Case No: CL-2020-000451

Neutral Citation Number: [2023] EWHC 779 (Comm)

IN THE HIGH COURT OF JUSTICE
THE BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/04/2023

Before :

THE HON MR JUSTICE ROBIN KNOWLES CBE

- -

Between :

DISCOVERY LAND COMPANY LLC
TAYMOUTH CASTLE DLC LLC
THE RIVER TAY CASTLE LLP

Claimants

- and –

AXIS SPECIALTY EUROPE SE

Defendant

- -
- -

William Flenley KC and Heather McMahon (instructed by **Davis Woolfe**) for the **Claimants**
Patrick Lawrence KC, Helen Evans KC and Ian McDonald (instructed by **CMS**) for the **Defendant**

Hearing dates: 11-14; 20-21 July 2022

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JUDGMENT

Mr Justice Robin Knowles CBE:

Introduction

1. The Defendant ("AXIS") was the provider of the primary layer (£3 million per claim, less excess) of solicitor's professional indemnity insurance to Jirehouse Partners LLP, a limited liability partnership, and two private limited companies, Jirehouse and Jirehouse Trustees Ltd ("JTL") (together, "the Jirehouse Entities").

2. Claims under the policy arise in circumstances of dishonest and fraudulent acts, errors and omissions committed by the Jirehouse Entities through Mr Stephen Jones ("Mr Jones"), a solicitor. The Solicitors Regulation Authority (the "SRA") which had undertaken a number of earlier investigations over time, ultimately intervened in the legal practice.

3. The terms of the insurance policy give rise to two main questions for determination at this trial. The first main question is whether Mr Jones was the only director of the limited companies and the sole member of the limited liability partnership that make up the Jirehouse Entities, or whether a Mr Vieoence Prentice ("Mr Prentice") was also a director and member.

4. If Mr Prentice was also a director and member, then the question whether he "condoned" the dishonest acts, errors and omissions committed by the Jirehouse Entities through Mr Jones becomes material as the second main question for determination. There is a further issue on aggregation.

5. The Claimants have judgments against the Jirehouse Entities in respect of two claims, each in respect of client money provided in connection with the purchase of Taymouth Castle in 2018 and 2019. The two claims have been termed the Surplus Funds Claim and the Dragonfly Loan Claim.

6. The Surplus Funds Claim involved Mr Jones dishonestly and without authority removing, on 16 April 2018, a sum of US$ 14,050,000 that the First Claimant had just paid to the account of JTL in relation to the purchase of Taymouth Castle.

7. The Dragonfly Loan Claim involved Mr Jones, over the period 21 January to 12 February 2019, dishonestly and without authority arranging and drawing down £4,980,470 from Dragonfly Finance s.a.r.l. as a loan against security over Taymouth Castle, and then removing that sum from Jirehouse's client account.

8. The Jirehouse Entities have not satisfied the judgments, and are insolvent. It is not in dispute that the Claimants are entitled to pursue against AXIS the rights (if any) of the Jirehouse Entities to be indemnified, under the terms of the insurance, in respect of the judgments.

9. An issue on excess was agreed in advance of the start of the trial.

10. Documents have been obtained from Jirehouse's servers and from regulatory files of the SRA. In the result the Court also has before it many documents, however these are not complete and some are heavily redacted, apparently on the basis of claims to legal professional privilege. I am left feeling quite sure that not all the relevant facts are known about the period of more than a decade that this case spans.

The insurance policy

11. The insurance policy was written pursuant to the rules established by the SRA for the primary layer of solicitors' professional indemnity insurance.

12. Clause 5.1 states that the policy is "intended to comply with the minimum terms and conditions." Clause 8.17 of the policy defines the 'minimum terms and conditions' as being the SRA Minimum Terms and Conditions of Professional Indemnity Insurance which were in force at the commencement of the policy.

13. It is common ground that the version of the SRA minimum terms which was in force when the policy was issued was that which appeared in Appendix 1 to the SRA Indemnity Insurance Rules 2013. The Rules were made by the SRA Board pursuant to powers given in section 37 of the Solicitors Act 1974. Section 37 has as its principal purpose "to confer on the Law Society the power to safeguard the lay public": see Impact Funding Solutions Ltd v Barrington Support Services Ltd [2017] UKSC 57; [2017] AC 73.

14. There is no dispute that the Surplus Funds Claim and the Dragonfly Loan Claim fall within the insuring clause of the insurance policy issued by AXIS. The basis on which it is said neither Claim is the subject of indemnity from AXIS under that policy, is that each falls within an exception contained at clause 2.8 of the policy ("Clause 2.8").

15. Clause 2.8 provides (bold and italics as in the original):

> "**EXCLUSIONS**
>
> The ***insurer*** shall have no liability under the ***policy*** for:
>
> …
>
> **2.8 FRAUD OR DISHONESTY**
>
> Any ***claims*** directly or indirectly arising out of or in any way involving dishonest or fraudulent acts, errors or omissions committed or condoned by the ***insured***, provided that:
>
> (a) the ***policy*** shall nonetheless cover the civil liability of any innocent ***insured***; and

(b) no dishonest or fraudulent act, error or omission shall be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company or, in the case of a Limited Liability Partnership, all members of that Limited Liability Partnership."

Condonation

16. Subject to the proviso in Clause 2.8 (which narrows the exclusion), the only claims that are excluded under Clause 2.8 are "[a]ny claims directly or indirectly arising out of or in any way involving dishonest or fraudulent acts errors or omissions committed or condoned by the insured…" .

17. A professional indemnity policy of this nature is to be construed against the background of the purpose of section 37 (identified above): see Impact Funding at [16]-[17] per Lord Hodge and endorsing Thomas J (as he then was), and at [41]-[45] per Lord Toulson.

18. The decisions of Irwin J (as he then was) in Zurich Professional Ltd v Karim [2006] EWHC 3355 (QB) at [107] – [108] and of Wyn Williams J in Goldsmith Williams v Travelers Insurance Co Ltd [2010] EWHC 26 (QB), [2010] Lloyd's Rep IR 309 were helpfully cited. However these concerned a clause with different wording and applied to different facts. For example, in Karim the Court accepted that the two condoning partners knew that flows of money out of the firm to themselves could not come legitimately from the income of the firm. In Goldsmith Williams, the Court found that, before the relevant transactions, the condoning partner engaged in mortgage fraud in her own right and knew that her partner did. There are not true parallels between those facts and the facts of the present case.

19. I understood all parties fundamentally to accept that the words in Clause 2.8 should be given their ordinary meaning. It was to that end, that is, resisting a wider meaning rather than urging a narrower meaning than the ordinary meaning, that Mr William Flenley KC and Ms Heather McMahon for the Claimants referred to the compulsory statutory scheme for insurance.

20. In my judgment the word "condone" is best applied as it is, as an ordinary word. Elaboration risks supplying different or additional words that the parties did not use. That said, I consider a fair reflection of the meaning is conveyed by the Claimants' argument that, used in ordinary language, to "condone" conveys acceptance or approval. In some situations it does not require an overt act.

21. In the present case however what may be more important still is what is required to be condoned to come within Clause 2.8.

22. The Claimants submit that, on the wording of Clause 2.8, what has to be condoned are the "dishonest or fraudulent acts errors or omissions" which were committed and out of which the Claimants' claims arose. I respectfully consider the Claimants' submission is here open to the criticism that it omits reference to the wording "or in any way involving". The language of Clause 2.8 is: "directly or indirectly arising out of or in any

way involving dishonest or fraudulent acts errors or omissions" committed or condoned by the insured.

23. For their part, AXIS submit (their emphasis):

> "… there is nothing in the language used to suggest that it is only if a person knows of a particular fraudulent act before or at the time it is committed that he is taken to have condoned it. It is enough to know and condone a pattern of dishonest behaviour of which the particular fraudulent act forms part."

24. In my judgment that submission is correct. The Claimants respond rhetorically "How can I condone something of which I am ignorant?". I do not think that fully meets the point AXIS are making. If the Surplus Funds Claim and the Dragonfly Loan Claim represented the totality of Mr Jones' behaviour then perhaps that behaviour could not be condoned without knowing of it, but Mr Patrick Lawrence KC, Ms Helen Evans KC and Mr Ian McDonald for AXIS paint a broader canvas in this case.

25. All that said, the question, if there was condonation, of what it was that was condoned will require close attention on the facts.

Mr Prentice

26. After study at the University of Pennsylvania Mr Prentice studied law at the LSE. He had studied finance and had worked in the regulation of financial services. He worked for the Nevis Financial Services Regulator and co-authored chapters in a book on "Due Diligence", published in 2009.

27. He undertook both the Bar Vocational Course and the Legal Practice Course and, in 2013, qualified as a solicitor. He was to go on to qualify as a barrister and then as a solicitor.

28. Mr Prentice's employment by Jirehouse extended for more than a decade. He worked in London, Nevis, Jamaica and Ireland, but primarily London, going into Jirehouse's offices for over a decade. He had a lot of contact with Mr Jones over that time. His particular focus was on litigation. By the time of the events the subject of the Surplus Funds Claim and the Dragonfly Loan Claim in 2018 and 2019 he was purportedly a director of Jirehouse and a member of Jirehouse Partners LLP.

29. Mr Prentice resigned from his positions with the Jirehouse Entities on 15 March 2019. His evidence was that he had no concerns until then that anything untoward was going on within the Jirehouse Entities. Until then, according to his evidence in chief at trial, he "had not seen anything which would indicate Mr Jones was behaving as anything other than an experienced, honest and reliable solicitor".

30. The Court heard Mr Prentice's oral evidence for two and a half days at the trial. This was not the first time that Mr Prentice had been professionally questioned at the instigation of AXIS. In 2019 Mr Prentice had agreed to be interviewed by leading

counsel, Mr Jamie Smith KC. A transcript of much of that interview is available to the Court.

31. Mr Prentice is plainly an intelligent and well-educated man. There was nothing in his evidence to suggest that he did not know, or was incapable of understanding, the responsibilities placed on a solicitor. AXIS ask me to find that Mr Prentice was not a credible witness. I have reached the conclusion that the position is more complicated than that and that his evidence contained truth and untruth.

Commercial entities connected with Mr Jones

32. Mr Jones was involved with entities other than the Jirehouse Entities. These other entities seem to have been corporate vehicles used for commerce or finance. They included Jirehouse Capital Finance Limited ("Jirehouse CF").

33. Jirehouse CF had been involved in 2008 in what AXIS termed a "convoluted loan transaction" with a lender Legal & Equitable Nominees Ltd ("L&E") and two companies Aubert Property Ltd and Aubert Finance Ltd. Mr Prentice was a director of one of the Aubert companies for a period.

34. But there was also what were known as the Esquiline companies. I accept a point made by AXIS that Mr Prentice was less forthcoming at trial about his understanding of the Esquiline companies than it appears he had been prepared to be with Mr Smith KC in June 2019.

35. He told Mr Smith KC that he would have assumed or might have been told that the Esquiline companies were owned by Mr Jones. In my judgment that was the true position. It was an account given closer to events. It was less affected by what I considered to be a tendency on his part to adjust his evidence at trial to try to distance himself from events and circumstances and the personal risk that closeness to those events and circumstances might involve. There were further examples of this tendency as I detail later in this judgment.

36. Mr Prentice accepted he had some understanding that commercial vehicles in which Mr Jones was involved were meant to be separate from the legal practice. But his position was that even after becoming a partner he did not think it was necessary to ascertain what these vehicles (especially the Esquiline companies) were doing and their involvement, if any, with client monies.

37. A model that allowed a single, dominant individual (such as Mr Jones) to have the position and influence he did in both the legal practice and the commercial vehicles may have presented additional risk to clients of the legal practice, but on the face of things the model was permitted by the SRA as regulator.

Early financial issues within the Jirehouse Entities; early SRA investigations

38. The Claimants did not challenge written evidence provided by a Mr Young. Mr Young was a partner in the Jirehouse Entities for a very short period from 15 March 2010. He became concerned rapidly, to the point that he made a report to the SRA.

39. AXIS draw attention to concerns in Mr Young's report over authorisation of transfers of client money, the cashflow needs of Jirehouse, and failure to pay Jirehouse's debts when they fell due. The SRA visited Jirehouse. However the SRA decided not to take further action and did not prevent Mr Jones from practising. It was not suggested Mr Prentice was involved.

40. Ms Stricklin-Coutinho was a junior solicitor at Jirehouse for around 7 months from January 2012. Her evidence too was not challenged by the Claimants. She perceived that Mr Prentice was an important part of the firm and was told in 2012 to treat Mr Prentice as an equal.

41. After two to three months at Jirehouse she started to feel troubled and uncomfortable. She was concerned about Mr Prentice's competence as a litigator. By Easter 2012 she was developing concerns relating to the accounts team. In around May 2012 she overheard a conversation about trust money that made her anxious enough to consider whether or not she had to report the firm to the SRA. She resigned, and thereafter made a report to the SRA.

42. AXIS draw attention to the concerns expressed in this report over Jirehouse's solvency, delay in repaying debts, conflicts of interest, lending between entities and deducting bills from moneys held in client account. The Claimants note that there was little suggestion from Mr Stricklin-Coutinho that Mr Prentice was aware of matters or to blame.

43. A Mr Will Elgood then made a report to the SRA in August 2012. According to Ms Stricklin-Coutinho, Mr Elgood mostly did company secretarial work and financial modelling at Jirehouse.

44. The SRA investigated again. The SRA did not find dishonesty, or that Mr Jones should be prevented from practising and or that the Jirehouse Entities should be closed down. On 15 January 2013 the SRA decided to close its investigation. On 16 January 2013 an email to staff including Mr Prentice advised that the SRA investigation had been concluded "with no finding of fault and no need for further action".

45. AXIS contend that if the types of concern raised by Mr Young, Ms Stricklin-Coutinho and Mr Elgood were obvious to them, they were also obvious to Mr Prentice. I do not accept that that was the case for all of those concerns. I accept the Claimants' argument that the outcome reached by the SRA tends against AXIS's contention.

46. On cashflow specifically however, in his oral closing submissions Mr Flenley KC accepted that in light of the points made by Mr Lawrence KC it was accepted by the Claimants that on a fair reading of the documents there were persistent cashflow difficulties and that Mr Prentice's evidence on that was not correct.

47. On the evidence at trial I consider that acceptance to be proper and realistic. I do accept that Mr Prentice appreciated that there were cashflow issues affecting the Jirehouse

Entities. These must have been of concern, not least because they extended to arrears of payment of staff, with complaints especially from the Nevis office. (At a later point Mr Prentice himself was owed arrears of pay in the sum of £3,580.58, in November 2017.)

48. However I also accept that it appeared to Mr Prentice that Mr Jones resolved these cashflow issues, mostly quickly. He was also ready to accept Mr Jones' reassurance. I do not accept that the issues caused Mr Prentice to conclude that the Jirehouse Entities and other companies associated with Mr Jones were suffering long-standing financial problems of major scale.

49. Of course cashflow problems of any scale may well be serious in any solicitors' practice, and elsewhere, but so far as known to him the amounts involved were modest. Importantly, the cashflow issues did not indicate to Mr Prentice that Mr Jones was misappropriating client funds or committing any other kind of fraud. There is not enough material with which to conclude that he should have reached that view from these issues to the point that he was closing his eyes to the obvious.

50. These were however early days, and as appears below the SRA were to investigate again in 2017.

The petitions to wind up Jirehouse CF

51. In late 2016, Mr Prentice was involved in internal emails about whether or not Jirehouse (the firm) had been served with a statutory demand on Jirehouse CF. An email from Mr Jones gave the misleading impression that the statutory demand had never been received by the firm. Mr Prentice failed to correct the impression given by Mr Jones.

52. On a following application to restrain the advertisement of a winding up petition Mr Prentice then made two witness statements in which he represented that Jirehouse CF was solvent, annexing what purported to be draft unaudited accounts which purported to show a change in shareholders' funds from £2,003,182 negative to £638,200 positive. I accept AXIS's position that there is no satisfactory evidence as to the provenance of these draft accounts. That was as true for Mr Prentice at the time as it was before the Court at trial. In fact Mr Prentice suggested at the time that Jirehouse CF be allowed to go into some form of insolvency process. The statutory accounts were later to showed negative shareholders' funds of £2,903,635.

53. Mr Prentice accepted in his evidence that by November 2016, when he made his two witness statements, he was aware that Jirehouse CF was subject to a £1m debt to a Mrs Lawrence (a shareholder in L&E), personally guaranteed by Mr Jones. In December 2016, Mrs Lawrence then presented her own winding up petition against Jirehouse CF.

54. As AXIS argue, it was obvious that this matter was putting financial pressure on Mr Jones. The sum involved was substantial, and there was the personal liability too. Notwithstanding these features I do not consider Mr Prentice saw or should have seen that pressure as significant enough to lead him to assess (as AXIS argue) that there was a risk that Mr Jones might use client funds to meet the liability.

55. What I do accept is that Mr Prentice's conduct in relation to the two Jirehouse CF winding up petitions was deeply unprofessional and was not honest. It showed he was willing to go to considerable lengths for Mr Jones, including asserting solvency when he had insufficient grounds for supposing Jirehouse CF to be solvent, and was himself suggesting to Mr Jones to place it into some form of insolvency process.

The Barleycorn Blue matter

56. What was known as the Barleycorn Blue matter started with the purchase of a property known as "Bewley House" in 2014. Jirehouse had given an undertaking that it would repay loan funds of £185,000 if the matter did not complete.

57. In October 2016 , Portner Law, solicitors, criticised Jirehouse for failing to repay. They stated that they inferred that "Jirehouse has released the £185,000 to Barleycorn or paid it out of its client account to Barleycorn's order. Such payment was a breach of trust".

58. Jirehouse represented both to its insurance brokers and to another firm of solicitors that the monies remained on interest bearing accounts. Mr Prentice was copied into this correspondence, and also emailed the solicitors in March 2017 about a settlement agreement. I am satisfied he did not enquire into whether the monies were in fact held as represented.

The Rheno matter

59. On the documents before the court, which are not complete, Mr Prentice's first involvement with what was known as the Rheno matter was in February 2017.

60. A letter governing arrangements made clear that certain monies were intended to be held on Jirehouse's General Client Account, as evidence of good faith in respect of some ongoing settlement negotiations. In fact the monies were paid out, apparently to a corporate vehicle related to Mr Jones. Then in late February 2017, the monies (or an equivalent sum) were briefly restored to JTL Client Account. This was in order to enable Mr Jones or persons working with him to provide a bank document that would show the monies as being held on client account.

61. Mr Prentice became actively involved with the Rheno matter in June 2017, very shortly after becoming a "partner". On 15 June 2017, Mr Prentice was sent a chain of emails. The email at the top of the chain (from Mr Jones to Mr Prentice and another colleague) tasked the other colleague with "sorting it out". It indicated that Mr Prentice was dealing with a request to return funds and what was termed the "netting off of our fees generally". At the foot of the chain were emails about a "netting agreement" for a "loan" from Rheno to the corporate vehicle related to Mr Jones. There was reference to a need to have an agreement in place before "BDO come in for audit on 19th June".

62. Mr Prentice contended in his evidence at trial that he did not read down the email chain at the time. I do not accept that was the case but I do accept that he gave it little attention. He went on in evidence to suggest that his role was one of merely becoming involved in a draft of a letter based on information given to him by Mr Jones. In my

view the probability is that even that limited role would have caused him to have read the email chain.

63. AXIS make the point that the fact that Mr Prentice was sent the emails in the first place demonstrates that Mr Jones did not regard it as necessary to conceal from him indications that monies had gone from the client account. I accept that point but not that Mr Prentice reached any conclusion from the email chain about whether monies were in the client account.

64. The letter that had required drafting and to which Mr Prentice referred was complicated but the essential point is that it represented to Rheno that the relevant monies continued to be held by Jirehouse. In fact that was not the case.

65. Mr Prentice acknowledged he prepared the first draft of the letter but contended that:

> "the fact of me having sent the first draft is not indicative of me substantially drafting the letter … It simply means that I typed it up, because I was the one who was asked to, in his words, deal with it".

66. The contemporaneous documents appear to show that related documents were sent to Mr Prentice that would assist in drafting. When Mr Jones responded to the draft it was with "minor comments" on the draft. On 22 June 2017, Mr Prentice finalised the draft in terms representing that it had been necessary to "review our records … and this took some time".

67. Mr Prentice has sought to justify the false statement in the letter that the monies were held on client account by giving evidence that he was shown an internal accounts document by Mr Jones and a member of the accounts team, Mr Raval. He accepted a proposition put to him that if this was so, then this involved Mr Jones in preparing a forged document in order to deceive him into believing that the monies were held on client account when that was not the case.

68. AXIS argue it is objectively improbable that Mr Jones would create an accounts document, presumably with assistance from accounts staff, in order to deceive Mr Prentice, and I agree. But more important, in my judgment, is the point that AXIS make that no such internal accounts document was found during searches of the Jirehouse servers. There was argument between the parties over how reliable the searches were, but I consider this document would likely have been revealed on the searches undertaken, had it existed.

69. AXIS conclude that the reference to there being such a document was a lie by Mr Prentice, told in order to distance himself from the Rheno matter and to conceal the fact that when he drafted the letter of 22 June 2017 he either knew that it was false to represent that the monies were still held by Jirehouse, or was reckless about this and lacked any honest belief that it was true.

70. Having heard the evidence of Mr Prentice and considered the position and the documents, the further findings I make are these.

71. I find first that he was not simply the "typist" of the letter, but was its draftsman under instruction and on information from Mr Jones. I find that Mr Prentice made no check on the true position when drafting the letter: he left that to Mr Jones and did not concern himself with whether it was true or false.

72. Consistently with his not concerning himself with whether the letter was true or false, I find he was not shown, and did not ask to see, an internal accounts document. I find that in his evidence at trial he made up the reference to such a document. The reason he did this was, I find, because he realised how serious it was to have drafted that letter, in its terms and circumstances, without checking on the true position or confirming that a check had been undertaken against records.

73. This was an example - it is not the only one - of Mr Prentice seeking in his evidence to downplay his role to a lesser role than he in fact had. He sought to distance himself at the expense of an honest exposition of what he knew he had failed to do.

74. However this does not mean he knew that the draft letter was false or lacked any honest belief that it was true. In fact having heard and considered his evidence on this episode I find that, whatever a more competent and professional lawyer might have made of what Mr Prentice did see and was asked to do and was told, at the date of the letter Mr Prentice did not know that the monies were not still held by Jirehouse.

75. AXIS made the point that if Mr Jones had had any concern that his new "partner" would ask awkward questions or obstruct what Mr Jones was doing over the Rheno matter, he would not have asked him to assist in the way he did. I accept that. But I do not accept that Mr Prentice would have been prepared to draft a representation about client monies that he knew or had reason to believe to be false, or that Mr Jones would have expected Mr Prentice to be prepared to go that far. My assessment of Mr Prentice is that had he been asked or expected to go that far he would have considered that it carried too much risk for him personally and refused.

Further SRA investigation in 2017

76. On 10 July 2017 the SRA wrote to Mr Jones and Mr Prentice giving notice of another investigation. This would examine the business management and accounts of the Jirehouse Entities.

77. By this point, Mr Prentice had only just been made a "partner". Mr Prentice was advised internally that "we are totally up to date with accounting to 30 June". Mr Jones informed a number of people including Mr Prentice that the focus of the SRA investigation would be particularly on client and office accounts and the health of the business.

78. Tasks were assigned by Mr Jones; in Mr Prentice's case, to provide an insurance summary. In an email copied to Mr Prentice, Mr Jones stated that:

> "We can leave no stone unturned and must test everything, particularly all movements between the office account and client account and all receipts coming into the office account from whatever source. There must be back-ups, invoices and consents."

79. The SRA wrote to Mr Prentice making plain that he had a responsibility for pulling together banking and ledger documentation. The SRA held an initial meeting on 17 July 2017, continuing on 18 July. There were some exchanges between Mr Prentice and the person leading the investigation, Mr Carruthers, and Mr Prentice attended the meeting on 17 July 2017. Questions were asked and documents called for and provided then and over the period between then and 28 September 2017.

80. Within the material provided to the SRA there were documents showing that as at June 2017 Jirehouse's General Client Account had a balance of £12,482.77, and on Jirehouse's departmental analysis ledger there was only a tiny sum held in relation to the Rheno matter.

81. Mr Prentice denied that he had looked at the accounting material provided to the SRA. I am asked by AXIS to treat this denial with scepticism and to conclude that Mr Prentice must have known what was shown by these records. Even with scepticism, I am unable to conclude that Mr Prentice was lying to the Court when he said he had not looked at the material. The likelihood is that here too he just left things. But even if he had looked, I do not think he would have made more of it than Mr Carruthers did, and Mr Carruthers did not see enough to cause him to take action. I appreciate the matter was further complicated by an asserted lien for unpaid fees to which I turn later.

82. On 7 August 2017, Mr Prentice (among others) received an email asking for help with producing documents. One request related to a £400,000 "loan" relating to Rheno, and here the request was directed to Ms Martinez, a colleague, and not to Mr Prentice. Ms Martinez answered by providing a loan note and a resolution dated 14 August 2017 purporting to record that Rheno had earlier loaned the money.

83. Again, it is Mr Prentice's evidence that he did not read the emails or attached documents. When taxed on why he was sure about this, his reply was merely: "that's my evidence". That was an abrupt reply, lacking elaboration, and one that AXIS note accordingly, but it was not a reply that I found affected its credibility. I consider that he likely did not read the emails or attached documents, but that even if he did, he did not make much of them at the time.

84. On 6 October 2017 Mr Carruthers emailed Mr Jones and Mr Prentice stating:

> "I have now had the opportunity to fully examine the documents provided. As a result I am now in a position to close my investigation forthwith and will be taking no further action."

The Claimants submit that, bearing in mind the nature of the investigation by the SRA and its detail, if anything this result would have served to reassure someone in the position of Mr Prentice that accounting obligations were being complied with. I accept that point.

Late 2017 into 2018

85. It is clear that by September 2017 Mr Prentice was aware that Jirehouse had liabilities of approximately £779,000 in total. PAYE and VAT were not being paid as they fell due. HMRC were "chasing" and "giving warnings" including threatening to seize goods. Even Mr Jones used the word "crisis", although perhaps only to encourage effort. Unrealistically, Mr Prentice did not see that the word was an appropriate description of the gravity of the situation.

86. By February 2018, the Jirehouse Entities had just £3,000 on office account to cover any funds needed by employees as a matter of urgency. The monthly salaries were not being paid on time and Mr Prentice knew this. Mr Prentice said in his oral evidence that it "was reflective of the transition that the firm found itself in". I am also satisfied that Mr Prentice appreciated that the Jirehouse Entities were prepared to take client monies from client account as soon as an invoice had been raised on the client for fees.

87. Over this period Mr Prentice was copied into various emails highlighted by AXIS and to which I should make specific reference.

88. These included an email from Jessica King of the Jirehouse accounts department to Mr Jones dated 26 September 2017. This suggested moving £110,000 from an Esquiline company to Jirehouse Secretaries to Jirehouse. Mr Prentice's evidence was that he did not know whose money it was but "assumed it was something they were entitled to do". He considered that he was entitled to rely on administrative accounts staff not to make inappropriate transactions.

89. The emails copied to Mr Prentice also included an email dated 26 September 2017 stating that "we can pay when the [client name] settlement closes (which should be next week)". In March 2018, Mr Prentice was copied into an email exchange relating to "reserving" £70,000 of monies relating to a client matter into a deposit account until 29th of the month, apparently to meet the payroll expenses.

90. Separately Mr Prentice was copied into an email which stated: "We need to clear off V tomorrow with the [client reference] funds". Mr Prentice's explanation was that he thought that this was a reference to fees, but conceded that he had not enquired. On 28 June 2018 Mr Jones copied Mr Prentice into an email stating that "$100k is to come across from EFL to cover [month end costs]".

91. I am wary of reading too much into the receipt of a copy of these emails, even against the background described at the beginning of this section and the events and circumstances described elsewhere in this judgment. The paragraphs give glimpses of matters, no doubt among many matters, and of individual communications, no doubt among many. I expect each of the glimpses may suffer from the incompleteness of the documents that were available by the date of trial to the parties and the Court.

92. I accept that these emails alone and without more detailed background than Mr Prentice was proved to have in connection with each, did not strike him as indicating that client monies were about to be used without authority. I am unable to conclude that the reason he failed to investigate the possibility that client monies were about to be used without authority was because he suspected that if he did investigate that is what he might find. Instead, he simply did not consider that he should look into the position.

The Rheno matter (continued)

93. On 21 February 2018, Mr Prentice became involved in the Rheno matter again. On that date, a Mr Uddin emailed a Ms Michelle Waugh saying he had "adjusted the interest date to current date and the total is £416,284.25 owed to Rheno Trust from JSBF… There was a netting agreement……". Ms Lauren Taylor, a paralegal, forwarded that email to Mr Prentice.

94. AXIS contend that the fact that Mr Prentice accepts that he was aware of this email is further evidence that he did not believe all client monies where being held on client account. His oral evidence was that: "I'm not sure I made any sense of it [the email]". He said that it:

> "… struck me as nonsensical, given the position as I'd understood it to be. And I'm not sure what, if any, reliance I placed on what was said by Mr Uddin's email to Michelle".

95. Thereafter, Mr Prentice's involvement with the Rheno matter focused on a lien that Jirehouse contended it was entitled to exercise over the client monies in question. On 13 May 2018, Mr Jones emailed Ms Waugh, copied to Mr Prentice, stating:

> "I have marked up the statements with what we need to adjust for (and put these on your desk) and then we need to add back in time we wrote off or did not record in 2015/2016/2017".

96. On 17 July 2018, Mr Prentice was copied into an email from Ms Waugh to Mr Jones referring to "manually added time". In July 2018, Mr Jones was recorded as having spent 271.3 hours on the matter, a Ms Lai Kong was recorded as having spent 152.6 hours and a Ms Tohtayeva was recorded as having spent 168.1 hours. This contrasted with billing material dated 28 June 2017, which recorded that Mr Jones had spent 194.4 hours on the matter, Ms Lai Kong had spent 46.4 hours and Ms Tohtayeva had spent 137.1 hours.

97. Mr Prentice was recorded as having carried out 86 hours of chargeable time. In his first statement in these proceedings his position in relation to the Rheno matter was that he had "only a limited involvement". In evidence he said:

> "… well, you need to look at the files. I can't, you know, give you a detailed analysis of every minute that I spent on the file, but my time was accurately recorded"

98. I am not satisfied that these increases in hours had any proper justification. The way in which Jirehouse went about quantifying its fees was deeply troubling, say AXIS. I agree. Although there was reference to hours having been written off or under-recorded for earlier periods, I have no confidence at all that there was agreement with the client to revisit that position or that the methods used to recalculate bills were reliable. There was neither professionalism nor integrity in what was happening. Mr Prentice's evidence under cross examination at trial that he did not before March 2019 see any evidence that Mr Jones was acting in breach of the core conduct principles is contradicted by this episode.

99. Although Mr Prentice did not accept this, the purpose behind raising the bills was plainly to reduce or extinguish an amount that had to be repaid. But that does not mean it was to reduce an amount of client monies that could not be repaid; that was a possibility but not one that I am satisfied Mr Prentice knew or suspected.

The Taymouth Castle transaction and the Surplus Funds Claim

100. It will be recalled that the Surplus Funds Claim involved Mr Jones dishonestly and without authority removing, on 16 April 2018, US$ 14,050,000 that the First Claimant had paid to the account of JTL in relation to the purchase of Taymouth Castle.

101. The original receipt of US$14.05 million, paid into the account of JTL in April 2018, was many months before completion of the Taymouth Castle transaction. Mr Prentice told Mr Smith KC in June 2019 that he did not know that these funds had been received, in April or in November 2018.

102. AXIS contend that in saying this he lied. They point out that searches on Jirehouse's server later revealed that Mr Prentice had actually amended the "terms" letter sent to the First Claimant in May 2018. When he was cross examined on his involvement in amending the letter, Mr Prentice said:

> "I was from time to time asked to either sense check documents or just review documents from a linguistic standpoint" .

He also suggested that he did not pay particular attention to the letter, yet the letter expressly refers to the receipt of the money in April 2018 and, indeed, the very paragraph referring to the receipt was amended by Mr Prentice.

103. I have no doubt Mr Prentice was aware of the receipt of the money. In his evidence at trial he was seeking again to downplay his role, in my judgment. AXIS are in my judgment correct that Mr Prentice had no plausible explanation for what he had told Mr Smith KC in June 2019 about the receipt of the money. He said at trial that when he told Mr Smith KC that he did not know about the receipt of the US$14.05 million, that was "my recollection at the time". Given the size of the transaction, and the documentary record, and hearing and considering the way he gave this evidence at trial, that evidence is not credible. He was not open with this Court and he did not tell the truth to Mr Smith KC.

104. There is however no documentary evidence that Mr Prentice knew at the time of the subsequent removal from JTL's account of US $14,050,000 on 16 April 2018.

105. On 20 July 2018 Mr Jones wrote an email about the structure of the Taymouth Castle transaction. This involved the use of "third party debt". Mr Jones sent an email to Barclays Bank dated 13 December 2018 which referred to recent money sent by the First Claimant as "short term funding" and made clear it was shortly to be returned. When asked about this Mr Prentice denied that the matter attracted his attention. I am not persuaded on the materials available, which may not be complete, that it should have attracted his attention and he should have made enquiry, but I accept it did not and

he did not. I add that, had he made enquiry it does not follow that he would have received an answer that caused him to take any further step.

106. Then, in what must on any view have been a dramatic episode, in early January 2019 Mr Prentice learned that Jirehouse's accounts and, significantly, an account of his own, had been frozen.

107. He received Mr Jones' email dated 3 January 2019 stating:

> "We have no idea to what it relates or who made the call and my suspicion is that it was from Henry Anderson on the Taymouth transaction".

Mr Jones later wrote by email about:

> "… coercive action is then threatened against us (including Henry's threatened more extreme physical steps) if we or the Bank do not act as demanded …".

108. Mr Prentice admitted reading Mr Jones' email, which made plain that an Esquiline entity, EAML, was said to have "primary payment obligations". Mr Prentice appeared unperturbed by the revelation that EAML was involved or that Mr Anderson was making threats. The pressure of the Jirehouse Entities continued with statements that "There is nothing preventing you from making a wire", that "all parties believe that something dodgy is going on" and that "you are just choosing not to send the money".

109. Mr Jones suggested money-laundering and compliance issues prevented the return of the money. AXIS describe these suggestions as lies, and that is, as far as I can see from this vantage point in time, a fair description. That does not mean that Mr Prentice appreciated at the time that they were lies.

110. However Mr Prentice did not react. His explanation was that although he had received emails of this type before, "never before has the issue not been resolved".

111. AXIS submit that Mr Prentice came close to the truth in the answer he gave about matters being "resolved" in the past. He knew, say AXIS, that Mr Jones was misusing client monies but, on past evidence, he expected Mr Jones to find a way out. Up until March 2019, Mr Jones had always found a way out but Mr Prentice, say AXIS, turned a blind eye to the steps taken by Mr Jones to achieve a resolution. As to these allegations, I accept that Mr Prentice knew there were problems, and expected Mr Jones to resolve them, but not that they and their resolution involved misusing client monies.

112. On 30 January 2019, solicitors for the vendor in the Taymouth Castle transaction emailed Mr Jones depicting his conduct in failing to release part of retention monies as "extremely unusual". The email stated that the:

> "… refusal to execute instructions you have been irrevocably given, the constant changing excuse for failure to carry out those instructions, and the refusal to provide any evidence to substantiate your position, mean we have had to take the appropriate steps with the relevant authorities".

Mr Jones forwarded this document to Mr Prentice stating:

> "… this is not good - I think we do have to show some evidence of something held on account".

113. In February 2019 the First Claimant pressed for evidence that its funds were safely held and properly segregated. Mr Prentice was copied in. AXIS contend that given the magnitude of the problem, it is obvious that Mr Prentice would have followed these developments closely. Given what he knew about Mr Jones' prior conduct, he must have been gravely concerned. An honest solicitor and partner would in the circumstances 'have it out' with Mr Jones, say AXIS, by demanding that proof that the monies were safely held be provided.

114. But, as AXIS put it, Mr Prentice accepted that he did no such thing. He accepted that he chose not to make his own investigations into the nature of the compliance and money laundering issues asserted by Mr Jones as involved. He told the court that Mr Jones had told him that it was an "Esquiline issue" and that "at some point" proof of funds had been provided. I accept that for Mr Prentice to leave things at this was inadequate, and well below the professional standards to be expected of him. I do not accept that it was dishonest.

115. There was some evidence that funds were still held at 25 February 2019 but at that stage the only evidence was as to the sum of £1,433,000. Mr Prentice's explanation of his inactivity was that:

> "… [one person] was advancing a position. Mr Jones was advancing a slightly different position, but they were working towards a resolution.".

He denied that his failure to act was because he knew or suspected that the monies were not properly held or accounted for.

116. As AXIS say:

> "… it would have been wholly inappropriate for any solicitor (particularly one with managerial obligations under the Solicitors Accounts Rules) to treat the situation as a "debate" between Gibson Dunn and Mr Jones which could be allowed to run its course."

Yet that is broadly how, in my judgment, Mr Prentice saw it. This was because he was unsuitable to be a solicitor. He did not have the sense of personal responsibility required and he did not see how serious his own professional obligations were.

117. However I do not consider that the reason he did not make enquiries was because, as AXIS argue, he did not want to have confirmed what he believed or strongly suspected was the case (which was, AXIS argue, that client monies were being misused). Had that been the case he would in my judgment have left the Jirehouse Entities, as he did the next month when Mr Jones told him in effect that that was the position. Mr Prentice's instinct for self preservation, well demonstrated in the witness box as he sought to take opportunities to distance himself from events and circumstances, would have seen him get out.

The Taymouth Castle transaction and the Dragonfly Loan Claim

118. It will be recalled that the Dragonfly Loan Claim involved Mr Jones, over the period 21 January to 12 February 2019, dishonestly and without authority arranging and drawing down £4,980,470 from Dragonfly Finance s.a.r.l. as a loan against security over Taymouth Castle, and then removing that sum from Jirehouse's client account.

119. As noted above, on 20 July 2018 Mr Jones had written an email about the structure of the Taymouth Castle transaction, involving the use of "third party debt". Correspondence over loan arrangements had followed.

120. Heads of Terms for a loan from Octopus were available by 4 December 2018. A loan application was completed and signed by a Mr John Clark, purportedly on behalf of the Third Claimant. On 19 December 2018 Mr Jones emailed about compliance review, release of funds and the Octopus loan.

121. On 4 January 2019 Mr Jones exchanged emails with the First Claimant about funding. The Octopus loan offer was sent to the First Claimant. The next day the First Claimant queried the Octopus terms. On 6 January 2019 Mr Jones gave an explanation of the proposed loan. Internal emails within the First Claimant followed on 7 January 2019 about the proposed loan, but with no agreement to proceed. On 8 January 2019 concern was expressed about the proposed loan.

122. On 21 January 2019 Mr Clark was dealing with corporate documents for a Dragonfly Loan application, purportedly on behalf of the Third Claimant. A charge to secure a Dragonfly Loan was created with Mr Clark's signature. Emails between Mr Jones and the First Claimant followed on 23 January 2019 about delays and funding proposals. Meanwhile on 3 February 2019 concerns were again expressed about the idea of a Dragonfly Loan.

123. Notwithstanding, on 11 February 2019 £4,980,479.00 was received into the Jirehouse General Client Account in respect of the Dragonfly Loan. The next day the amount of the Dragonfly Loan was paid out to one of the Esquiline companies, EAML.

124. But the sequence of correspondence summarised above was not copied to Mr Prentice. I accept his evidence that he was unaware of the Dragonfly Loan until 12 March 2019. This was in dramatic circumstances that led to his resignation from the Jirehouse Entities.

125. Mr Prentice was in Nevis when on 13 March 2019 notice was received of a freezing injunction against EAML at 16.51 hours. Jirehouse was ordered to provide information. An email to Mr Jones about the freezing injunction was copied to Mr Prentice at 19.50. The evidence in support of the injunction stated that the charge to secure the Dragonfly Loan had been registered without the Claimants' knowledge or consent.

126. The next day, 14 March 2019, in a letter from Jirehouse to Gibson Dunn, solicitors, at 14.08 hours it was stated that £4,980,479 was drawn down in respect of the Dragonfly Loan facility. Mr Prentice's evidence was that this paragraph was drafted by Mr Jones.

An email to Mr Jones copied to Mr Prentice at 17.45 hours brought news of the Claimants' intention to apply for further injunctive relief in light of that letter. Mr Jones sent an email to Mr Prentice and another, referring to offering "undertakings to deal with their concerns as well as any further information on EAML".

127. On 15 March 2019 in an email copied to Mr Prentice at 07.55 hours Mr Jones wrote about the question of Jirehouse having no authority for the Dragonfly Loan. He asserted that Jirehouse was asked to keep the loan available and this was authorised. Mr Prentice's evidence is that he had a telephone conversation during the morning at which Mr Jones told him for the first time that monies had been paid away. I accept this evidence. It caused an email from Mr Prentice to Mr Jones at 14.30, resigning his directorships and membership in the Jirehouse Entities.

128. Mr Prentice gave an account in his first witness statement of his shock when Mr Jones told him that the money had gone. AXIS urge that the account of shock is not credible, or if he was shocked, that was because Mr Jones "had finally run out of room". As AXIS put it, the problem itself – arising out of Mr Jones's misuse of client funds – was nothing new. Whilst I accept unhesitatingly that Mr Prentice could and should have been more professionally responsible at many points over the decade leading to this point, my assessment is that he was shocked and that was because he had no idea of this type or nature of misuse of client funds by Mr Jones.

"Condonation", of what, and conclusions

129. Mr Prentice did not specifically approve the dishonest acts of Mr Jones in transferring money away from JTL on 16 April 2018. Nor did he specifically approve the dishonest acts of Mr Jones which caused the Third Claimant to enter into the charge in respect of the Dragonfly Loan on 21 January 2019, and involved transferring the Dragonfly Loan funds away from client account on 12 February 2019.

130. However that is not of course the extent of AXIS's case. It is AXIS's case that Mr Prentice was aware of Jirehouse's financial problems and hence, as was put at one point, the temptation or need for Mr Jones "to help himself to client funds". AXIS contend that it was in an attempt to cover up this awareness that Mr Prentice told a number of significant lies, either in his evidence at trial or to Mr Smith KC in June 2019.

131. In AXIS's contention the lies go to the heart of what Mr Prentice knew and chose to turn a blind eye to in the latter years with the Jirehouse Entities. For this purpose, AXIS take and accept a definition of "blind eye knowledge" that requires a suspicion "firmly grounded and targeted on specific facts" and a deliberate decision to "avoid obtaining confirmation of facts in whose existence the individual has good reason to believe": Group Seven v Nasir [2020] Ch 129 at [60].

132. As I have said, I accept that Mr Prentice lied to Mr Smith KC. I also find, as seen above, that there were points when he did not tell the truth in his evidence to the Court; when he made something up or deliberately attempted to downplay his role.

133. I do not accept the allegation made by AXIS that Mr Prentice knew that the Jirehouse Entities were in "very serious difficulties" when he became a "partner". Indeed I conclude he would have refused "partnership" if he had known that. I do accept that he was aware that at times over his long involvement with the Jirehouse Entities there were material financial problems. However, I do not accept his awareness was such that he appreciated or should have appreciated that the financial problems were such that Mr Jones might steal client funds.

134. There was thorough and searching cross examination of Mr Prentice at trial. Following that Mr Lawrence KC for AXIS submits that Mr Prentice must over time have realised that Mr Jones was "up to no good". Mr Prentice, say AXIS, was prepared to go along with that. He was, at least, compliant, say AXIS and, at least, could be counted on to turn a blind eye when it was necessary to do so.

135. I accept that Mr Prentice realised Mr Jones was prepared to do things that he should not have been prepared to do. In fact Mr Prentice was the same, with his conduct in relation to the two Jirehouse CF winding up petitions as an example. To that extent he realised Mr Jones was "up to no good", was prepared to go along with that, was compliant and prepared to turn a blind eye.

136. However I do not accept that, before the events of March 2019, Mr Prentice realised or should have realised that Mr Jones had stolen client monies, or was prepared to steal client monies. I accept that in the case of the Rheno matter, taking all the material now available (even though still incomplete) there is every indication that client monies were misused or stolen by Mr Jones, but not that this was in circumstances that brought that fact home to Mr Prentice at the time or would have brought that fact home to any honest person in his position and with the material before him. The position was simply not clear enough then.

137. It is of course an altogether separate question whether Mr Prentice was a suitable person to be made a director and member of a legal practice, or even to be involved in one. In my judgment, he plainly was not. Or whether, as a director or member or employee, he behaved as he should have behaved in those positions. In my judgment, he plainly did not.

138. If, as I do below, I find he became a director and member, then AXIS does here go on to say Mr Prentice did not take the steps that a solicitor acting properly in that position would have taken. Mr Lawrence KC summarises:

> "He did nothing to comply with his obligations under the Solicitors' Accounts Rules … and/or the core principles of the Code of Conduct to ensure the proper management of the firm and the safety of client monies."

139. In my judgment the reason Mr Prentice did not make enquiries and follow up was not because, as AXIS argue, he did not want to have confirmed what he believed or strongly suspected was the position (misuse and theft of client monies on AXIS's case). Had that been the case he would in my judgment instead have left. Despite what had gone before, the nature and scale of that proposition would have shocked even Mr Prentice and his instinct for self preservation, well demonstrated as he gave evidence, would have seen his departure. The reason he did not make enquiries and follow up was

rather because he lacked the necessary sense of professional responsibility and an appreciation of the importance of the regulatory requirements of his profession.

140. I have referred to Mr Prentice downplaying his role. The central question is why? In my judgment, the reason he did not tell the truth to Mr Smith KC (and this Court) on particular points was in order to try to distance himself from facts and circumstances that by then he realised presented or appeared to present personal risk to him. I do not accept (as AXIS press) that it was to conceal that he was deliberately turning a blind eye to Mr Jones' misuse of client funds. A further reason he was not accurate in some of his evidence to this Court was, I find, to try to minimise the fact he had lied to Mr Smith QC. It was not to do with hiding that at his time at the Jirehouse Entities he had a greater appreciation of Mr Jones' wrongdoing.

141. AXIS argue, properly, that one should see things cumulatively over what was a decade or more at the Jirehouse Entities. This would include considering the way in which matters had been "resolved" in the past, especially in the case of the Barleycorn Blue matter and the Rheno matter. But when one reviews the decade, the SRA investigations and reports are important. This is not to pass judgment on their quality; that is not my function in this case. Rather it is to note that their outcomes affect my confidence that had Mr Prentice questioned or looked into matters at the time he would have encountered matters that meant that continuing to work with Mr Jones would condone dishonesty or fraud on the part of Mr Jones or the Jirehouse Entities, that would give rise to or would involve the claims for the Surplus Funds Claim or the Dragonfly Loan Claim.

142. In their closing written submissions, AXIS summarise part of what they contend in these terms, that:

> "Mr Prentice turned a blind eye to what money was being used to meet Jirehouse's liabilities over an extended period from September 2017 onwards … [i]n due course, this permitted Mr Jones to perpetuate the fraud in the Taymouth Castle [t]ransaction".

I identify this particular summary in order to address it directly in the next paragraphs.

143. It is clear Mr Prentice did not look into the question of what money was being used to meet Jirehouse's liabilities. He should have done so as a matter of professional responsibility, but in my judgment his failure to do so was not because he suspected that if he did look into the question he might find client monies being used to meet those liabilities. Even if (contrary to my finding) he had suspected that, the suspicion would have been a suspicion about the use of client monies to address temporary exigencies and pressures and not a fraud of the nature and scale of that involved in the Surplus Funds Claim or the Dragonfly Loan Claim.

144. Giving the word "condone" its ordinary meaning and applying the language of Clause 2.8 of the policy, Mr Prentice did not condone Mr Jones acting dishonestly or fraudulently. If he did, then what he condoned was the use by Mr Jones of client monies to address temporary exigencies and pressures. Those acts by Mr Jones were not the acts involved in the claims in respect of the Surplus Funds Claim or the

Dragonfly Loan Claim, and nor do the claims directly or indirectly arise out of them. It may be that had Mr Prentice looked into the question of whether client monies were being used to address temporary exigencies and pressures that would (by one means of another) in the event have prevented "Mr Jones [from] perpetuat[ing] the fraud in the Taymouth Castle [t]ransaction", but that causal link is not that provided by the terms of Clause 2.8.

145. In my judgment the true story of this case is that Mr Prentice's standards fell well below those required in his profession. Indeed there are episodes that show he was untrustworthy and prepared to behave dishonestly. But these episodes were not such as to justify a conclusion that he in any way appreciated that Mr Jones could be embarked on multi-million pound fraud, extracting client monies in connection with the commercial entities with which he was involved. Mr Prentice did not condone, either generally or specifically in relation to the two claims, what AXIS described in closing as a Ponzi scheme by Mr Jones the roof of which fell in in March 2019.

146. It is common ground that the burden of proof on condonation is on AXIS. The attempt to discharge that burden in this case was always going to be a major undertaking. It has been tackled with great ability, and fairness, by Mr Lawrence KC, Ms Evans KC and Mr McDonald for AXIS. It was resisted with great ability and fairness by Mr Flenley KC and Ms McMahon. In the result the burden was not discharged.

"Sham partnership", and conclusions

147. As noted above, Mr Jones purported to appoint Mr Prentice as, in effect, "partner" but, as to that appointment, AXIS say there was no real "partnership" and the purported appointments were in fact a sham.

148. As Jirehouse Partners LLP was a limited liability partnership, and Jirehouse and JTL were private limited companies, "partnership" would take the legal form of membership and of directorship.

149. Companies House records an appointment of Mr Prentice in 2017 as a director of Jirehouse and as a member of Jirehouse Partners LLP. The contention is advanced by AXIS that "the documents effecting these appointments were a sham", but frankly there is no good evidence of that. Further, I consider that Mr Flenley KC makes a very important point when he cautions over the serious consequences in terms of legal uncertainty if duly documented and registered appointments are too readily treated as a "sham".

150. I have taken into account all the evidence at trial, but whatever else I make of his evidence at trial, I accept Mr Prentice's account of the point at which and circumstances in which he came to be offered and to accept the appointments. He had reached a suitable stage in his career. Mr Jones wanted to keep him and he was incentivised to stay.

151. It was said that there was a lack of business justification for his appointment, but that is answered by the point just made. I am quite satisfied that both appointor and appointee intended the appointments to be effective. Although Mr Jones was, and was always intended to be, by far the more powerful "partner", even to the point of asserting the

power to cause Mr Prentice's removal at a future date, that does not render the "partnership" a sham. It was not, for example, a preparatory step in a fraudulent plan.

152. AXIS refer to a lack of due diligence on Mr Prentice's part before accepting the appointments, to the absence of negotiation of terms offered by Mr Jones, to differences in the dates in 2017 of appointing documents, to Mr Prentice's later neglect of the regulatory responsibilities that come with "partnership", and his readiness to defer to Mr Jones. There was evidence which I accept to support all these points. I accept also that Mr Prentice's evidence at trial showed few examples of responsibilities taken on and that the examples given (some hiring decisions; some work on billing practice) were those that an employee could in some cases as readily be asked to do. However I do not consider any of these points referred to in this paragraph make the appointments a sham.

153. AXIS refer to a point in Mr Prentice's cross examination when it was put to him that he was not actually a partner at all and that his appointment was a "convenient fiction". His answer was that he disagreed. AXIS argue that the absence of elaboration was significant, but I consider his answer was true and that it did not need more.

Aggregation

154. Clause 5.2 of the policy provides in these terms:

> "5.2 ONE CLAIM
>
> All *claims* against one or more *insured* arising from:
>
> (a) one act or omission;
> (b) one matter or transaction;
> (c) one series of related acts or omissions;
> (d) the same act or omission in a series of related matters or transactions;
> (e) similar acts or omissions in a series of related matters or transactions;
>
> will be regarded as one *claim* for the purposes of this *policy* and the payment of any excess."

155. The question between the parties is whether the claims in respect of the Surplus Funds Claim and the Dragonfly Loan Claim are to be aggregated pursuant to the terms of either of Clause 5.2(c) or Clause 5.2(e). The Claimants point out that the relevant wording is identical to the standard wording of the SRA minimum terms and conditions.

156. In Lord Bishop of Leeds v Dixon Coles & Gill [2021] EWCA Civ 1211; [2021] Lloyd's Rep IR 410 at [53]-[54], Nugee LJ quoted an earlier reference by Lord Hoffmann to acts or events that "together resulted in each of the claims", and continued:

> "In other words, if there is a series of acts, A, B and C, it is not enough that act A causes claim A, act B causes claim B, and act C causes claim C. What is required

> is that claim A is caused by the same series of acts A, B and C; claim B is also caused by the same series of acts; and claim C is too."

157. In my judgment, the claim in relation to the Surplus Funds Claim was not caused by the same series of acts as the claim in relation to the Dragonfly Loan Claim so as to bring both within Clause 5.2(c). The thefts were brought about separately. As an example, the charge that enabled the Dragonfly Loan Claim played no part in the Surplus Funds Claim. In addition, at the time of the theft of the purchase monies the subject of the Surplus Funds Claim, whether there would later be loan monies (later the subject of the Dragonfly Loan Claim) was not clear and that there would be loan monies in addition to the full purchase monies was unlikely to have been in contemplation.

158. The Supreme Court said in AIG Europe Ltd v Woodman [2017] UKSC 18, [2017] 1 WLR 1168 at [22] that the requirement that the acts or omissions giving rise to the claims "were in a series of matters or transactions which were related" raised the question whether the transactions "fitted together". I acknowledge that in some cases a purchase transaction and a lending transaction might fit together, but in my judgment in the present case they do not and the requirements of Clause 5.2(e) are not met. Although both involved Taymouth Castle, the Surplus Funds Claim involved the theft of a client's purchase monies under a proposed purchase transaction that did not depend on a loan, whilst the Dragonfly Loan Claim concerned the theft of monies lent to a client under a secured lending transaction arranged later.

159. AXIS argued otherwise, providing a list of "acts in question" and saying that they arose in a series of "related" matters and transactions as follows: (a) that there was a clear inter-connection between all matters in that they related to the same property, Taymouth Castle, and the same transaction, the First Claimant's purchase of the same; (b) whilst different corporate entities were involved on the Claimants' side, they were very closely connected and all of the matters essentially involved the same underlying relationship with Jirehouse; (c) the matters fitted together in that, but for the First Claimant's decision to acquire Taymouth Castle (and to retain Jirehouse in connection with the same), the opportunity for Mr Jones to carry out the respective thefts which led to both the Surplus Funds Claim and the Dragonfly Loan Claim simply would not have existed; (d) moreover those connected with the First Claimant were aware as early as October 2018 of the possibility, at least, that monies might be raised by borrowing on the security of Taymouth Castle; (e) the fact that the First Claimant was not a party "in law" to the Dragonfly Loan is irrelevant.

160. As to points (a) and (b), relationship to the property, its purchase and Jirehouse are among the points to be taken in the round, but the points are at a high level of generality and there is further detail to be considered. In the present case, the detail unravels the relationship of the matters and transactions, and the fit of the transactions with each other. As to point (c) the opportunities for theft do not answer the question whether the transactions fitted together. Point (d) mitigates but does not remove the degree of separation between the provision of purchase monies and the later loan. As to point (e), I would agree the fact is not decisive, and does not affect the outcome in this case, but not that it is irrelevant.

161. On "similarity", addressing an aspect that was not the subject of the appeal to the Supreme Court, in AIG Europe Ltd v OC320301 [2016] EWHC 2398 (Comm); [2016]

Lloyd's Rep IR 147 at [32] Teare J held that "the requisite degree of similarity must be a real or substantial degree of similarity as opposed to a fanciful or insubstantial degree of similarity".

162. AXIS say that "the Surplus Funds Claim was founded on a misappropriation of funds paid by the client, whereas the Dragonfly Claim was founded on the misappropriation of funds raised by granting a security over property owned by the client is a distinction without a real difference". I respectfully consider that the difficulty with that proposition is that the distinction which is present in this case is not revealed by that choice and generality of summary. I agree with the Claimants that AXIS's submission that both Claims involved "thefts of closely connected clients' money by Mr Jones" ignores the detail between the two. In relation to the Surplus Funds Claim the act or omission giving rise to the claim under the policy was the wrongful release of money from the client account, whereas in the Dragonfly Loan Claim the act or omission was, 9 months later, the wrongful arrangement of a facility and charge, drawdown under the facility and then release from the client account.

163. In these circumstances the claims are not regarded as one claim. The Claimants fairly draw attention to the way in which AXIS in the declinature letter dated 14 August 2019 clearly distinguished between the two claims.

The application to strike out

164. The day before the start of the trial, the Court heard what was a late application by the Claimants to strike out references to the meeting on 11 June 2019 at which Mr Prentice was interviewed by Mr Jamie Smith KC.

165. The Court ruled against the Claimants but, in the interests of time, reserved its reasons. I can deal with this shortly now, especially in light of my overall decision in the case.

166. The question was whether Mr Prentice enjoyed legal professional privilege on a common interest basis in respect of the contents of the meeting. The circumstances, which I will not elaborate here, were confusing. However I was satisfied that there was no privilege enjoyed by Mr Prentice relevant to the present litigation, where coverage is in issue. I was also satisfied there was no unfairness towards Mr Prentice, a solicitor, in the process that was adopted. I add that it is quite clear that Mr Prentice was made aware and appreciated that AXIS could rely on what he said at the meeting against him.

167. From the record available, the questioning itself by Mr Smith KC at the interview was completely fair.

Endnote

168. I should not leave the case without an observation on one aspect.

169. I appreciate that the type of insurance with which this case is concerned insures not the clients but the firm. However, I do not know whether clients, or the public that could

become clients, would anticipate the consequences shown by this case.

170. The point is for discussion, but I suggest it may surprise the client community, and the public, that insurance, which is part of a framework required for their protection, may protect them where one of two partners was dishonest but not where the insurers can show the second partner condoned the dishonesty of the first. This may be especially so where the firm is a separate legal entity from its "partners".

171. I appreciate there are other parts of the overall framework that is in place for the protection of the clients of solicitors. However at least the question of sufficient transparency on the point just mentioned may be suitable for joint review by The Law Society and the SRA.