subsequent good conduct the Tribunal considered that neither Suspension (either fixed term or indefinite) nor Strike Off from the Roll of solicitors was required.

66. The appropriate sanction was therefore a Fine. Given the serious circumstances of the misconduct found by the Tribunal, the misapplying of client funds and extreme loss of focus with respect to where his responsibilities lay, it considered a Fine within Level 4 (as set out in the Guidance), *"conduct assessed as very serious"* was merited.

67. A Level 4 Fine had range of £15,001-£50,000 and in this case a fine at the higher end of the scale was required.

68. The Tribunal decided that the appropriate level of fine would be in the sum of £45,000.

69. The Tribunal had considered the evidence as to Mr Longton's finances and it did not consider that any reduction to the level of the fine was warranted by the evidence it had seen.

70. Having first canvassed submissions from Mr Baker with respect to the imposition of a Restriction Order the Tribunal considered that whilst Mr Longton had been working without further incident for 4 years as a consultant the protection of the public and the reputation of the profession from future risk of harm necessitated restrictions on Mr Longton's practice, indefinitely, to prevent him acting as a compliance officer for finance and administration (COFA) for any authorised body, or head of finance and administration (HOFA) for any authorised non-SRA Firm.

Costs

Applicant's Submissions

71. Mr Collis stated that as the Applicant had proved its case to the required standard it was entitled to its proper costs. The quantum of costs claimed by the Applicant was in the sum of £37,004.70 inclusive of VAT and disbursements.

72. The investigatory process accounted for £14,804.70 of the total cost and the remainder, £18,500.00 was Capsticks' fixed fee. The claimed costs were not excessive but were reasonable and proportionate in the circumstances of the case. Mr Collis was in-house counsel, and the costs were commensurate to the level of complexity the case raised.

73. Whilst not overtly stated in the Applicant's claim for costs the nominal hourly rate equated to £69.02 per hour which was a modest figure in the circumstances and the Applicant.

74. External counsel had been instructed to draft the Rule 12 Statement and advise on the allegations at a cost of £6,000.00, however, this was encompassed within the fixed fee.

75. Mr Collis said that in the earlier part of the proceedings an adverse costs order in the sum of £7,500.00 had been made against the Applicant for the costs of an abortive hearing following the non-availability of a witness when the case had been originally listed for a substantive hearing in August 2022. This costs order had been settled by the Applicant and it had claimed no further preparation costs since that time.

76. The case had been re-listed in January 2023 and it had gone part heard, however, the Applicant had not claimed for the further time this case had taken up.

77. In response to a question from the Panel, Mr Collis could not confirm whether the investigation costs of £14,804.70 related solely to Mr Longton or whether it encompassed the investigation of others within the Firm or the Firm itself.

Respondent's Submissions

78. Mr Baker referred the Tribunal to Mr Longton's statement of means and to take into account the information set out therein.

The Tribunal's Decision

79. The Tribunal had heard the case and it was appropriate for the Tribunal to determine the liability for costs and the quantum of any costs it ordered to be paid.

80. Having listened with care to the submissions with respect to costs the Tribunal considered that it was in a position to summarily assess costs to determine whether they were reasonable and proportionate in all the circumstances of this case.

81. The Tribunal was aware that it had a wide discretion as to costs and that by rule 43(4) of the Solicitors (Disciplinary Proceedings) Rules 2019, the Tribunal had first to decide *whether* to make an order for costs. When deciding whether to make an order, against which party, and for what amount, the Tribunal also had to consider all relevant matters.

82. The Tribunal noted, amongst other things, the following factors:

- The substantive hearing had taken 4 days, 1 day extra than originally listed;
- The conduct of the parties;

- Mr Longton had made partial admissions and contested other matters;

- There had been dispute of fact between the parties which required the Tribunal to hear live evidence;

- Mr Longton's means.

83. The case had raised very serious issues, including lack of integrity and the misapplication of client funds and the public would expect the Applicant to have prepared its case with requisite thoroughness. There had been a wasted costs order made against the Applicant which had been settled. The Tribunal noted that the Applicant had not claimed any further preparation costs since the abortive substantive hearing, and it had not claimed for the extra time the case had taken following the matter going part heard.

84. Mr Longton had, as he was entitled to do, fiercely contested some of the allegations and in the event lack of integrity had not been proved to the requisite standard.

85. With respect to his means the Tribunal did not consider them to be modest as he had a stated annual income of £75,000.00 and the potential to earn an extra £5,000.00 per calendar month along with income from rental property. The Tribunal did not consider therefore it should reduce the costs he would be required to pay due to his purported lack of means.

86. The Tribunal considered the costs as claimed by the Applicant to be reasonable and proportionate however there was uncertainty as to whether the investigation costs encompassed not only Mr Longton but others too.

87. The Tribunal noted that as part of the Applicant's evidence of costs there was a document titled "*Time Analysis With Revised Print*" which itemised the time Ms Wright spent on the investigation. This document referred to Metis Law alone, although the work must have encompassed an investigation of Mr Longton's involvement.

88. Erring on the side of caution and in fairness to Mr Longton the Tribunal decided to halve the amount claimed for the investigation costs leaving a figure of £7,402.35 payable by Mr Longton.

89. The Tribunal therefore ordered costs to be paid by Mr Longton in the total sum of £29,602.35.

90. **Statement of Full Order**

1. The Tribunal Ordered that the Respondent, RICHARD LONGTON, solicitor, do pay a fine of £45,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £29,602.35.

2. The Tribunal further Orders that the Respondent be subject to the following condition indefinitely:-

2.1 The Respondent may not act as a compliance officer for finance and administration (COFA) for any authorised body, or head of finance and administration (HOFA) for any authorised non-SRA Firm.

3. There be liberty to either party to apply to the Tribunal to vary the condition set out at paragraph 2.1 above.

Dated this 13th day of April 2023
On behalf of the Tribunal

C Evans
Chair

Amended and re-filed with the parties
This 27th day of April 2023