Reference number: FS/2010/0039

FINANCIAL SERVICES – general insurance broker - whether Applicant in breach of Statements of Principle 1 and 4 – standard of proof - forged documentation – failure to effect insurance – failure to keep clients informed of identity of insurer – failure to deal with the Authority in an appropriate, open and cooperative way – action under s 66 FSMA – whether prevented by limitation – construction of s 66(4), (5) – penalty – s 66(3) - prohibition order – s 56 FSMA

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

ANDREW JEFFERY **Applicant**

- and -

THE FINANCIAL CONDUCT AUTHORITY **Respondent**

TRIBUNAL: JUDGE ROGER BERNER
SANDI O'NEILL (Tribunal Member)
IAN ABRAMS (Tribunal Member)

Sitting in public at 45 Bedford Square, London WC1 on 5 – 20 December 2012 and on 9 and 31 January 2013 and following further written submissions of the parties

The Applicant, Andrew Jeffery, in person

Sarah Clarke, instructed by the Financial Services Authority, for the Respondent

DECISION

1. The Applicant, Mr Andrew Jeffery, has referred to this Tribunal a Decision Notice sent to him by the Financial Services Authority ("the Authority") dated 13 July 2010, which informed Mr Jeffery that the Authority had decided:

> (1) To impose on Mr Jeffery a financial penalty of £150,000 for breaches of Statements of Principle 1 and 4 of the Authority's Statements of Principle and Code of Conduct for Approved Persons ("Statements of Principle") in the period between 14 January 2005 and 23 October 2009 ("the relevant period") pursuant to s 66 of the Financial Services and Markets Act 2000 ("FSMA"); and
>
> (2) To make a prohibition order, pursuant to s 56 FSMA, to prevent Mr Jeffery from carrying out any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

2. Although the decision in question was that of the Financial Services Authority ("FSA"), the Respondent in this reference has now become the Financial Conduct Authority ("FCA"). This is the consequence of the Financial Services Act 2012 which made provision with effect from 1 April 2013 for two new regulators in place of the FSA, the Prudential Regulation Authority and the FCA. Specifically, reg 12 of the Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013 provides that where, as in this case, the reference to the Tribunal was made before 1 April 2012, the decision-maker for the purpose of s 133 FSMA (Proceedings before Tribunal: general provisions) is treated as the body which would have made the decision after that date. In this case that body is the FCA.

3. For ease of reference we shall refer throughout to the Authority, and that expression will include the FSA for all periods up to 1 April 2013 and from that date the FCA.

4. The decisions reached by the Authority related to Mr Jeffery's activities as a general insurance broker within his firm of Jeffery Flanders (Consulting) Limited ("the Firm") for which he required approval from the Authority from 14 January 2005. From that date Mr Jeffery was approved to hold controlled functions CF1 (Director) and CF8 (Apportionment and Oversight) and to be responsible for insurance mediation at the Firm. Mr Jeffery was, at all material times, the only approved person at the firm.

5. The essence of the Authority's case is that Mr Jeffery is not a fit and proper person because he lacks integrity and he has breached Statements of Principle 1 and 4. In summary the grounds for this contention are:

> (1) Mr Jeffery continued to carry on regulated activities and received payment for services provided to clients after 25 January 2009, contrary to the position stated by Mr Jeffery in his letter to the Authority dated 16 April 2009.

(2) Through Mr Jeffery's insurance intermediary business, following receipt of payment from clients, Mr Jeffery recklessly did not effect insurance and/or failed to inform clients of the identity of their insurers.

(3) Mr Jeffery knowingly forged or caused to be forged documentation and correspondence in the names of clients potentially to mislead recipient insurance companies and in circumstances where the clients were not aware of and had not consented to this activity.

(4) Mr Jeffery failed to deal with the Authority in an appropriate, open and cooperative way, in particular failing to notify the Authority of any changes in either Mr Jeffery's contact details or his business activities, and failing to provide information and documents as required. This is said to be so despite repeated attempts by the Authority to contact Mr Jeffery by email, telephone and letter.

(5) Mr Jeffery also failed to attend an interview at the offices of the Authority despite the requirements made pursuant to the Authority's statutory powers.

6. Mr Jeffery disputes all of the allegations made by the Authority. In addition he has raised a limitation defence to certain of the grounds for the imposition of a penalty under s 66 FSMA. This defence is relevant to ground (2) (failing to effect insurance and/or to notify clients of identity of insurers) and ground (3) (forged documentation).

Structure of this decision

7. For ease of reference we set out below the headings under which we have organised this decision, and the corresponding paragraph numbers:

The law

Financial penalty

8. Action, including the levying of a financial penalty, may be taken by the Authority against a person who appears to the Authority to be guilty of misconduct. That is the effect of s 66 FSMA which, at the relevant time, provided as follows:

66 Disciplinary powers

(1) The Authority may take action against a person under this section if—

(a) it appears to the Authority that he is guilty of misconduct; and

(b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him.

(2) A person is guilty of misconduct if, while an approved person—

(a) he has failed to comply with a statement of principle issued under section 64; or

(b) he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under this Act or by any directly applicable Community regulation or decision made under the markets in financial instruments directive or the UCITS directive or by the emission allowance auctioning regulation.

(3) If the Authority is entitled to take action under this section against a person, it may do one or more of the following—

(a) impose a penalty on him of such amount as it considers appropriate;

(aa) suspend, for such period as it considers appropriate, any approval of the performance by him of any function to which the approval relates;

(ab) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance by him of any function to which any approval relates as it considers appropriate; or

(b) publish a statement of his misconduct.

(3A) The period for which a suspension or restriction is to have effect may not exceed two years.

(3B) A suspension or restriction may have effect in relation to part of a function.

(3C) A restriction may, in particular, be imposed so as to require any person to take, or refrain from taking, specified action.

(3D) The Authority may—

(a) withdraw a suspension or restriction; or

(b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(4) The Authority may not take action under this section after the end of the period of [two years] beginning with the first day on which the Authority knew of the misconduct, unless proceedings in respect of it against the person concerned were begun before the end of that period.

(5) For the purposes of subsection (4)—

(a) the Authority is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred; and

(b) proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given to him under section 67(1).

(5A) Approval" means an approval given under section 59.

(6) "Approved person" has the same meaning as in section 64.

(7) "Relevant authorised person", in relation to an approved person, means the person on whose application approval …was given.

(8) In relation to any time while a suspension is in force under subsection (3)(aa) in relation to part of a function, any reference in section 59 or 63A to the performance of a function includes the performance of part of a function.

(9) If at any time a restriction imposed under subsection (3)(ab) is contravened, the approval in relation to the person concerned is to be treated for the purposes of sections 59 and 63A as if it had been withdrawn at that time.

9. The reference to two years in s 66(4) has been amended to three years by s 12(4) of the Financial Services Act 2010, with effect from 8 June 2010. In this case the Warning Notice to Mr Jeffery was given on 28 May 2010. For the purpose of this reference, therefore, the former time limit of two years is applicable.

Limitation

10. Section 66(4) imposes a limitation period on the taking of action under s 66. That limitation arises only in respect of the imposition of a penalty (and not to the making of a prohibition order under s 56 FSMA). We shall consider the construction of s 66(4) when we come to the discussion of the substantive limitation issue.

Statements of Principle

11. Statements of Principle are issued under s 64 FSMA. They are published by the Authority in APER 2: The Statements of Principle for Approved Persons, at section 2.1. In this reference we are concerned with Statement of Principle 1 and Statement of Principle 4.

12. APER 3 is the Code of Practice for Approved Persons issued under s 64 FSMA. Its purpose is to help to determine whether or not an approved person's conduct complies with a Statement of Principle. At APER 3.14G, guidance is given to the effect that an approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances. APER 3.1.3G makes it clear that all the circumstances of a particular case must be considered. Account is taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.

Statement of Principle 1

13. Statement of Principle 1 is that: "An approved person must act with integrity in carrying out his controlled function" (APER 2.1.2P).

14. Section 4.1 of APER 4 provides guidance on the application of Statement of Principle 1. In the opinion of the Authority, the following relevant conduct does not comply with Statement of Principle 1:

> (1) Deliberately misleading (or attempting to mislead) by act or omission a client or the Authority, including (but not limited to) falsifying documents and providing false or inaccurate information to the Authority (APER 4.1.3E and 4.1.4E).
>
> (2) Deliberately failing to inform, without reasonable cause, a customer or the Authority of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding, including (but not limited to) deliberately failing to disclose the existence of falsified documents (APER 4.1.6E and 4.1.7E).
>
> (3) Deliberately not paying due regard to the interests of a customer (APER 4.1.14).
>
> (4) Deliberate acts, omissions or business practices that could reasonably be expected to cause consumer detriment (APER 4.1.15).

Integrity

15. Statement of Principle 1 is concerned with integrity. That expression has been considered in a number of cases before this Tribunal and its predecessor, the Financial Services and Markets Tribunal ("FSMT"). For example, in *Hoodless and Blackwell v The Financial Services Authority* (3 October 2003) the FSMT described (at [19]) the expression "integrity" in the following terms:

> "In our view 'integrity' connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest and dishonest by ordinary standards."

16. This formulation was approved by this Tribunal in *Atlantic Law LLP and another v The Financial Services Authority* (FIN/2009/0007), where it was pointed out that a person may lack integrity even though it is not established that he or she has been dishonest. Acknowledging, as was said in *Vukelic v The Financial Services Authority* (13 March 2009), that it is unwise to attempt a comprehensive definition of integrity, the guidance afforded by *Hoodless and Blackwell* and *Atlantic Law* was followed in *First Financial Advisers Limited v The Financial Services Authority* (FS/2010/0038), where it was held that even though a person might not have been dishonest, that person will lack integrity if he or she either lacks an ethical compass, or his or her ethical compass points them in the wrong direction.

Statement of Principle 4

17. Statement of Principle 4 is that: "An approved person must deal with the FSA and with other regulators in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice" (APER 2.1.2P).

18. Section 4.4 of APER 4 provides guidance on the application of Statement of Principle 4. In the opinion of the Authority, the following relevant conduct does not comply with Statement of Principle 4:

(1) Where the approved person is, or is one of the approved persons who is, responsible within the firm for reporting matters to the Authority, failing promptly to inform the Authority of information of which he is aware and which it would be reasonable to assume would be of material significance to the Authority, whether in response to questions or otherwise. Factors to be taken into account in this respect are the likely significance of the information to the Authority which it was reasonable for the approved person to assume, and whether any decision not to inform the Authority was taken after reasonable enquiry and analysis of the situation (APER 4.4.7E and 4.4.8E).

(2) Failing without good reason to:

(a) inform a regulator of information of which the approved person was aware in response to questions from that regulator;

(b) attend an interview or answer questions put by a regulator, despite a request or demand having been made;

(c) supply a regulator with appropriate documents or information when requested or required to do so and within the time limits attaching to that request or requirement (APER 4.4.9).

Prohibition Order

19. The power for the Authority to make a Prohibition Order is contained in s 56 FSMA:

56 Prohibition orders

(1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

(2) The Authority may make an order ("a prohibition order") prohibiting the individual from performing a specified function, any function falling within a specified description or any function.

(3) A prohibition order may relate to—

(a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;

(b) authorised persons generally or any person within a specified class of authorised person.

(4) An individual who performs or agrees to perform a function in breach of a prohibition order is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In proceedings for an offence under subsection (4) it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(6) An authorised person must take reasonable care to ensure that no function of his, in relation to the carrying on of a regulated activity, is performed by a person who is prohibited from performing that function by a prohibition order.

(7) The Authority may, on the application of the individual named in a prohibition order, vary or revoke it.

(8) This section applies to the performance of functions in relation to a regulated activity carried on by—

(a) a person who is an exempt person in relation to that activity, and

(b) a person to whom, as a result of Part XX, the general prohibition does not apply in relation to that activity,

as it applies to the performance of functions in relation to a regulated activity carried on by an authorised person.

(9) "Specified" means specified in the prohibition order.

20. The question of limitation does not arise in relation to the making of a Prohibition Order under s 56.

21. Guidance on the question whether an individual is a fit and proper person is given in FIT: The Fit and Proper Test for Approved Persons. According to FIT 1.3.1G, the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's:

(1) honesty, integrity and reputation;

(2) competence and capability; and

(3) financial soundness.

22. In this case, as appears from the Authority's statement of case, the focus is on honesty and integrity. As regards integrity, the analysis outlined earlier in relation to Statement of Principle 1 applies equally to the fit and proper test.

Burden and standard of proof

23. There is no issue on the burden of proof. That burden rests on the Authority.

24. In relation to the standard of proof, Mr Jeffery submitted that, having regard to the nature of the allegations made by the Authority, which Mr Jeffery asserted were essentially the same as the charges he was facing in an earlier criminal trial, and of which he was acquitted on all counts, the test that needed to be met by the Authority in proving its case was a higher test than the usual civil test. The argument is that there is a special standard of proof in civil cases which have criminal characteristics.

25. The relationship between the standard of proof and the seriousness of the misconduct alleged or the consequences for the person concerned was considered by the Supreme Court in *In re S-B (Children) (Care proceedings: Standard of Proof)* [2010] 1 AC 678. That case concerned care proceedings where two children had been removed from the care of their mother and placed in foster care. The question was the test to be applied in the court being satisfied that certain threshold conditions had been met, including the likelihood of a child suffering significant harm.

26. In giving the judgment of the Court, Baroness Hale of Richmond said:

"**10** The House of Lords was invited to revisit the standard of proof of past facts in *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2009] AC 11, where the judge had been unable to decide whether the alleged abuse had taken place. The suggestion that it would be sufficient if there were a "real possibility" that the child had been abused was unanimously rejected. The House also reaffirmed that the standard of proof of past facts was the simple balance of probabilities, no more and no less.

11 The problem had arisen, as Lord Hoffmann explained, because of dicta which suggested that the standard of proof might vary with the gravity of the misconduct alleged or even the seriousness of the consequences for the person concerned: para 5. He pointed out that the cases in which such statements were made fell into three categories. In the first were cases which the law classed as civil but in which the criminal standard was appropriate. Into this category came sex offender orders and anti-social behaviour orders: see *B v Chief Constable of Avon and Somerset Constabulary* [2001] 1 WLR 340 and *R (McCann) v Crown Court at Manchester* [2003] 1 AC 787. In the second were cases which were not about the standard of proof at all, but about the quality of evidence. If an event is inherently improbable, it may take better evidence to persuade the judge that it has happened than would be required if the event were a commonplace. This was what Lord Nicholls was discussing in *In re H (Minors)* [1996] AC 563, 586. Yet, despite the care that Lord Nicholls had taken to explain that having regard to the inherent probabilities did not mean that the standard of proof was higher, others had referred to a "heightened standard of proof" where the allegations were serious. In the third category, therefore, were cases in which the judges were simply confused about whether they were talking about the standard of proof or the role of inherent probabilities in deciding whether it had been discharged. Apart from cases in the first category, therefore, "the time has come to say, once and for all, that there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not": *In re B* [2009] AC 11 , para 13.

12 This did, of course, leave a role for inherent probabilities in considering whether it was more likely than not that an event had taken place. But, as Lord Hoffmann went on to point out, at para 15, there was no necessary connection between seriousness and inherent probability:

> 'It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely. If, for example, it is clear that a child was assaulted by one or other of two people, it would make no sense to start one's reasoning by saying that assaulting children is a serious matter and therefore neither of them is likely to have done so. The fact is that one of them did and the question for the tribunal is simply whether it is more probable that one rather than the other was the perpetrator.'

Baroness Hale of Richmond made the same point, at para 73:

> 'It may be unlikely that any person looking after a baby would take him by the wrist and swing him against the wall, causing multiple fractures and other injuries. But once the evidence is clear that that is indeed what has happened to the child, it ceases to be improbable. Someone looking after the child at the relevant time must have done

> it. The inherent improbability of the event has no relevance to deciding who that was. The simple balance of probabilities test should be applied.'
>
> **13** None of the parties in this case has invited the Supreme Court to depart from those observations, nor have they supported the comment made in the Court of Appeal [2009] 3 FCR 663 , para 14, that *In re B* 'was a sweeping departure from the earlier authorities in the House of Lords in relation to child abuse, most obviously the case of *In re H* '. All are agreed that *In re B* [2009] AC 11 reaffirmed the principles adopted in *In re H* [1996] AC 563 while rejecting the nostrum, "the more serious the allegation, the more cogent the evidence needed to prove it", which had become a commonplace but was a misinterpretation of what Lord Nicholls had in fact said."

27. Whilst therefore it remains the case that, in applying the test of balance of probabilities, inherent probabilities are something to be taken into account, where relevant, in deciding where the truth lies, neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts: see *In re B* [2009] AC 11, per Baroness Hale at [70].

28. Although *In re S-B* was concerned with care proceedings, the comments on the applicable standard of proof in civil proceedings generally are of wider application. The principles have been applied, and we respectfully say correctly so, in cases before this Tribunal; see, for example, *Mark Anthony Financial Management and Ainley v The Financial Services Authority* (FS/2011/0020 and 0021), at [18] – [22]. In common with the finding of the Tribunal in *Mark Anthony*, this is not a case, such as those concerning sex offender orders and anti-social behaviour orders which the law classes as civil but which are "quasi-criminal" in nature where the courts have held that the criminal standard is appropriate. It is a civil case, and there is only one standard, namely the balance of probabilities. The test, accordingly, is whether the alleged misconduct more probably occurred than not.

The evidence

29. We had witness statements from, and heard oral evidence of, a number of witnesses for the Authority. Each was cross-examined by Mr Jeffery. The Authority's witnesses were:

> (1) Milly Leigh. Ms Leigh works as Executive Coordinator for Neal Street Productions Limited and as personal assistant to Mr Sam Mendes. In that capacity she arranged car insurance through the Firm. Ms Mendes' evidence concerned the alleged false statements made by Mr Jeffery that the firm ceased trading in January 2009 – "the post-January 2009 trading issue".
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> (2) Anthony Dudman. Mr Dudman was a client of the Firm and arranged his motorcycle insurance through the Firm. His evidence related to the post-January 2009 trading issue.
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> (3) Gaye Burt. Mrs Burt's mother, Mrs Marjorie Goddard, was a client of the Firm. At the material time Mrs Burt had assumed responsibility for arranging and paying premiums for house insurance on Mrs Goddard's house. Mrs Burt's evidence goes to two issues: the post-January 2009

trading issue and the Authority's case that Mr Jeffery failed to effect insurance and/or failed to inform clients of the identity of their insurers – "the failure to effect insurance issue".

(4) Claire Burns. Mrs Burns was, with her former husband, a client of the Firm and arranged contents insurance through the Firm. Her evidence concerned the failure to effect insurance issue.

(5) Denise Yerbury. With her husband, Mr Robert Yerbury, and their two daughters, Ciara Bolsover and Louise Yerbury, Mrs Yerbury was a client of the Firm. The family arranged various policies of insurance through the Firm, including house and contents insurance and travel insurance. Mrs Yerbury's evidence related to the failure to effect insurance issue.

(6) Robert Yerbury. Mr Yerbury's evidence also concerned the failure to effect insurance issue.

(7) William Jamieson. Mr Jamieson was a client of the Firm in relation to his motor insurance. His evidence related to the failure to effect insurance issue, and also to the Authority's allegations that Mr Jeffery knowingly forged or caused to be forged documentation and correspondence in the names of clients – "the forged documentation issue".

(8) Chris Redfern. Mr Redfern was a client of the Firm, in relation to car insurance and home insurance. His evidence related to the failure to effect insurance issue.

(9) Paul Fisher. Mr Fisher was a client of the Firm in relation to car insurance for his son. His evidence concerned the forged documentation issue.

(10) Holger Marsen. Mr Marsen was a client of the Firm through whom he arranged his car insurance. His evidence related to the forged documentation issue.

(11) Stephanie Coxon. With her then husband, Mr Nigel Coxon, Mrs Coxon was a client of the Firm for a number of years, and arranged home insurance through the Firm. Mrs Coxon's evidence related to the failure to effect insurance issue.

(12) Nigel Coxon. Mr Coxon's evidence concerned the forged documentation issue.

(13) Lynda Masters. Mrs Masters began working for Jeffery Flanders Limited, a company run by Mr Jeffery's parents, David and Daphne Jeffery, in 1993. Prior to that time Mrs Masters had worked, from about 1990, for a secretarial typing agency called Ripley Office Services, in which capacity she had undertaken typing for Jeffery Flanders Limited. At the material times, until the Firm ceased trading, Mrs Masters was employed by the Firm and worked as Mr Jeffery's administrative assistant. She was not trained as an insurance broker, and was not approved by the Authority. Mrs Masters gave evidence of her dealings with Mr Jeffery and the Firm's business.

(14) Barry O'Neill. Mr O'Neill is the managing director of Home and Legacy Insurance Limited. His evidence related to the relationship

between Home and Legacy and the Firm, and specific issues concerning the insurances of Mr and Mrs Yerbury, Mr Redfern and Mrs Burns.

(15) Gary Beaumont. Mr Beaumont is a Director of Holman's Independent Lloyd's Brokers, a wholesale broker which provides facilities for independent brokers and intermediaries, and is responsible for Compliance. His evidence concerned the relationship between the Firm and Holman's, and in particular whether certain policies were placed through Holman's.

(16) Benjamin Rowe. Mr Rowe is the Compliance officer at Higos Insurance Services Limited. Mr Rowe's evidence concerns Higos' relationship with the Firm, and in particular the home insurance policy of Mrs Goddard.

(17) Nicholas Jeffery. Mr Nicholas Jeffery is Mr Jeffery's brother. His evidence related to business and home addresses, telephone numbers and email addresses that the firm and Mr Jeffery had connections with.

(18) Denis Gretton. Mr Gretton is Mr Jeffery's father-in-law. His evidence related to the addresses, in England and in France, for Mr Jeffery and Mr Gretton's daughter.

(19) Andrew Baum. Mr Baum is a solicitor in the Enforcement and Financial Crime division of the Authority. He is one of the investigators appointed to carry out the investigation into Mr Jeffery. He gave evidence concerning that investigation, in particular concerning the Authority's allegation that Mr Jeffery failed to deal with the Authority in an appropriate, open and cooperative way – "the cooperation issue", and the facts relating to the limitation issue.

(20) Beatrice Schady. Ms Schady is a solicitor in the Enforcement and Financial Crime Division of the Authority. Her witness statement deals with the disclosure of two documents that were provided to the Authority by Mr Rowe but which had not been exhibited to Mr Rowe's own witness statement.

(21) Celyn Armstrong. Mr Armstrong is a manager in the Authority. He gave evidence on the direction of the Tribunal, and consequently did not provide a witness statement. He was examined in chief by Ms Clarke and cross-examined by Mr Jeffery. His evidence concerned possible liaison between the Authority and Surrey Police around March 2008, and emails passing between Authority personnel at that time. Those matters related to the limitation issue.

30. Mr Jeffery gave evidence on his own behalf. His Reply to the Authority's statement of case, to the extent that it dealt with matters of fact, was adopted as his witness statement. He was cross-examined by Ms Clarke.

31. In addition, three further witnesses gave evidence under witness summonses issued by the Tribunal. Two of these followed applications by Mr Jeffery, and an appeal by him to the Court of Appeal. The witnesses in question, Mr Lambert and Mr Bennett, were police officers at the relevant time concerned in the criminal investigation of Mr Jeffery's activities and the subsequent prosecution and criminal trial in 2008. They were subject to questions from Mr Jeffery and Ms Clarke, but did not produce witness statements. Their evidence related to the liaison between Surrey

Police and the Authority, and the police and others, in particular BGL Group Limited, which went to the information that had been passed to the Authority and the issue of limitation.

32. The third witness for whom a witness summons was issued by the Tribunal was Mr Andy Poole of BGL Group Limited. We granted Mr Jeffery's application in this respect during the course of the hearing (see our decision at Appendix A). Mr Poole did not make a witness statement, but produced a number of documents comprising letters and file notes relevant to liaison in the period 2007 to 2009 between BGL and the Authority, and BGL and Surrey police. He was subject to questions from both Mr Jeffery and Ms Clarke.

33. In addition to the witness evidence we had a number of bundles of documents provided by both parties.

Applications by Mr Jeffery

34. We had a number of applications by Mr Jeffery for further witnesses to be required to attend and for further documentary evidence to be produced.

35. We acceded to Mr Jeffery's applications in respect of Mr Armstrong and Mr Poole. We refused other applications. At Appendix A we append our decision on the applications made by Mr Jeffery on 9 January 2013, at Appendix B we set out our decision on his applications made on 18 January 2013 in relation to the witness summons issued to Mr Poole, and at Appendix C we include our decision on certain further applications made by Mr Jeffery by email to the Tribunal dated 6 February 2013.

36. Mr Jeffery continued to complain at the failure of the Authority to produce witnesses or evidence that he believed would assist his case. In his final closing submissions he repeated his submission that there had been a coordinated and deliberate plan of the Authority and its witnesses to deprive him of access to evidence that would assist his case or prove his limitation arguments and/or to produce exhibits as late as possible and/or only at the order of the Tribunal or the Court of Appeal.

37. We reject that submission. Although the Tribunal itself felt constrained to criticise certain aspects of the production of documents by the Authority, particularly in connection with the evidence of Mr Poole given on the final day of the hearing, there is no evidence of any coordinated or deliberate plan to deprive Mr Jeffery of access to relevant evidence. We are entirely satisfied that Mr Jeffery has had a fair and just hearing. The difficulty is that Mr Jeffery appears genuinely to believe that somewhere there is something that can destroy the basis of the Authority's case, in particular on limitation, and that this is being deliberately withheld. Having acceded to a number of Mr Jeffery's applications, we are fully satisfied that this supposed panacea simply does not exist.

38. In his final closing submissions Mr Jeffery referred to the evidence of Mr Poole that had been given on 31 January 2013. He made the point that had Mr Poole's evidence been available in June 2011, when Mr Jeffery had made applications to the Tribunal, it would have been possible for other witnesses employed by BGL at that time, who had knowledge of certain contact with the Authority (in relation to an "Arrow II" visit) in January 2008 to have been called as witnesses. We are satisfied

that, even with the benefit of hindsight, it would not have been appropriate to call additional BGL witnesses on the basis of Mr Poole's evidence. As we describe later, the Arrow II visit was a separate regulatory review, and was not material to anything in this reference. Mr Jeffery's application that Ms Ward and Ms Raistrick (former employees of BGL) now be called as witnesses is refused.

39. Mr Jeffery argued that, because in his view Mr Armstrong had not been able to recall certain matters, and in Mr Jeffery's submission had been evasive, a further Authority witness, Mr Russell Clifton, who had been involved in the case, ought to have been called to give evidence. We reject that further application. We do not find that Mr Armstrong was evasive in the evidence he gave. We are satisfied, for the reasons we describe later when considering the evidence on limitation, that there is nothing to be gained from hearing from alternative Authority witnesses in respect of the evidence given by Mr Armstrong.

40. Mr Poole gave evidence on the final day of the hearing. Prior to that day he produced certain documentation and, having been questioned concerning a meeting between BGL and Surrey police on 15 January 2008, he produced after the hearing an agenda for that meeting and some handwritten notes. Mr Jeffery argued in his written final closing submissions that this meant that he had been unable to question Mr Lambert and Mr Bennett whether they had sent the Authority a copy of a report of BGL dated 25 January 2008. For the reasons we describe when dealing with the evidence on limitation, we are entirely satisfied that the Authority did not receive that report until it was sent to them by BGL on 23 March 2009. We do not consider that the evidence provided by Mr Poole casts any doubt on the evidence given by Mr Lambert and Mr Bennett or the Authorities' witnesses in this regard.

41. In his written final closing submissions Mr Jeffery makes a further application for disclosure of certain witness statements obtained by Surrey police that were provided to the Authority by Surrey police on 10 June 2009. The witness statements are those of Ms Zoe Manser, Mr Gary Thomas and Mr Matt Cowling. Mr Jeffery's reason for requesting disclosure of these statements, apart from wishing to ascertain if they contain any information that would assist the Tribunal, is essentially that the Authority has misinformed the Tribunal as to the status of yesinsurance as an insurer, and that there has been some confusion over the similarity between the names Manser and Marsen.

42. We refuse these applications. Mr Jeffery has failed to persuade us that any of this evidence has any prospect of being of any assistance to the Tribunal. Ms Manser's statement relates to an insurance policy of Mr Marsen with Sabre Insurance. We accept Mr Jeffery's submission that the insurance certificate issued by yesinsurance regarding the policy number with which the per procurationem letters written on behalf of Mr Marsen were concerned was issued on behalf of Sabre Insurance. But the mere fact that Ms Manser may have identified that Mr Manser's policy was not valid does not provide any basis for supposing that it would reveal anything more about the knowledge of the Authority for limitation purposes.

43. There is no basis at all for seeking the disclosure of the statement of Mr Thomas. According to the Authority, that statement concerns individuals outside the scope of this reference. Mr Cowling's statement, we are informed, does refer to Mr Fisher, but only in relation to policies that were not concerned with the per procurationem letters written on behalf of Mr Fisher. That statement is therefore of no value in these

proceedings. Despite Mr Jeffery suggesting that the statement of Mr Cowling might confirm his own evidence that he had been trying to reinstate Mr Jamieson's policy, we do not consider that it could add anything to the evidence in relation to Mr Jamieson that we have considered.

44. It is unfortunate that Mr Jeffery continues to believe that if enough information is made available then, however unlikely it might be, something will turn up to assist his case. Such an exercise is in our view not only wholly disproportionate but, in the light of the extensive evidence we have heard and considered, devoid of any prospect of providing Mr Jeffery with what he wants.

The facts and our conclusions

45. From all the evidence presented to us, we make findings of fact in relation to each of the issues that fall to be determined. We examine the evidence under headings corresponding to the allegations against Mr Jeffery made by the Authority, and the issue of limitation. Under each of those headings we make findings of fact and record our conclusions. We begin, however, with some general background, acknowledging that this is a summary only, and that we make more detailed findings under separate specific headings.

Background

46. In 1986 Mr Jeffery began working for his parents' small insurance intermediary business, Jeffery Flanders Limited. He did not have, and has never obtained, any formal qualification in insurance broking. In around May 2000, Mr Jeffery's parents retired from the business, and it was from that stage run by a new company, JFL Consulting Limited, which was established by Mr Jeffery on 1 June 2000. In these capacities Mr Jeffery acted as a broker for general insurance contracts covering personalised business, motor and household insurance, along with commercial insurance for businesses.

47. Up to 2005, no FSA approval was required for My Jeffery or his company to undertake these activities. Such approval or authorisation was required from 14 January 2005, the date on which insurance mediation business required to be regulated by the Authority, and on that date Mr Jeffery, then carrying on the business through a different company, Jeffery Flanders (Consulting) Limited ("the Firm"), was approved to hold controlled functions CF1 (Director) and CF8 (Apportionment and Oversight).

48. Prior to this time, the Authority was aware of concerns of alleged insurance fraud that the Surrey police had with Mr Jeffery and his company. This first came to the attention of the Authority in a telephone call from Surrey police on 16 April 2004. A meeting took place with DC Bennett and DS Lambert on 19 April 2004 at which those officers informed the Authority that the case related to allegations of obtaining monies by deception and theft of premiums combined with genuine business.

49. On 29 July 2004, Surrey police executed search warrants on the offices and house of Mr Jeffery. The police had requested assistance from the Authority on the search to provide them with technical expertise. A representative of the Authority, Dick Donouzjian, was in attendance at the search to advise on the type of documents the police should look for, the importance and relevance of documents and what

questions should be asked, but he did not take part in the search. The Authority was not directly involved in the Surrey police investigation, although it did maintain contact and received updates from Surrey police from time to time. This included receipt of an operation log from Surrey police in 2005.

50. The Authority had also commenced an investigation on a separate issue of whether Mr Jeffery had completed the forms for authorisation and approval in January 2005 honestly. There had been a failure on the part of Mr Jeffery to disclose that his name had, with effect from 7 August 1998, been erased from the Insurance Brokers Registration Council for unprofessional conduct. This investigation concluded with no action being taken and Mr Jeffery was notified of this on 13 April 2006.

51. Mr Jeffery moved to France in November 2006. He remained as the principal of the Firm, but did not inform the Authority that he had moved abroad. After that time the only person present in the Firm's office was Mrs Masters. Mr Jeffery told us that he had put in place sufficient communication between himself and Mrs Masters to mean effectively that there was no difference between his remote working and the position if he had been in the Firm's office himself.

52. On 15 November 2007 the Authority received a letter from the BGL Group Limited ("BGL") enclosing a copy of the report made by BGL of a review of policy documentation in relation to business introduced by the Firm and an initial investigation. The report noted that in late September 2007 BGL had identified 86 motor and household insurance policies that had been taken out over the internet on behalf of individual policyholders using four different credit cards in Mr Jeffery's name. The report identified certain concerns, particularly in relation to six active policies, where the business address of the Firm had been given as the risk address, although the policies were not those of Mr Jeffery or his family. This gave rise to a concern that the risk address might be invalid, and that the policy might be cancelled. The report was sent to the Authority primarily because Mr Jeffery, having responded to a letter from BGL of 10 October 2007 indicating BGL's concerns to the effect that the risks had been placed correctly, had been unwilling to meet BGL to discuss matters further.

53. On 20 December 2007 the Authority wrote to Mr Noel Conway of Surrey police requesting any evidence (or a summary of evidence – the letter states that a police report will suffice). The letter indicates that the Authority wanted to consider whether the authorisation of the firm should be removed as a matter of urgency, and that it needed sight of the evidence, particularly evidence of recent wrongdoing.

54. DS Lambert of Surrey police responded to that letter on 10 January 2008 (received by the Authority on 16 January 2008), enclosing a copy of the indictment in relation to the charges for which Mr Jeffery was due to stand trial at Guildford Crown Court commencing on 5 May 2008. The letter states that since Mr Jeffery had been charged with the matters on the indictment, further (unspecified) allegations of dishonesty had been made against him in respect of the period after his approval by the Authority, one of which was from an individual and the other from an insurance broker. It is said that the allegations are similar to those on the indictment and have similarities with the matters that had been reported by BGL. A meeting had been held on 7 January 2008 with counsel and the CPS, and Surrey police were to investigate further, including having a meeting with Mr Andy Poole of BGL. The letter concludes by saying that if the Authority wished to take any action against Mr Jeffery,

it should contact Surrey police so that the impact of such action could be taken into consideration.

55. This was followed on 7 May 2008 by an email from Mr Conway of Surrey police to Mr Armstrong at the Authority. This noted that, as had been stated in DS Lambert's letter of 10 January 2008, further cases had been submitted to the CPS. Counsel for the CPS had recently advised that those new matters, and others the police were aware of, should be put on hold until the outcome of Mr Jeffery's trial was known. The email records a telephone message left by Mr Armstrong concerning complaints received from members of the public concerning Mr Jeffery's ongoing behaviour.

56. Mr Jeffery's criminal trial concluded, with his acquittal on all counts, on 19 June 2008. Following that, on 5 August 2008, Mr Armstrong and Mr Clifton of the Authority had a meeting with DC Bennett and Mr Conway of Surrey police. The Authority asked for documents relating to the criminal trial. A follow up letter was sent by Mr Clifton to DS Lambert on 8 August 2008 in which it was stated that the Authority would now consider if regulatory action might be necessary. A further request was made for documents relating to the criminal trial. Certain documentation was provided by Surrey police under cover of a letter dated 3 October 2008.

57. There then followed a meeting on 5 November 2008 between Mr Baum and Mr Sean Byrne of the Authority and Mr Conway and Mr Neil Cox of the Surrey police. At this meeting the police provided the Authority with 10 lever arch files of material, mainly consisting of witness statements and exhibits.

58. The Authority commenced a formal investigation into the Firm and Mr Jeffery on 10 December 2008. Investigators were appointed on 25 February 2009 (and further investigators were appointed on 8 September 2009). The investigation team decided, early in the investigation, not to re-investigate the facts surrounding the allegations of which Mr Jeffery had been acquitted.

59. We shall consider the course of the Authority's investigation when we examine the Authority's case that Mr Jeffery failed to cooperate with that investigation.

60. In August 2009, following the raising of a concern in relation to Mrs Goddard's insurance arrangements, the Authority issued a consumer alert which was published on the Authority's "Money Made Clear" website and in local media in the Surrey and Sussex areas. This advised current customers of the Firm to make direct contact with their insurers to check that they had appropriate insurance cover and advising customers also to contact the Authority.

61. The Firm's permissions to conduct regulated activities were removed following a variation of its permission on the Authority's initiative with immediate effect on 23 October 2009. The Authority subsequently issued a Final Notice cancelling the Firm's permission on 20 January 2010.

62. On 28 May 2010 the Authority issued a Warning Notice to Mr Jeffery. This was followed on 13 July 2010 by the Decision Notice which is the subject of the present reference.

Forged documentation

63. The Authority's case is based on a number of grounds which can conveniently be grouped under four headings: Forged documentation, Failure to effect insurance/failure to inform, Post-January 2009 activities and Failure to deal with the Authority in an appropriate, open and cooperative way. We shall make findings and set out our conclusions in respect of each of these grounds in turn, before then proceeding to consider the limitation issue

64. We start with the issue of forged documentation.

65. In that respect the Authority put forward evidence of letters written in three cases, those of Mr Jamieson, Mr Marsen and Mr Fisher, where the letters had been written by the Firm, but purported to have been from each client, from an address which was not the client's own address, but that of the Firm. The Authority's case is that Mr Jeffery forged or caused to be forged the signatures of those clients and that the letters were signed without the permission of those clients. The Authority also contends that Mr Jeffery wrote letters in his clients' names without their permission.

66. In a fourth case, that of Mr Coxon, the Authority say that Mr Coxon's signature was forged by Mr Jeffery, or on his instruction, on an insurance proposal form.

Mr Jamieson

67. In Mr Jamieson's case we were provided with evidence of two letters. One, dated 15 March 2007, was addressed to the Post Office, and concerned a motor insurance policy number 114252342. The letter purports to be from Mr Jamieson. In the space for the signature of the sender, after the words, "Yours faithfully" there appears the name "W. JAMIESON" handwritten in block capitals, and beneath that is typed "W Jamieson". The sender's address is stated at the top of the letter to be "The Old Barn, Vicarage Hill, Loxwood, West Sussex, RH14 0UE", which was not Mr Jamieson's address, but that of the Firm. The name of the Firm does not appear.

68. The letter is headed, in block capitals, COMPLAINT, and goes on to refer to previous correspondence, on 20 February 2007 and a reminder on 6 March 2007. The letter seeks confirmation that the Post Office has acted on Mr Jamieson's instructions, will advise of any additional premium that may be due and issue "me" (that is Mr Jamieson) with an amended certificate. It states that the current certificate will be retained until the amendments are made.

69. The second letter we were shown is that of 20 February 2007. Again the letter purports to come from Mr Jamieson himself, from the Firm's Loxwood address. Again the name of the Firm does not appear. It asks that "my daughter" be added to the policy with immediate effect, and gives relevant information about Mr Jamieson's daughter. Under "Yours sincerely" Mr Jamieson's name has been typed, and in handwriting there has been added what we find are the initials "LM" and the letters "pp".

70. Mr Jamieson's evidence was that until he was shown these two letters by the Authority on or after 21 July 2009 he had never seen the letters and was unaware they had been written. Mr Jamieson says that the handwritten "W. JAMIESON" on the 15 March 2007 is not his signature, and that he did not sign the 20 February 2007 letter. Nor had he given permission to Mr Jeffery or the Firm to write or sign letters

purporting to be from him. He had assumed that the Firm had been working with the underwriter, in its own name, to address the issues that had arisen in relation to the motor insurance policy in question. He had not been told otherwise by Mr Jeffery or the Firm.

71. In cross-examination of Mr Jamieson, Mr Jeffery took him to a copy of a Terms of Business document which included, in a paragraph headed "Confidentiality of Personal Data", the following sentence:

> "We may write on your behalf (per-procurationem) to 'Direct Insurers' using our address, not yours for corespondence (sic)."

72. However, it was pointed out by the Tribunal that these terms of business were those applicable to Mr Marsen (they had been signed by him) and not to Mr Jamieson. The terms of business signed by Mr Jamieson did not include the "per procurationem" wording. Mr Jeffery's explanation for this was that since the terms and conditions applicable to Mr Jamieson dated from before February 2007, there would at that time have been an addendum, in the form of an additional page, which would have included the relevant wording. Mr Jamieson was unable to recall whether the terms and conditions signed by him included an addendum.

73. We were not taken to any evidence of an addendum of the nature referred to by Mr Jeffery. However, in reviewing documents submitted to the Tribunal by Mr Jeffery, we found a document which appeared to contain six copies of an addendum to the Terms of Business for motor and household insurance, presumably designed to be cut out and added to the Terms of Business document itself. The wording of this addendum was:

> Direct Insurance and Direct Insurers
>
> Occasions may arise when we will select insurance products from this type of Insurer for you. To be able to deal with this type of Insurer, we will assume that, we have your permission and agreement to communicate in the manner prescribed by these 'Direct Insurers' on your behalf. In these circumstances, we will only charge you a placing fee for arranging this type of policy."

74. This is very different from the wording that appeared in later versions of the Terms of Business, and which we have described above. In the absence of evidence of such wording having been expressly added in the case of Mr Jamieson, we find, first, that Mr Jamieson did not sign any terms and conditions which included the "per procurationem" wording, and secondly that he was not provided with any terms and conditions of business which included that wording, whether in the body of the document or by means of an appropriate addendum. Furthermore, it appears to us that the Terms of Business signed by Mr Jamieson were sent to him in August 2007, which was after the February 2007 date referred to by Mr Jeffery, and after the dates of the letters sent in Mr Jamieson's name.

Mr Marsen

75. In relation to Mr Marsen, the Authority relies upon four letters that purport to have been written by Mr Marsen to yesinsurance.co.uk. The letters are dated respectively 2 August 2007, 9 August 2007, 28 August 2007 and 3 September 2007. At the heading of each letter, in what would be the position for the address of the

sender, the Loxwood address of the firm has been stated, but without the name of the Firm.

76. The letters all relate to a motor insurance policy no 114687328 01. All have the name H Marsen typed after the words "Yours faithfully". The letter of 2 August 2007 encloses the certificate of insurance "following cancellation of the policy", and asks for a return premium. It is unsigned. The letter of 9 August 2007 is a reminder, and is initialled with what we find are the initials "LM" and with the letters "pp". The letter of 28 August 2007 has a similar squiggle to that on the previous letter, and we likewise find that to be "LM", but there are no letters "pp". The letter includes a request to yesinsurance: "Please do not attempt to deal with this by telephone." (No telephone number is included in the letter.) The final letter of 3 September 2007 is another reminder. It is also signed with a similar squiggle that we find must also be "LM".

77. Mr Marsen's evidence was that he had never used the Loxwood address in any of his own correspondence, and he had not signed the letters. Nor had he given the Firm or its staff permission to write such letters on his behalf. Mr Marsen said that he had been unaware of the letters until he had been shown them by the Authority, which appears to have been in July 2009.

78. As part of the police investigation of Mr Jeffery, Mr Marsen made a witness statement dated 2 January 2008. That statement records that he was visited at his home address by DC Bennett and a Mr Conway of Surrey police. Those officers informed Mr Marsen that they were looking into the behaviour of Mr Jeffery following a complaint from Swinton insurance brokers. At that time Mr Marsen was shown copies of four letters with various dates in March 2007 that purported to have been letters from Mr Marsen to Swinton, and signed in his name, the words "H Marsen" having been written as the signature, in each case with the Firm's Loxwood address as the address of the sender, but with no reference to the name of the Firm.

79. The letters to Swinton are therefore similar to those to yesinsurance, but with the difference that none of the letters to yesinsurance had been signed "H Marsen". However, the Swinton letters concern a different policy (policy no 26671000171) from those to yesinsurance. No reliance is placed by the Authority on the letters to Swinton; the Authority's case in this respect, as presented to the Tribunal in Ms Clarke's skeleton argument and her closing submissions, rests solely on the letters to yesinsurance between August and September 2007.

80. We emphasise that point because certain of the oral evidence did refer to the Swinton letters as well as those to yesinsurance. In examination-in-chief, Ms Clarke took Mr Marsen specifically to the letter of 16 March 2007, Swinton's reply to it addressed to Mr Marsen at the Loxwood address, and to other correspondence of the same type. He was asked whether he had signed those letters or given authority for them to be written. The same questions were then asked in relation to the letters to yesinsurance. Mr Jeffery also raised the matter of the Swinton letters in his cross-examination of Mrs Masters. Mrs Masters confirmed that she had written "H Marsen" in the signature space in two letters, dated 16 and 23 March 2007, purporting to have been from Mr Marsen to Swinton.

81. Ms Clarke's examination of Mr Marsen also covered certain background in relation to Mr Marsen's dealings with the Firm, including allegations that a policy of

insurance for a motor vehicle had been cancelled. Those allegations again form no part of the Authority's case in these proceedings. We make no findings in respect of them, and have disregarded them in reaching our conclusions.

82. We should also note that in her cross-examination of Mr Lambert, Ms Clarke took him to the witness statement that Mr Marsen had made in the criminal proceedings. Referring to that statement, the transcript records Ms Clarke as having said:

> "Would you take it from me – I'll be corrected if I am wrong – that there's nothing in that witness statement about his [Mr Marsen's} signature being forced [this should clearly have read "forged"] on letters. There isn't, but –

And Mr Lambert replied:

> "I don't remember that being an issue about the Marsen case that I was aware of."

83. The questioning of Mr Lambert ended there, and Mr Jeffery did not offer any correction at that time or in his own re-examination of Mr Lambert. However, the witness statement of 2 January 2008 does clearly refer to the Swinton letters, and to the fact that Mr Marsen confirmed in that statement that he had no knowledge of those letters and that the signature of "H Marsen" shown on two of the letters was not his. The statement also states that Mr Marsen was visited by Mr Bennett; however, when questioned, Mr Bennett was unable to recall having attended such a visit, nor anything in relation to enquiries about Mr Marsen.

84. This issue was addressed in the cross-examination of Mr Marsen by Mr Jeffery. Mr Marsen was initially shown the letters to yesinsurance, and his immediate response was that he had been shown those letters by the police. He could not, however, recall when that might have taken place. On being questioned, however, it became clear to Mr Marsen that the letters he was shown by the police in November 2007 were the Swinton letters, and that he had not at that time been shown the letters to yesinsurance.

85. Although it took a while to reach a conclusion on this, in the end the evidence is clear. We find that the letters Mr Marsen was shown during the police visit to him on 28 November 2007 were only the Swinton letters and not the letters to yesinsurance. The Swinton letters are not part of the Authority's case in this Tribunal. We have already said that we have paid no regard to the background to Mr Marsen's insurance dealings with the Firm, including any allegation that his motor insurance might have been cancelled. Similarly, we disregard entirely any allegation of forgery in relation to the Swinton letters, and we make no findings in respect of those letters.

86. In his cross-examination of Mr Marsen, Mr Jeffery took him to a Terms of Business document that Mr Marsen accepted had been signed by him, although he had not read it in detail and had not been taken through it. The document contained the "per procurationem" wording under the heading "Confidentiality of Personal Data". However, in questions from Ms Clarke, Mr Marsen confirmed that he had never been informed by the Firm that it was writing letters in his name to yesinsurance. We accept Mr Marsen's evidence in that regard.

Mr Fisher

87. Mr Fisher's evidence referred to seven letters to Groupama Insurance, dated 1 October 2007, 5 November 2007, 13 November 2007, 26 November 2007, 27 November 2007, 7 December 2007 and 10 December 2007. At the top of each letter is the Firm's Loxwood address, but there is no mention of the Firm's name. All of the letters purport to have been written by Mr Fisher: the name "P Fisher" has been typed under "Yours faithfully" in each case, apart from the letter of 27 November 2007, which nevertheless refers to "my son" meaning Mr Fisher's son.

88. None of the letters have a signature. In one case – the letter of 5 November 2007 - a squiggle (which is nothing more, and indecipherable) appears over Mr Fisher's typewritten name.

89. In his evidence, Mr Fisher said that he did not write any of the letters. He was not aware that such letters were being written, nor had he given the Firm permission to write such letters. In his Reply to the Authority's statement of case, Mr Jeffery had stated that he was certain that the letters were sent to Mr Fisher and that he signed them on behalf of his son. However, this point was not put to Mr Fisher in cross-examination.

90. Mr Jeffery argued that Mr Fisher should not be regarded as a credible witness, having regard to an alleged failure to disclose motor convictions when applying for a policy. Having seen Mr Fisher give evidence, we find that he was truthful, and that Mr Jeffery's submissions do nothing to undermine Mr Fisher's credibility as a witness in this case. We find that Mr Fisher did not sign the letters, that he was unaware of them being written on his behalf, and that he gave no express permission to the Firm for them to be written.

91. In cross-examination Mr Jeffery took Mr Fisher to a copy of an invoice for a motor policy renewal dated 20 April 2007. That copy invoice contains the words "Attached are our Terms and Conditions. For absolute clarity, please sign and return the copy". However, no evidence of Mr Fisher having signed such terms was produced.

Jamieson, Marsen and Fisher: discussion

92. In his submissions to us on this issue, Mr Jeffery principally relies, first, on the Terms and Conditions of Business providing the relevant authority from the clients to write letters to direct insurers "per procurationem", and secondly on a submission that Lynda Masters wrote the letters without Mr Jeffery's knowledge, and in breach of the instruction that the letters should be written in the Firm's name, and on the Firm's letterheading.

93. We turn first to the Terms of Business. Mr Jeffery contended that the clients were all aware of the fact that the letters were being written in their names because they had all been provided with the Firm's Terms of Business, including the "per procurationem" wording. We note immediately that we have found that this does not apply to Mr Jamieson. He could not, on the basis of our finding, have been aware of the "per procurationem" wording, and could not have authorised the Firm to act in this way.

94. Ms Clarke made the following submissions in this respect:

(1) Even if the "per procurationem" wording was intended to alert clients to the fact that the letters were to be written by the Firm as if they came from the clients themselves, that wording was far too oblique and well-hidden.

(2) It is clear from the evidence of the clients that most barely recalled the Terms and Conditions document and all denied that they had ever been informed of the Firm's practice in this regard.

(3) None of the clients were (as a matter of fact) aware that letters were being written in their names, they were never specifically asked to consent to this, the matter was never discussed with them and they were never provided with copies of the letters.

(4) All clients confirmed that had they known of the practice they would not have consented.

(5) On any view, it cannot be necessary or appropriate for the Firm to write letters purporting actually to come from the clients when in fact they did not do so, rather than adopt a more conventional approach such as: "We write on behalf of …".

(6) There is no legitimate or sensible commercial reason for the Firm behaving in this way. We are asked on this basis to conclude that this practice was done without the client's consent or knowledge and with the intention to mislead.

95. We find that Mr Jeffery cannot rely on the "per procurationem" wording in the Terms and Conditions to assert that what the Firm did was with the authority of the clients. We conclude thus for the following reasons:

(1) First, we do not consider that the "per procurationem" wording can have the effect which Mr Jeffery submits it has. It does not give a general authority to the Firm to write letters as if they have been written, or authorised to be written, by the client. Even if the provision were effective, the authority it would allow the Firm would be limited to writing in its own name, as agent for the client under a delegated authority, or signing a letter which the client had expressly authorised the Firm to send as a letter from the client.

(2) Secondly, even if, contrary to our view, the "per procurationem" wording was capable of giving the Firm the authority which Mr Jeffery asserts, our view is that any such authority would have to be expressly given in order to be effective. The agency relationship between the Firm and the client which it purports to create could only be created by express consent. Otherwise, in our view, the necessary consensual nature of an agency relationship would be absent. Such a relationship cannot be imposed by one party on another without that other party's clear consent. We have found that such consent was absent in all of the cases of Mr Jamieson, Mr Marsen and Mr Fisher. We particularly reject Mr Jeffery's assertion when giving evidence that the inclusion of the "per procurationem" wording in the Terms and Conditions amounted to proper disclosure and was transparent.

(3) Finally, even if, again contrary to our view, the mere existence of the "per procurationem" wording in Terms and Conditions which formed the

basis of the contractual relationship between Mr Marsen and Mr Fisher on the one hand and the Firm on the other gave the Firm the necessary authority to act in the way it did, in our view the exercise by the Firm of such an authority was unconscionable in circumstances where the effect was to falsely represent to third parties that correspondence was from the client and not from the Firm, and where the client was not informed of the actions being taken by the Firm.

96. Mr Jeffery argued that these examples of letters were unrepresentative, in that there was a correct procedure under which such letters, and he referred to there being hundreds of such letters issued, disclosed the Firm's name and were signed correctly, meaning signed by the Firm, pp the client. However, apart from a letter dated 2 May 2006 addressed to Admiral Insurance in the name of Mr Jeffery's father which included the name of JFL Consulting Limited in the heading, and a warning letter from Budget Insurance dated 18 June 2008, which was addressed to Miss Louise Yerbury at the Firm's address including the Firm's name, Mr Jeffery did not produce any other example. Whilst there was no dispute from the Authority that the Firm's records stored on computer in France had been lost as a consequence of a lightning strike in January 2009, Mr Jeffery had nevertheless been able to assemble impressive bundles of documents comprising more than 800 pages, including materials from client files. If, as Mr Jeffery argued, there were hundreds of letters of the nature asserted by Mr Jeffery, it is unlikely in our view that not one from the Firm relating to a third party client survived. We do not accept therefore that the letters which form this part of the Authority's case are unrepresentative.

97. Mr Jeffery also claims that the letters in question were written by Lynda Masters without his knowledge and against his instructions. Ms Clarke raised the question of Mr Jeffery's responsibility in this connection. She referred to Mr Jeffery's responses under cross-examination when he had said, in answer to the question whether he was taking personal responsibility for the fact that the letters had been written, replied: "Yes, in the general sense, yes".

98. Mr Jeffery disputes that he accepted responsibility for the specific actions of Lynda Masters. He is prepared to say only that, like any managing director, the company would have to accept responsibility for any professional negligence errors or omissions that caused loss to a client. He argues that this is why the Authority requires authorised firms to carry professional indemnity insurance. It is only this liability for which Mr Jeffery is prepared to accept responsibility. He does not consider that he should be held responsible for issues arising out of Mrs Masters acting against his instructions or deliberately failing to bring to his attention.

99. We do not accept that this was the limit of Mr Jeffery's responsibility. It wholly ignores his position as part of the regulatory regime he was required to operate within. He was both the CF1 and CF8 at all material times. As such he had a clear duty of oversight. He was under a duty to ensure that his systems and controls were such as to enable him properly to perform that function. Absenting himself from the office, when he moved to France in November 2006, without putting in place effective oversight procedures, in our view would constitute a failure of Mr Jeffery's regulatory responsibilities.

100. Mr Jeffery argued that Mrs Masters understood the clients and the job, although she was not herself an insurance broker. He referred us to notes made by Mrs Masters

assessing the degree of difficulty in dealing with particular clients as demonstrating the quality of her work and why Mr Jeffery placed confidence in her work. Mr Jeffery says that Mrs Masters had clear instruction how to deal with the "pp" letters and that she failed to adhere to them. What is clear, however, from Mr Jeffery's submissions, is that although he denied being aware of how the letters were being signed by Mrs Masters, he was nevertheless aware, from copies of the letters on the file, of the content of the letters. Nonetheless, he said that the sole reason the name of the Firm was omitted from the letters was that Mrs Masters had failed, contrary to his instructions, to include it.

101. The evidence of Mrs Masters in this respect is that Mr Jeffery would ask her to write letters in the clients' names and pp their signatures. She believed that the clients had given Mr Jeffery authority to do this. From Mrs Masters' evidence in this respect we can conclude that certain of the letters were written by her. However, some were not; they were written (whether physically, or by instruction) by Mr Jeffery. Mrs Masters also said that the instruction for the letters to be put on plain, rather than headed, notepaper emanated from Mr Jeffery. She confirmed that she would not have taken it upon herself to use plain paper, with the office address, rather than headed notepaper. Mrs Masters' evidence was that she felt very uncomfortable with the position she had been left in. Mr Jeffery was not present, and she did not know how to proceed.

102. Mr Jeffery made strenuous efforts to discredit the evidence of Mrs Masters. He pointed to discrepancies between what Mrs Masters had said in her interview under caution with the Authority on 7 July 2009 and her witness statements to this Tribunal. We have considered the points raised by Mr Jeffery in this respect. We had the opportunity of seeing Mrs Masters give evidence ourselves. Our assessment is that, whilst we should take care to examine carefully the sometimes hesitant statements made by Mrs Masters, her evidence cannot be impugned as wholly unreliable, and must be considered on its own merits in each particular instance.

103. Assessing the evidence we have, we conclude that the procedure of letters being written as if from the client, using the Firm's address as if it were that of the client, and not making it clear that the letters were from the Firm, was a deliberate and calculated strategy initiated by Mr Jeffery. We do not accept that he had given any other instructions to Mrs Masters and that she had disregarded those instructions and embarked on a frolic of her own. Except in certain instances, where the letters were routine or purely administrative, and those, such as for Mr Marsen, where Mrs Masters accepted that she had written the letters without reference to Mr Jeffery, we also find that Mr Jeffery himself was the author of the letters. By way of example, we consider that the letter of 15 March 2007, purportedly from Mr Jamieson to the Post Office, and headed COMPLAINT, has all the hallmarks of Mr Jeffery's personal style of correspondence. Indeed, Mr Jeffery accepted that he had dealt with the complaint in relation to Mr Jamieson.

104. From our assessment of Mrs Masters, we do not consider that she would have been capable of writing such letters without input from Mr Jeffery. Mr Jeffery suggested in his evidence that he had been told by Mrs Masters that Mr Fisher had specifically instructed Mrs Masters to write the relevant letters on his behalf; Mr Jeffery viewed it as Mrs Masters doing Mr Fisher a favour, and was comfortable because the insurer was not being misinformed. This is contrary to the evidence of Mr Fisher, and was not confirmed in evidence by Mrs Masters. We reject the

argument that Mr Fisher gave any instruction or authority for the writing of the letters on his behalf.

105. It follows that, in this respect, we find that Mr Jeffery is responsible for the letters in question. From the evidence, it is apparent that this was a deliberate policy adopted by Mr Jeffery to enable him to continue to transact business for his clients at a time when he had lost agencies with Folgate Insurance in October 2005 and with Home & Legacy in May 2008 and was instead arranging insurance with direct insurers by inputting details on a website, as any private individual could do. It is evident from the caustic correspondence entered into by Mr Jeffery with insurance companies and wholesale brokers that Mr Jeffery had a keen sense of ownership of his clients, and was prepared to threaten action against any that dared to correspond directly with such a client. It was that sense of ownership (which in parentheses we should say that we consider was itself contrary to the best interests of the clients) which in our view led Mr Jeffery to seek to give the impression that it was the client direct who was corresponding with the relevant counterparty, but with a correspondence address of the Firm, but not divulging the Firm's interest. This explains what would otherwise be a curious instruction to yesinsurance in the Mr Marsen letter of 28 August 2007 that yesinsurance should not attempt to deal with the matter by telephone. Such an instruction is explicable only on the basis, first, that yesinsurance did not know that the Firm had written the letter, and secondly that Mr Jeffery wanted to ensure that yesinsurance did not find that out.

106. The allegation of the Authority in this respect is that these documents were forged. We were not taken to any authority on the meaning of forgery, but we can derive its meaning from section 1 of the Forgery and Counterfeiting Act 1981, which provides:

> "A person is guilty of forgery if he makes a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice."

107. From this it can be seen that there are three elements. The first is that a false instrument must be made, the second that there must be an intention that somebody should be induced to accept it as genuine, and finally that by reason of so accepting it that person must be induced to act or omit to act to his own or someone else's prejudice.

108. We have no doubt that the first two of these elements are satisfied in this case. It is the letters themselves that are false; the question whether they are signed or not, and by whom, is immaterial. The addressee is, in our view, intended to accept the letters as genuinely emanating from the client, and not from the Firm. The third element is, on the other hand, more problematic. We heard no argument or evidence that any recipient of the letter would be acting to its detriment, or to the detriment of any other party, including the client. The clients were understandably perturbed at the fact that the letters had been written without their authority or consent, but that is not enough to persuade us that any detriment was suffered by the clients.

109. Nonetheless, we must consider the conduct of Mr Jeffery in orchestrating the process of the creation and sending of these letters. Even if they were not technically within the definition of a forgery, they were nevertheless false representations of the true position, and they were designed to (and in our judgment did) deceive. They

were the antithesis of transparency and fair dealings with clients. The letters have no place in any business, let alone a regulated business. The deliberate concealment of the true position, compounded by the unmeritorious reliance on an obscure and wholly opaque weasel-wording in the Firm's Terms of Business, demonstrate to us conclusively that Mr Jeffery did not act with integrity whilst carrying out his controlled functions.

Expert reports

110. Mr Jeffery urged upon us what he described as two expert reports. The first was a report prepared by Mr R C Wood ACII for the criminal proceedings taken against Mr Jeffery, in respect of which he was acquitted. The second was a note of advice prepared at Mr Jeffery's request in connection with these proceedings by Mr M D A Emblin FBIBA and dated 25 August 2012.

111. Neither Mr Wood nor Mr Emblin was called as a witness by Mr Jeffery, and consequently the Tribunal did not have the benefit of hearing their evidence directly. Nor of course did the Authority have the opportunity to cross-examine either author. Nonetheless, and exercising the necessary caution in doing so, we have considered, where relevant, whether anything in either report or note supports the case being put by Mr Jeffery or undermines the Authority's case.

112. A far as the "pp" letters are concerned, there is nothing that deflects us from our view expressed above. Mr Woods' report does not address letters of the nature with which we are concerned. It deals only with the practice of a broker signing a proposal form in the name of the insured with the letters P/F, said to represent "pro forma". In this context, Mr Woods says that he had not seen PF before, but had often seen "PP" the client, and that this was acceptable on a proposal, as from the market perspective the intermediary is the proposer in many cases. However, Mr Woods goes on to describe what he calls the "legal frailty" which would arise, even in that circumstance, if the client has not given authority to the intermediary to make a presentation of the risk on his/her behalf. It is clear that Mr Woods is describing something that is transparent to all parties and not, as we have found the case in relation to these letters, a deliberate subterfuge.

113. Mr Emblin, in his advice note, speaks only of the use of per pro on behalf of a client in relation to letters of authority, where an account or accounts were transferred from one organisation to another. He does not refer to letters of the nature with which we are concerned, and we find no assistance from his advice in this respect.

114. We find accordingly that Mr Jeffery is in breach of Statement of Principle 1 in respect of the letters purporting to have been written by Mr Jamieson, Mr Marsen and Mr Fisher, and consequently is guilty of misconduct for the purpose of s 66 FSMA. Whether the Authority, and this Tribunal, is able to take action in that respect depends on our findings on the limitation issue, to which we shall return later.

Mr Coxon

115. In relation to Mr Coxon, the Authority's case is that a proposal form for a home insurance policy with the insurer, Home & Legacy, was signed by Mr Jeffery or by someone acting on Mr Jeffery's instruction.

116. Both Mr and Mrs Coxon gave evidence in this regard. That evidence was pertinent also to a separate allegation, that Mr Jeffery and the Firm had failed to effect an insurance policy on Mr and Mrs Coxon's home. We shall consider that allegation later, but we set out here the complete background in order better to appreciate the context in which the Authority's forgery case arises in this respect.

117. Mr and Mrs Coxon are now divorced, but before they separated in February 2005 they lived in the family home in Farnham, Surrey. Their home insurance had been arranged through the Firm and its predecessors for a number of years; the Farnham property was so insured since 2002. No problems had arisen until 2006. On 10 November 2005, Mrs Coxon received an insurance renewal document from the Firm. This was in respect of the renewal of household policy with Folgate Insurance with effect from the renewal date of 5 December 2005. The total due on the invoice was £825.85. This was paid following a reminder dated 25 November 2005.

118. Mrs Coxon's evidence was that she could not recall having received any insurance documents, but having paid the premium she assumed that the property was insured with Folgate.

119. We were shown a series of letters written by the Firm to Mrs Coxon concerning the insurance on the Farnham property. The first was on 19 January 2006, when Mr Jeffery wrote to say that "Underwriters have picked up on a point detailed on the old proposal form submitted in 1996 at the time that a Structural Engineer had diagnosed a thermal crack in the south facing wall." The letter said that Mr Jeffery had been asked to obtain an update and if possible a copy of the relevant section of the report. Further letters were sent to Mrs Coxon, expressing increasing urgency, on 30 January and 3 February 2006.

120. A letter from Mr Jeffery dated 9 February 2006 said that a note had been received from the underwriters confirming that they "are not prepared to continue cover without the engineer's report". It asked Mrs Coxon for a copy of the report so that the Firm could arrange cover. On the same day, Mrs Coxon telephoned the Firm, and spoke to the Firm's answering service, leaving a message to say that she had been unable to find the engineer's report and had asked Mr Coxon if he knew where it was.

121. Mr Jeffery then wrote again to Mrs Coxon, on 16 February 2006, referring to the letter of 9 February 2006 and saying that he would be grateful to receive the report as soon as possible, as "I cannot do anything further without this".

122. There followed three letters from Mr Jeffery to Mrs Coxon, dated 21 and 27 February 2006 and 13 March 2006, which Mrs Coxon said that she did not receive. The letter of 21 February 2006 stated the following:

> "Obviously there is nothing I can do with an Underwriters' request for more information and if the report is not available, then as per earlier correspondence there is nothing further I can do.
>
> I understand you feel that you might be better served by looking at alternative Insurers and I would only caution you to the extent that obviously the thermal crack in the south facing wall needs to be declared as an historical issue to any insurer, as this data is in fact centrally maintained by insurers and you obviously need to avoid any possible non-disclosure.

> From my experience, I doubt whether an underwriter will take this risk on without sight of the engineer's report but no doubt you will keep me informed."

123. The letter of 27 February 2006 refers to Mr Jeffery's understanding that Mrs Coxon had been seeking information regarding cancellation of the policy and that he wanted to know the date on which this should take place. The letter of 13 March 2006 then returns to the theme of the engineer's report, referring to telephone calls made by Mrs Coxon to the Firm, and reiterating that nothing could be done without the engineer's report. The letter also refers to "the most recent proposal form completed", saying that it had included a reference to the report, and that Mr Jeffery assumed that Mr Coxon could obtain a copy of the report from the engineer.

124. We accept the evidence of Mrs Coxon that she did not receive certain of the letters sent by Mr Jeffery. That is, however, not material to our assessment of this correspondence. It was in fact wholly disingenuous. It gave the impression throughout that the existing insurers, Folgate, were requesting a copy of the report. That was not the case. The true position was that the Firm had ceased to have an agency with Folgate, and accordingly had been seeking to place insurance with another insurer, Home & Legacy, entirely without the knowledge of Mr and Mrs Coxon. The reference in the letter of 9 February 2006 to cover being continued was, in our judgment, deliberately misleading. So too is the letter of 21 February 2006 which, far from disclosing that cover had been sought from a different insurer (and that was the reason the engineer's report had suddenly become an issue) suggests the very opposite.

125. We do not accept Mr Jeffery's assertion that either he or Mrs Masters would have telephoned Mrs Coxon to explain that the policy was going to be transferred from Folgate to Home & Legacy because a better deal could be obtained. The correspondence points in entirely the opposite direction, and we accept Mrs Coxon's evidence that she had never heard of Home & Legacy.

126. It is in that context that we turn to consider the question of Mr Coxon's signature on a Home & Legacy proposal form dated 18 January 2006. The name of the proposer had initially been typed as Mrs Coxon, but amended in handwriting to N D COXON. Mr Coxon's occupation, also handwritten, as stated as "Managing director – Financial consultancy". The form requires a number of standard statements to be confirmed, with space for details to be given where any statement cannot be confirmed. In that space has been typed:

> "(I) TIMBER FRAMED, BRICK INFIL AND HUNG TILE
>
> (II) THERMAL CRACK IN SOUTH FACING BRICKWORK AS DIAGNOSED BY STRUCTURAL ENGINEER
>
> (III) NO CLAIMS 5 YEARS"

127. The proposal form was signed "N Coxon". Mr Coxon's evidence, which we accept, was that this signature is not his. We also accept the evidence of Mrs Coxon that she did not sign the proposal form in Mr Coxon's name. We also accept her evidence that no such proposal form was ever presented to her for signature. We reject Mr Jeffery's attempts to suggest that Mrs Coxon signed the form, because she did not consider that her ex-husband was capable of dealing with matters such as the insurance. This was not something that Mr Jeffery put to Mrs Coxon in cross-examination; Mrs Coxon was asked only to confirm when she had first seen the

proposal form, and she confirmed, and we accept, that the first time was when she was in the witness box.

128. It is clear to us from the correspondence that Mr Jeffery was at great pains to conceal from Mrs Coxon the fact that a new proposal had been made to Home & Legacy, instead of the insurance having been renewed with Holgate. If Mrs Coxon had seen the proposal form, there would have been no need for such subterfuge, and the correspondence would have been written so as to reflect this. Furthermore, as Mr Coxon described in evidence, he had never worked in the financial industry, so his occupation had been wrongly stated, and this could only have been written by someone who did not know him; not therefore by Mrs Coxon.

129. Mr Jeffery is right in this respect: the original of the proposal form was not made available, and there has been no handwriting analysis. However, we have to find the facts on the balance of probability. Applying that test, we can say that the proposal form emanated from the Firm, and it did so without ever having been disclosed to Mr or Mrs Coxon. There were only two persons at the Firm who could have been responsible for it being completed and purportedly signed; that is Mr Jeffery and Mrs Masters. Mr Jeffery says that we should bear in mind that Mrs Masters regularly signed documents in his name and in the names of clients. We do, but we have regard to our own findings that, at least in the cases of the clients we have considered, this was done with the authority and indeed on the instruction of Mr Jeffery. Our own assessment of Mrs Masters is that the issue of a proposal form to a new insurer is not something she would have undertaken on her own. The need for the proposal form arose because of the loss of the Holgate agency. Making a proposal to a new insurer whilst concealing that fact from the client is something that, having regard to the correspondence we have seen, only Mr Jeffery could have instigated. The correspondence is all his, and we conclude that the proposal form was his work as well, even though we cannot be sure that it was Mr Jeffery who physically forged Mr Coxon's signature. But we are entirely satisfied that it was either Mr Jeffery, or someone instructed by him.

130. On these findings, we conclude that Mr Jeffery is in breach of Statement of Principle 1 in this respect, and consequently is guilty of misconduct for the purpose of s 66 FSMA. Once again, whether the Authority, and this Tribunal, is able to take action in that respect depends on our findings on the limitation issue.

Failure to effect insurance/failure to inform

131. The Authority's case in this respect is that Mr Jeffery recklessly failed to effect clients' insurance and/or failed to inform clients of the identity of their insurers. The Authority relied upon a number a client cases in this connection, and we heard evidence from Mrs Coxon, Mr Jamieson, Mr and Mrs Yerbury, Mr Redfern, Mrs Burns, and Mrs Burt in this respect, along with the evidence of Mrs Masters.

Mrs Coxon

132. It is convenient to start with Mrs Coxon, as we have already covered some of the background to that case. It will be recalled that Mrs Coxon received an invoice from the Firm in November 2005, and paid the premium. In his cross-examination of Mrs Coxon, Mr Jeffery appeared to suggest that there was no evidence of the actual payment of the premium, but if Mr Jeffery was suggesting that this might have been a

reason why insurance was not effected, we reject any such assertion. We find that the invoiced amount was paid by Mrs Coxon.

133. On 13 August 2006 there was a flood at Mrs Coxon's Farnham property. An emergency drainage specialist was called out, and Mrs Coxon incurred a fee. The following day Mrs Coxon telephoned the Firm and spoke to a female member of staff whose name Mrs Coxon could not recall. She informed the Firm of the flood and explained that she would need to make a claim against her household insurance. She was then informed that she was no longer insured through the Firm, and that the Firm had written to her in March explaining this.

134. Having then contacted Folgate Insurance, Mrs Coxon wrote to the Firm on 6 September 2006 to make a complaint. In that letter Mrs Coxon referred to the call on 14 August 2006, and said that a requested copy of a letter written in March had not been sent to her. She also referred to the presentation by the Firm of the cheque for the premium on 6 December 2006, and requested the return of the invoice amount and the cost of the uninsured repairs. Mrs Coxon also stated that she had arranged cover elsewhere.

135. This was followed by receipt by Mrs Coxon of a compliments slip of the Firm, with a handwritten note signed by Mr Jeffery, enclosing copies of the correspondence we have earlier described, and referring to his understanding that the Firm had been waiting for the engineer's report. Mr Jeffery also asks from what date Mrs Coxon had arranged alternative cover with a view to arranging an appropriate refund.

136. We have already referred to the disingenuous nature of the correspondence sent by Mr Jeffery to Mrs Coxon. In our view a reasonable person would have assumed, as Mrs Coxon did, that insurance cover had been renewed with Folgate Insurance following payment of the invoiced amount of premium. There is nothing in the correspondence to say that cover had been withdrawn. This is not surprising, since Mr Jeffery was at pains to conceal from Mrs Coxon that the cover had never been renewed with Folgate, because the Firm no longer had an agency with Folgate. Even the latest of the letters said to have been sent by Mr Jeffery to Mrs Coxon (those of 27 February 2006 and 13 March 2006) make no mention of the fact that the insurance cover was, or was about to be, withdrawn; the letter of 27 February refers to a prospective cancellation of the policy by Mrs Coxon (and not by the insurer) and that of 13 March suggests that Mr Coxon approach the engineer, again suggesting that the policy remained in force.

137. If Mr Jeffery had wished to convey the true position to Mrs Coxon he would have done so by straightforwardly informing her that the Folgate renewal had not taken place, that a proposal had been made to Home & Legacy, but cover had either not been accepted or had lapsed because of the absence of the engineer's report, and refunded all or part of the sum paid by Mrs Coxon accordingly. Instead, Mr Jeffery acted in anything but a straightforward manner, and cannot in our view now seek to rely upon such misleading and imprecise correspondence.

138. Mr Jeffery claims that he has shown that cover was provided by Home & Legacy and then cancelled by them. We have seen no evidence of this. But even if cover was provided temporarily, that cannot deflect from the fact that Mrs Coxon was told nothing about the fact that cover had not been renewed with Folgate, that cover had (if it had) been placed with Home & Legacy, or that cover had been cancelled by

them. Mr Jeffery's attempts to blame Mrs Coxon for the fact that she was left without insurance cover reflect, in our view, a fundamental misconception on his part of the proper approach to client service, and a clear lack of integrity in his dealings with his client.

139. Our conclusions as to the effect of the correspondence were shared by the Financial Ombudsman, to whom Mrs Coxon made a complaint on 17 November 2006. We have seen the FOS provisional and final decisions, but have formed our own view on the evidence and with the benefit of the submissions made to us. We record that the FOS awarded compensation to Mrs Coxon only because Mr Jeffery sought to rely in some way on Mrs Coxon's action in the Aldershot and Farnham County Court having been struck out on 18 June 2008. That order was followed by a further order on 17 July 2008 that Mrs Coxon may enforce the FOS award, with costs, and subsequently, the Firm having failed to pay, by a third party payment order against the Firm's account with Butterfield Bank UK Limited.

140. There is nothing in Mr Jeffery's point in this respect. A money award made by the FOS is simply enforceable in a county court if it has been registered. It is enforceable as if it were an order of that court. Accordingly, all that was required was for Mrs Coxon to register the award; she did not have to make a separate claim against the Firm. It is evident to us that the original claim was struck out simply because it had been wrongly made, and the court had no jurisdiction. Instead the award was simply registered and enforced as such. The striking out was a technicality, and had nothing to do with the merits of Mrs Coxon's claim. Mr Jeffery's reference to this in his letter of 26 August 2008 to the Authority was no more than an attempt to deflect the Authority from Mrs Coxon's complaint.

141. We therefore hold that Mr Jeffery failed to effect insurance for Mrs Coxon, and failed to inform Mrs Coxon of the true position. Subject only to limitation, we find that Mr Jeffery acted without integrity in this respect and is accordingly in breach of Statement of Principle 1.

Mr Jamieson

142. We have referred earlier to the evidence of Mr Jamieson in relation to the "per procurationem" letters in his name. Those letters concerned a motor insurance policy. We are now concerned with insurance on a property which was owned by Mr Jamieson in Scotland and was used by him for rental.

143. Mr Jamieson received from the Firm a letter dated 2 August 2007 enclosing an account for renewal of the property insurance, with a calculation of a credit in respect of the motor insurance. The cover had previously been placed with Acumus Insurance Solutions Limited, and Mr Jamieson assumed that the renewal would be with that company. Following a holding letter from Mr Jamieson dated 12 August 2007, he wrote again to Mr Jeffery on 24 August 2007 asking him to renew the property insurance, and enclosing a cheque for £190, and a signed copy of the Terms of Business (to which we referred earlier). On 23 September 2007, having received no documentation from the Firm, Mr Jamieson wrote again asking for confirmation that cover had been placed.

144. By 22 October 2007 Mr Jamieson had still received no reply from the Firm. He wrote again to Mr Jeffery, this time by recorded delivery, to say that if he did not hear

from Mr Jeffery, in writing, by 26 October 2007 that the cover was in place, he would have to assume that it was not, and would then obtain cover elsewhere and initiate proceedings to recover his premium.

145. On 29 October 2007, having still received no reply from Mr Jeffery or the Firm, Mr Jamieson telephoned Acumus to ask them if cover had been placed by the Firm. Acumus confirmed that the policy had not been renewed at 31 August 2007. This was confirmed in writing by Acumus by letter to Mr Jamieson dated 1 November 2007.

146. In the meantime Mr Jamieson had written, again by recorded delivery, to Mr Jeffery on 29 October 2007 to complain about the Firm's failure to place the property insurance. He telephoned the Firm on 23 November 2007, at which time he spoke to Mrs Masters, to say that he had received no reimbursement of his premium, plus claimed interest, and threatened to involve the police and the Authority. Mr Jamieson then received a letter from the Firm (reference AJ) in which Mr Jeffery said that whilst he did not agree with Mr Jamieson's comments concerning both the motor and property insurance, he had nonetheless "organised the cancellation of the two covers to the extent that I have established that credits are due". He said that the cheque would take five working days to be received by Mr Jamieson, as Mr Jeffery was in France. A cheque was received by Mr Jamieson several days later, in an amount which excluded the £190 paid by Mr Jamieson in respect of the property policy. Mr Jamieson has not received any reimbursement from the Firm in respect of the property insurance.

147. Much of Mr Jeffery's cross-examination of Mr Jamieson related to his motor insurance policy, with which we are not concerned in this connection. In relation to the property, with which we are concerned, Mr Jamieson was taken to certain emails between Mr Jeffery and Mrs Masters on 9 November 2007 in which Mr Jeffery had said to Mrs Masters that he was sure he had instructed the renewal to be done, and apparently asking Mrs Masters to contact the insurers so that the policy could be sorted out and start on the expiry of the previous policy. Mrs Masters replied to the effect that she had spoken to the insurers to confirm that the renewal premium had been paid and had received the reply that the policy documents should be capable of being downloaded.

148. Mr Jeffery's submission in this respect is that this email exchange demonstrates that he was attempting to resolve the problems that had arisen on the non-renewal of Mr Jamieson's policy with Acumus. He also submits that a policy must have been in place at the time of the email exchange, as otherwise it would not have been possible for a copy of it to be downloaded. There is, on the other hand, no copy of any such policy. In his opening, Mr Jeffery criticised Mr Jamieson for not having himself attempted to validate whether this new policy existed at the material time, despite Mr Jamieson having been sent a copy of the email exchange in February 2008.

149. Mr Jeffery's criticisms of Mr Jamieson are worthless. Asked why he did not go back to Acumus following Mr Jeffery's letter of 26 February 2008, Mr Jamieson quite properly responded that he had no reason to do so. As Mr Jamieson himself said, and we find, Mr Jeffery had resolved nothing. Whatever Mr Jeffery was doing in November 2007 was irrelevant to the fact that there had been a conspicuous failure by Mr Jeffery and the Firm to renew the property insurance with Acumus, and to engage meaningfully with Mr Jamieson's strenuous efforts to seek resolution from Mr Jeffery. What Mr Jeffery did was far too little, and far too late.

150. In his closing submissions Mr Jeffery repeated that a witness from Acumus should have been called to give evidence in relation to Mr Jamieson's policy. We saw no purpose in such evidence. Even if we accept everything Mr Jeffery says about the efforts to resolve the position, the fact remains that Mr Jamieson's policy was not renewed when it should have been, that consequently his property was uninsured, and it was only through the efforts of Mr Jamieson that he discovered he was uninsured and took steps to arrange insurance on his own account.

151. There was in the case of Mr Jamieson a complete abrogation of responsibility by Mr Jeffery and the Firm. It demonstrates in our view the distorted view taken by Mr Jeffery of his responsibilities to clients that he believes that a policy can fail to be renewed, leaving a property uninsured, and that everything can be made all right by a belated attempt at renewal after he has been made aware that the client will be making other arrangements. That, combined with an abject failure to engage in any appropriate correspondence with Mr Jamieson at the material time, clearly demonstrates in our view a lack of integrity on the part of Mr Jeffery.

152. Some of the correspondence, in particular a letter of 26 February 2008 from Mr Jeffery to Mr Jamieson, is breathtaking in its arrogance: Mr Jeffery tells Mr Jamieson that it is not for him as a client to decide what amount of money the Firm retains as a fee and/or percentage of commission and that Mr Jamieson's position as a client is to receive quotations and confirmation of policy terms and on his agreement the Firm proceeds to act on his instructions.

153. On the basis of our finding of a lack of integrity on Mr Jeffery's part, there is therefore, subject once more to limitation, a clear breach of Statement of Principle 1.

Mr and Mrs Yerbury

154. Mr and Mrs Yerbury had a home insurance policy arranged through the Firm. We are concerned with circumstances of the renewal of that policy on two occasions, the first in October 2007, and the second in October 2008.

<u>October 2007</u>

155. On 13 September 2007 the Firm issued an invoice to Mr and Mrs Yerbury for the renewal of their household policy with Home & Legacy with effect from 7 October 2007. The premium of £5,978.96 was paid on 25 September 2007.

156. Following the payment of the invoiced amount for renewal of the household insurance in the following October, Mr and Mrs Yerbury received from Mr Jeffery a letter dated 11 November 2008 in which Mr Jeffery told them that their previous insurers, Home & Legacy might be writing directly to them. It was explained that this was concerning an accounting dispute relating to the 2007 premium. This prompted Mrs Yerbury to telephone Home & Legacy. She was told that Home & Legacy were preparing legal action against the Firm, and that they had terminated business with the Firm in May 2008.

157. Later, in February 2009, Mr and Mrs Yerbury received a letter from Home & Legacy, dated 5 February 2009, explaining the position from that company's perspective. The letter explained that, in relation to the October 2007 renewal, the Firm had instructed Home & Legacy to renew the household policy with effect from 1

October 2007 but payment had not been received from the Firm. The letter went on to acknowledge that Mr and Mrs Yerbury had provided proof that they had paid the premium to the Firm, and that consequently, "under FSA guidelines" Home & Legacy had honoured the policy cover for the period to 30 September 2008.

158. To understand what had happened in relation to the October 2007 renewal, we need to look at the relationship between the Firm and Home & Legacy. That relationship had been in place since 1995 (with a predecessor of the Firm), and at the material time was governed by an agency agreement dated 6 January 2005. That agreement contained the following relevant clause:

> **Responsibility for Premiums**
>
> The Company [Home & Legacy] and its introducing intermediaries have been appointed as agents of the Insurers for the purposes of receiving premiums from customers, in respect of business transacted prior to, and after 14th January 2005. The Company and its intermediaries have also been appointed to act as agents of the Insurers for the purpose of receiving and holding premium refunds prior to the transmission to the client in question, again in respect of business transacted prior to, and after, 14 January 2005. In respect of this appointment, the Company has been given consent from all its Insurers to extend Risk Transfer to Agents, (and approved intermediaries of the Agent), of the Company and this will be in place once the customer has paid the premium to the agent or their intermediary.

159. It will be seen from this that Home & Legacy is not itself an insurance company. It is a wholesale broker that has its own network of "retail" brokers, such as the Firm.

160. The clause we have highlighted from the agency agreement is to do with risk transfer. Home & Legacy operate a policy of risk transfer, which was in place during the period of the Firm's agency agreement. Its purpose, as described in the evidence of Mr O'Neill, is so that Home & Legacy can maintain insurance cover where instruction has been received from brokers such as the Firm, but where payment of the premium has not been received. In essence it works by ensuring that cover is effected where the premium is received by the broker dealing with the client, even though the premium has not been received by the insurer or any intermediate broker in the chain.

161. Mr O'Neill told us that Home & Legacy requires the insurers it works with to provide what is known as "cascading" risk transfer, and that it would not deal with an insurer that did not provide full cascading risk transfer. This, we can see, is reflected in the terms of the agency agreement we have described. Risk transfer has been extended to agents, such as the Firm, and other intermediaries, so that cover is in place once the customer has paid the premium to the agent or the intermediary. The only fact, therefore, that needs to be established is whether such a premium payment had been made; if it has, then cover is in place, and any dispute between the agent and Home & Legacy, or any other intermediary or the insurer itself cannot affect the cover so far as the client is concerned.

162. In this case there was a dispute between the Firm and Home & Legacy. We heard a great deal of evidence about the dispute, but little of it is material to what we have to consider. The merits of the respective parties in that dispute are not questions

we have to decide. We need only record that Home & Legacy received judgment in its favour in the Guildford County Court for the full value of its claim against the Firm, and that the judgment debt in that respect remains unpaid.

163. Evidence was given by Mr O'Neill, which we accept, concerning problems and delays from June 2007 in the settlement by the Firm of accounts for the payment to Home & Legacy of premiums collected by the Firm from clients. This culminated in statements of account issued by Home & Legacy in February, March and April of 2008, a letter dated 14 May 2008 terminating the Firm's agency, and the formal termination of the Firm's agency on 12 July 2008.

164. The February 2008 statement of account was issued with a request for payment of the outstanding balance of £16,617.11. On 19 February 2008 Home & Legacy telephoned the Firm demanding payment. Mrs Masters confirmed that all the clients had paid their premiums to the Firm. Further contact was made between Home & Legacy and the Firm, but no payment was received.

165. The March 2008 statement of account was issued, with an identical outstanding amount (£16,617.11). On 7 March 2008 a cheque was received from the Firm for £9,000, but with no reconciliation against any of the specific items (namely identifying clients) shown on the account. Mr O'Neill explained that, in the absence of any reconciliation, Home & Legacy had taken it upon itself to attempt to match the undifferentiated payment of £9,000 to certain clients, some of which were therefore cleared off the account. Mr O'Neill conceded in cross-examination that it would, with hindsight, have been better to have kept the £9,000 payment in a suspense account, rather than allocate at all. However, in our view, none of this matters.

166. We say that because we go back to the fundamental relationships that governed the matter of risk transfer between all the insurance professionals involved. Confirmation had been received by Home & Legacy from the Firm that the Firm had received all the relevant premiums. Because those amounts were not received by Home & Legacy it, quite properly in our view, took steps to confirm that the clients had indeed paid the premiums. In the case of Mr and Mrs Yerbury, they clearly had. It was by virtue of that fact, which was the case from 25 September 2007, that their household policy was renewed with effect from 1 October 2007. The risk transfer arrangements ensured that this was the case, and there was in our judgment no period for which Mr and Mrs Yerbury were uninsured in this respect up to 30 September 2008.

167. In this connection we should also consider an issue that was canvassed at some length before us, concerning the requirement, under Mr and Mrs Yerbury's household policy for a risk appraisal. It is relevant to the conduct of Mr Jeffery and the Firm in relation to Mr and Mrs Yerbury and their household policy, and the risks Mr Jeffery and the Firm exposed them to.

168. Evidence was given by Mr O'Neill of correspondence sent to the Firm requesting the contact details of Mr and Mrs Yerbury in order to arrange a survey. The first such letter was dated 1 March 2007, in which the Firm was asked to note that the need to have a risk appraisal of the property was a requirement of the policy and that this had been highlighted in the renewal papers issued. The renewal papers were then issued on 12 September 2007 for the October 2007 renewal, and the covering letter stated:

> " – we were unable to arrange the required survey of the risk address last year, therefore it has become a requirement of cover for this renewal. Insurers request that prior to renewal, a contact telephone number for the insured is provided. Please note that cover will not renew unless the contact details for the insured are received."

169. We have noted earlier that the Firm issued an invoice to Mr and Mrs Yerbury for the October 2007 renewal. That invoice was issued immediately the renewal papers had been received by the Firm, but no mention is made of the requirement for a survey.

170. Despite the warning of non-renewal contained in Home & Legacy's letter of 12 September 2007, confirmation was given to the Firm by letter from Home & Legacy on 14 November 2007 that the policy had been renewed for a period of 12 months from 1 October 2007. However, the same letter said that the Firm's contact details had been passed to the surveyor in order that an appointment could be arranged for the appraisal. There appears then to have been a telephone call between Mrs Masters and Home & Legacy, because on 29 November 2007 Home & Legacy sent a fax to the Firm explaining the nature of the proposed surveyor's visit.

171. No contact details for Mr and Mrs Yerbury were provided by Mr Jeffery or the Firm. Mr Jeffery accepted that Mr and Mrs Yerbury had seen none of the correspondence between Home & Legacy and the Firm. Mr and Mrs Yerbury's evidence, which we accept, is that they had not been aware of the appraisal being a requirement of the policy, and that if they had been aware they would have had no objection to it. (Indeed, such an appraisal was readily carried out in connection with the emergency insurance that Mr and Mrs Yerbury later had to effect with Home & Legacy in November 2008.) Mr and Mrs Yerbury became aware of the appraisal requirement only when, in November 2008, the question of whether the household insurance remained in place had arisen, and Mrs Masters had faxed to Mr and Mrs Yerbury a copy of a letter of 1 September 2008 from Home & Legacy to the Firm.

172. The 1 September 2008 letter advises that, despite repeated attempts by PRMP (Promise Risk Partnership Management – the firm instructed to carry out the appraisal) to arrange to visit Mr and Mrs Yerbury to carry out an appraisal, "Mr Yerbury has now advised that he does not wish for the appraisal to go ahead." The letter then states that it was a requirement of the policy that an appraisal is carried out, as otherwise cover will be cancelled with immediate effect.

173. This letter is curiously worded as it suggests, contrary to what we find to be the case, that Mr Yerbury had been in direct contact with PRMP. The mystery is solved, however, by the evidence of Mr O'Neill who sent the letter of 1 September 2008. Mr O'Neill says, and we accept, that his letter was written on the basis of a letter of 27 February 2007 from the Firm, in which it was said:

> "Would you please also note that a risk appraisal is not required at the moment as Mr Andrew Jeffery has visited Mr and Mrs Yerbury with this in mind and they do not wish to be troubled further by another visit. It has been suggested that this could be done at the next renewal when they will be happy to undergo a further review."

Accepting as we do the evidence of Mr and Mrs Yerbury that they were unaware of the appraisal being required at the material time, this statement by the Firm was clearly untrue.

174. We find in connection with the October 2007 renewal of Mr and Mrs Yerbury's household insurance that, for the period 1 October 2007 to 30 September 2008, the cover was at all times in place. However, we also find that Mr Jeffery and his Firm withheld from Mr and Mrs Yerbury vital information about Home & Legacy's requests for an appraisal to be carried out, and in doing so placed the continuing cover at risk of being cancelled. In addition, the Firm made false statements to Home & Legacy concerning Mr and Mrs Yerbury's position in relation to the appraisal.

175. Accordingly, whilst we do not accept that for this period Mr Jeffery and the Firm failed to effect Mr and Mrs Yerbury's household insurance, we do find that Mr Jeffery acted without integrity in his dealings with Home & Legacy and Mr and Mrs Yerbury in the matter of the appraisal. This is therefore, subject to limitation, a breach of Statement of Principle 1.

October 2008

176. On 29 September 2008 the Firm sent to Mr and Mrs Yerbury an invoice for £6,217.00 in respect of the renewal of the household policy for a further year, expressed in the invoice as from 7 October 2008, but in fact from 1 October 2008. A cheque for the invoiced amount was sent to the Firm by Mr Yerbury on 3 October 2008.

177. Following Mr Jeffery's letter of 11 November 2008, which as we have described warned of possible contact from Home & Legacy as a result of a dispute relating to the October 2007 premium, Mr Yerbury wrote to Mrs Masters on 14 November 2008 to say that, following a conversation between Mrs Masters and Mrs Yerbury the previous day, he was still awaiting details of the policy Mr Jeffery was purported to have organised, following the cancellation of the firm's business arrangement with Home & Legacy. The letter explains that, without such details, Mr and Mrs Yerbury had been obliged to arrange their own emergency household insurance. Refund of the sum of £6,217 was requested.

178. Home & Legacy wrote to Mr and Mrs Yerbury on 5 February 2009. That letter confirmed that no renewal had been invited of the home insurance policy after 30 September 2008. Home & Legacy had not therefore covered the property from 30 September 2008 to 13 November 2008, when a new policy was arranged at the instigation of Mr and Mrs Yerbury.

179. Mr Jeffery's position in this regard is that, although the agency with Home & Legacy had terminated (which meant that the Firm could not place business directly with Home & Legacy), it was nevertheless possible for the firm to have arranged a renewal of the Home & Legacy policy (or a new Home & Legacy policy) through a sub-broker, or another wholesale broker. Mr Jeffery says that he had arranged for his sub-broker, Holman's Independent Lloyd's Brokers, to take over the policy and place it in their Home & Legacy agency subject to Mr and Mrs Yerbury signing a letter of authority to transfer the policy to Holman's.

180. In his evidence to us, Mr Beaumont of Holman's confirmed that Mr Jeffery had been in contact with Holman's in July 2008. On 2 July 2008, Mr Jeffery emailed Holman's asking if they were looking for new broker accounts. With an irony that can now be discerned, Mr Jeffery said: "We have a book of hnw [high net worth] household[s] suffering from disinterested service levels and would like to arrange a

transfer to a more suitable provider". This was passed to Sonia Kowalski of Holman's high net worth division. Ms Kowalski spoke to Mr Jeffery on 10 July 2008, at which time Mr Jeffery promised to send over a couple of "test cases".

181. Mr Jeffery then claims to have written to Ms Kowalski on 18 August 2008 concerning the renewal of Mr Redfern's policy with Home & Legacy, by means of a letter of authority signed by Mr Redfern. In that letter, Mr Jeffery refers to the other cases, including that of Mr Yerbury which he describes as a "£6,000 premium case also with Home and Legacy which, I have a feeling is going to be a transfer of an agency like Mr Redfern". Mr Beaumont has searched Holman's systems, and contacted Ms Kowalski, but no record has been found of Holman's having received this letter.

182. Nothing is recorded by Holman's as having happened until 14 November 2008, when Mr Jeffery sent three proposal forms by fax to Holman's. Amongst those was a proposal form for Mr Yerbury. Holman's then sought quotes from various insurers and sent them to the Firm by email.

183. On 19 November 2008 the Firm applied online for an agency with Holman's. This was confirmed as having been set up on 24 November 2008. Mr Beaumont's evidence was that no business could have been transacted between the Firm and Holman's before the setting up of the agency agreement.

184. During the agency agreement, which lasted until 9 September 2010 (although there was no evidence of any activity after November 2008), only two policies were placed. Neither was for Mr or Mrs Yerbury. There is no evidence of any letter of authority having been provided by Mr and Mrs Yerbury for a transfer of their business to Holman's; it is clear from Mr and Mrs Yerbury's actions in effecting emergency cover directly with Home & Legacy in November 2008 that they had no knowledge of any possible such transfer. Mr Jeffery attempted to submit that Mr Yerbury had confirmed that he may have signed a letter of authority. That, in our view, was not his evidence. Mr Yerbury said that he could not recall signing a letter of authority; that in our view was an appropriate response to a question which required him to test his recollection. Mr Yerbury also said that he had not heard of the name Holman's until the morning of the hearing when he was giving evidence. We are satisfied, on the evidence, that neither Mr nor Mrs Yerbury signed any letter of authority, and they were not asked to sign any such letter.

185. We are prepared to accept that Mr Jeffery did write to Ms Kowalski on 18 August 2008. However, absent the inception of a policy for Mr and Mrs Yerbury, for which they had paid the firm £6,217, this correspondence can provide Mr Jeffery with no assistance. It is evident that he failed to arrange such insurance, and he must have known that he had failed to do so. He was clearly alive to the need, following the termination of the agency arrangements with Home & Legacy in May – July 2008, for alternative arrangements to be made for Mr and Mrs Yerbury, but he did not make those arrangements and failed to inform Mr and Mrs Yerbury that they were uninsured.

186. In our view these failures are a clear demonstration of a lack of integrity on the part of Mr Jeffery. We therefore find that he was in breach of Statement of Principle 1 in this respect. This is not subject to limitation, as limitation cannot affect the right of the Authority to take action under s 66 FSMA for misconduct taking place within

two (now three) years of the issue of the warning notice; the failure to effect insurance for Mr and Mrs Yerbury in October 2008 occurred after 29 May 2008, which is the relevant date for limitation in this case.

Louise Yerbury

187. Louise Yerbury was not called as a witness, and accordingly we had no direct evidence from her. However, her mother, Mrs Yerbury, gave evidence concerning the issue of the renewal, or non-renewal, of Miss Yerbury's household insurance policy.

188. The evidence is that Louise Yerbury paid a premium of £412 to the Firm in May 2008 for home and contents insurance. On contacting the insurance company in order to have certain items included in the policy, she discovered that her household insurance had not in fact been renewed. Miss Yerbury therefore wrote to the Firm on 12 February 2009 requesting that the cheque cashed in May 2008 should be passed on to BISL (which Miss Yerbury understood to be the insurance company), and asking that the insurance certificate be sent directly to her. A number of additions to the policy were proposed by Miss Yerbury, and she made it clear that she wished to deal with the insurer directly in the future, and not through the Firm.

189. The Firm replied on 18 February 2009. In that letter blame was placed on the failure of the BISL "automatic renewal system". The Firm refused to accept responsibility, and suggested to Miss Yerbury that she hold BISL responsible for their negligence. The letter goes on to refer to an instruction from Miss Yerbury to put in place a replacement cover, in the same sum insured, which the Firm had done. However, referring to the additional items requested to be added to the policy in Miss Yerbury's letter of 12 February 2009, the Firm claimed that it was "obvious that you would have been grossly underinsured, and both the previous insurer, and both the old insurer and any new insurer could easily have accused you of 'non disclosure of a material fact' and as a result voided their respective policy" (sic). The letter closes by saying that the Firm is not prepared to continue to act for Miss Yerbury, and enclosed a cheque for £252, said to represent a return of monies paid less commission and fees.

190. Mr Jeffery's submissions in this regard have been rather inconsistent. In his Reply to the Authority's statement of case he said that Miss Yerbury's household policy was quoted via the "compare the market" internet facility owned by BISL/BGL Group, and that the policy was issued by one of their panel insurers. The policy had an automatic renewal clause which, unknown to the Firm, did not operate in Miss Yerbury's case. This was consistent with what Mr Jeffery (for we find that the letter of 18 February 2009 was authored by him) had said in the Firm's letter to Miss Yerbury of 18 February 2009. In closing submissions, however, Mr Jeffery changed tack, arguing instead that the policy had been renewed and had then been cancelled.

191. In support of the latter submission, Mr Jeffery produced a letter dated 18 June 2008 from Budget Insurance (the trading name of BISL) which referred to a balance of £86.20 being outstanding on the account. That letter was addressed to Miss Yerbury by name, but at the firm's address (and, as we have earlier described, in the Firm's name). In his evidence, Mr Poole of BGL Group confirmed that generally debt letters of this nature were issued only after a policy had been cancelled, and that this could only be the case if a policy had been in place. It therefore seems to us more likely, and we find, that the policy was indeed renewed, and was then cancelled.

192. Whichever of these contentions is correct, neither can absolve Mr Jeffery of responsibility for the fact that for a period Miss Yerbury was uninsured. As broker for the purpose of arranging Miss Yerbury's insurance, Mr Jeffery had a duty to his client to ensure that cover was placed, and that any issue which arose on continuation or cancellation of cover was brought to the client's attention within a reasonable period.

193. Accordingly, if Mr Jeffery were right that automatic renewal had not taken place, he was best placed to know that, as he had collected a premium from Miss Yerbury, and would have known that it had not been paid to BISL. We do not accept that Mr Jeffery was simply entitled to rely on the fact that BGL had his credit card details and could have taken the premium from there as an acceptable substitute for the Firm taking active steps to ensure that cover had been renewed. Mr Jeffery's failure to act in those circumstances is his responsibility, and he cannot seek to deflect blame onto any other party. If, on the other hand, as we have found is the more likely, Mr Jeffery is right that the policy was initially put in place and then cancelled, the very receipt by the Firm of BISL's letter of 18 June 2008 should have put any reasonable broker on notice that Miss Yerbury's policy had been cancelled and that action would need to be taken to restore cover immediately. Only the Firm knew the position, but it kept Miss Yerbury in the dark, in spite of the fact that it had received Miss Yerbury's cheque for the premium in full.

194. Mr Jeffery raised the point that Miss Yerbury was not called as a witness, and that Mrs Yerbury had given hearsay evidence. Such evidence may be admitted in these proceedings under rule 15(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008. The Tribunal has taken account, in considering the evidence, that Mr Jeffery did not have an opportunity to ask questions of Miss Yerbury. However, even on Mr Jeffery's own case we find that he was responsible for Miss Yerbury's household risks not being covered for the whole of the period for which she had paid a premium to the Firm, and that Miss Yerbury was not told of the position. Instead, Miss Yerbury was faced with a blanket refusal on the part of the Firm to accept any responsibility.

195. We find that in his dealings with Miss Yerbury's policy Mr Jeffery acted without integrity, and that accordingly, and without any limitation issue (as the issue was discovered by Miss Yerbury only in 2009), Mr Jeffery is in this respect in breach of Statement of Principle 1.

Mr Redfern

196. Mr Redfern received from the Firm an invoice dated 8 August 2008 in respect of his household policy renewal with effect from 7 August 2008. Previously his policy had been arranged through Home & Legacy, and at the time he received this invoice Mr Redfern assumed that his insurance would be arranged in the same way. He did not know at that time, and nor did the invoice details give him any information in this respect, that the Firm's agency with Home & Legacy had been terminated in July 2008. Mr Redfern paid the premium to the Firm of £1,125.56 on 11 August 2008.

197. Mr Redfern had his car serviced on 25 November 2009, and at that time brought to mind that his motor insurance was due to expire the following week. He attempted to contact the Firm, but having been unable to do so he carried out an

internet search which threw up an FSA warning about the Firm. As a result he contacted Home & Legacy in relation to his household policy to be informed that he had not been covered since 6 August 2008.

198. Mr Jeffery's case is that Mr Redfern's policy with Home & Legacy was one of those he was seeking to have transferred to the agency of Holman's in order that cover could be maintained through Home & Legacy despite the loss of the Firm's agency with Home & Legacy in July 2008. Mr Redfern accepted that he had signed a letter addressed to Home & Legacy and dated 15 August 2008 which was authority to Home & Legacy to transfer Mr Redfern's existing policy to Holman's.

199. On 18 August 2008 Mr Jeffery wrote to Ms Kowalski at Holman's concerning the renewal of Mr Redfern's policy on 7 August 2008. There is, we accept from Mr Beaumont's evidence, no record of this letter having been received by Holman's, but we proceed on the basis that it was sent. The letter refers to a faxed presentation of Mr Redfern's details, which we have seen (and again accept that there is no record of these having been received by Holman's), which set out Mr Redfern's details and the particulars of his insurance policy with AXA. Mr Jeffery attaches the letter of authority signed by Mr Redfern, saying "as we agreed [where] we can't beat Home and Legacy's terms". The letter concludes, with regard to Mr Redfern, that Mr Jeffery "assume[s] you [Holman's] can hold covered (sic) pending the letter of authority being processed by [Home & Legacy]".

200. In her evidence Mrs Masters confirmed that it was she who had typed the sheet of particulars in relation to Mr Redfern. She had written the name "Redfern" on the top of it. The policy details had likely been taken from a proposal form or similar document. However Mrs Masters could not recall the process, and whether particular information had been provided to Holman's. She confirmed, however, that a letter of authority would be obtained where it was intended that the policy would be maintained with Home & Legacy but it was necessary to transfer it to another broker.

201. It seems to us that the only alternative to our accepting that Mr Jeffery wrote the letter of 18 August 2008 and that it was then sent, with its enclosures, to Holman's (albeit that Holman's can find no record of it) is for us to find that Mr Jeffery either wrote the letter at the relevant time and did not send it, or has later concocted the letter to make it appear as if it were sent. We can reject the second of those possibilities having regard to the contemporaneous letter of authority and the details typed by Mrs Masters. As to the first, there is no evidence that points in this direction, and it was not put to Mr Jeffery that this was the case. Accordingly, we make no such finding. We find that the letter of 18 August 2008 was genuine, and that it was sent with its enclosures to Holman's.

202. On that basis, we note an element of Mr Jeffery's disingenuousness even in this letter. This was a time when, as Mr Jeffery knew, the Firm's agency with Home & Legacy had been terminated by them. Yet he tells Holman's in the letter of 18 August 2008 that:

> "I have had some letters from Home and Legacy regarding other clients saying 'they had suppressed their renewals on their system' so in some cases, they have issued renewal documents to my clients direct and in others they have not sent anything to me OR the client.
>
> I will obviously be taking these issues up with them!"

This was clearly a misrepresentation of the position. Mr Jeffery knew full well that Home & Legacy would not be issuing renewal notices to the Firm, as the relationship with Home & Legacy had come to an end. There was no renewal notice in relation to Mr Redfern's policy.

203. In cross-examination Mr Jeffery proffered his own suggested version of what had happened. He suggested that Holman's might have "NTU'd" (meaning "not taken up") the transfer of agency. He told us that he suspected that Holman's might have persuaded Home & Legacy to go on cover and then come off, in order, as we understand it, to save Holman's from a time on risk charge. This is of course nothing more than speculation, and we reject it. It is unsupported by any evidence, and the fact that neither Holman's nor Home & Legacy have any record of Mr Redfern shows clearly that such a suggestion is fanciful.

204. A more likely explanation in our view, and we so find, is that the letter of 18 August 2008 was sent by the Firm to Holman's, but was simply not received by them. What is clear, however, is that after 18 August 2008 neither Mr Jeffery nor the Firm took any steps to chase matters up. Mr Jeffery was unable to explain why this had been so. He sought to blame a "systems failure", by which he meant that Mrs Masters was to blame for not informing him that the policy had not come through. He also sought to excuse the position by saying that it was not unusual for a year to elapse before a policy document was received.

205. We do not accept those explanations. Mr Jeffery had taken a keen interest in attempting to mitigate the effect of the termination of the Home & Legacy agency by seeking to arrange, in certain cases, the same insurance through an intermediate broker, Holman's. He had done this in a less than candid manner failing, as he did, to present the true position to Holman's. But in the case of Mr Redfern Mr Jeffery would have been aware that, but for the transfer of agency having taken place, Mr Redfern would be without insurance. In August 2008 the Firm did not have an agency agreement with Holman's; that was not put in place until 24 November 2008. There is no question, therefore, of any risk transfer having taken place by reason of the receipt by the Firm of Mr Redfern's premium; there was in any event no renewal documentation. The assumption made by Mr Jeffery in his letter of 18 August 2008 as to cover being held by Holman's was nothing more than that; to be sure Mr Jeffery would have had to have the position confirmed, and a reasonable broker would, in our judgment, have done so.

206. In our judgment the failure by the Firm to effect insurance for Mr Redfern was not down to systems failure, nor can it be explained as mere negligence or lack of appropriate care. It was down to a pure disregard of the client's interests. The retention of Mr Redfern's premium in those circumstances demonstrates in our view a lack of integrity on the part of Mr Jeffery. We also consider, though it is not itself material to our decision in relation to the failure to effect Mr Redfern's insurance, that Mr Jeffery showed a lack of integrity in attempting to mislead Holman's in relation to the agency transfers.

207. As a result we find that Mr Jeffery is in this respect in breach of Statement of Principle 1. The action taken by the Authority in this respect cannot be affected by limitation, as all the relevant events took place after 29 May 2008.

Mrs Burns

208. Mrs Burns renewed her contents insurance through Home & Legacy for the 12-month period 28 October 2007 to 2008 by cheque in the sum of £572.66 paid to the Firm which was cashed on 2 November 2007.

209. Mrs Burns further renewed her policy in October or November 2008 and paid a premium to the Firm in the sum of £618.47 which was cashed on 14 November 2008.

210. Mrs Burns received a letter from Home & Legacy dated 5 January 2009 to inform her that instructions had been received from the Firm to arrange for insurance cover in respect of her property with effect from 28 October 2007, but that the Firm had not paid over the premium. The letter said that Home & Legacy wished to ascertain whether Mrs Burns had made payment of the premium to the Firm. Mrs Burns telephoned Home & Legacy to provide them with details of payment, and Home & Legacy appeared to be satisfied in that respect, and that they would honour the insurance for 2007/08. However, Home & Legacy informed Mrs Burns that they would no longer deal with the Firm.

211. Soon after this Mrs Burns and her ex-husband moved out of their house. Mrs Burns telephoned the Firm and spoke to Mrs Masters to confirm who the insurance policy was with. Mrs Masters told her that it was with Home & Legacy. Mrs Burns asked for a schedule of insurance. Nothing was received. Mrs Burns spoke again with Mrs Masters to tell her that she was not insured with Home & Legacy. Mrs Masters said that there had been a mistake, claimed not to have told Mrs Burns that the policy was with Home & Legacy, but did not know who were the insurers. Mrs Masters said that Mr Jeffery was dealing with the matter, but that he was in France, and not contactable because of the storms there.

212. On 10 February 2009 Mrs Burns sent an email to the Firm in which she made the point that although payment had been made for the renewal of the contents insurance for 2008/09, no policy documents had been received, and Mrs Burns did not know who the insurer was. She told the Firm that she knew that Home & Legacy would not deal with the Firm. This of course was the case, as we have seen, since the Firm's agency with Home & Legacy had been terminated with effect from July 2008.

213. Neither Mr Jeffery nor the Firm replied to Mrs Burns' email. She has not received any insurance documentation, nor a return of her insurance premium. She had to take out another policy to cover the risks she thought had been covered when she paid her premium for the 2008/09 insurance.

214. The position of Mrs Burns is analogous in some respects to that of Mr and Mrs Yerbury, in that the issue divides itself into the two years 2007/08 and 2008/09. In relation to the former, we find, as we did in relation to Mr and Mrs Yerbury, that the risk transfer arrangements that operated under the firm's agency agreement with Home & Legacy had the effect that, once Mrs Burns had paid her premium to the Firm, the insurance cover was established. Mrs Burns was not therefore, in our judgment, uninsured for that period.

215. The period 2008/09 is very different. No renewal was invited by Home & Legacy for that period, because the agency agreement with the Firm had been terminated. There was no renewal of the insurance, and no evidence in the case of Mrs Burns (such as there was for Mr Redfern) that Mr Jeffery or the Firm had

attempted to put in place any transfer of agency arrangements or to effect any other cover for Mrs Burns. Mrs Burns' premium was received by the firm and banked by it, but thereafter Mr Jeffery and the firm washed its hands of Mrs Burns. Despite Mrs Burns' efforts to obtain policy documents and an explanation from Mr Jeffery and Mrs Masters, nothing at all was provided. The premium was not returned in spite of the Firm having done nothing to provide Mrs Burns with the insurance cover she had paid for.

216. Our conclusion in relation to Mrs Burns therefore is that the Authority has not made out its case in relation to the 2007/08 insurance cover, but that in relation to 2008/09 we are satisfied that no insurance cover was provided and that this was due to the reckless conduct of Mr Jeffery. The failure to have regard to the interests of Ms Burns as a client demonstrates a lack of integrity on the part of Mr Jeffery. This is a breach of Statement of Principle 1. There is no limitation issue.

Mrs Goddard

217. Evidence in relation to Mrs Goddard's affairs was given by her daughter, Mrs Burt who, at the material time, was dealing with her mother's insurance matters. Mr Jeffery raised the point that the evidence of Mrs Burt was in large part hearsay. We have described above the Tribunal's powers to admit evidence. In our view there is no reason why Mrs Burt's evidence should not be admitted. It almost entirely consisted of matters within her own knowledge, and was not hearsay. To the very limited extent that it concerned matters outside Mrs Burt's own knowledge we have taken that into account in assessing her evidence.

218. We should also say that Mr Jeffery, in his closing submissions, made an entirely unwarranted, and frankly scurrilous, attack on Mrs Burt's character. We have no intention of dignifying that submission by detailing it here. We need only say that we reject it without hesitation.

219. Prior to 2008 Mrs Goddard's household insurance cover had been arranged, through the Firm, with Higos Insurance. In March 2008, as Mrs Burt herself recalled, Mrs Goddard received a letter from Higos giving details of certain difficulties Higos had been having with the Firm. Mrs Burt telephoned the Firm and spoke to Mrs Masters who told her not to worry, and to send the letter to the Firm. This Mrs Burt did. On 17 March 2008 Mrs Goddard received a letter from Mr Jeffery advising that Higos was suggesting that the premium for the then policy (2007/08) had not been paid, and saying that this was due to the negligence of Higos for which an offset by way of compensation was being claimed.

220. On 16 October 2008 Mrs Goddard received a renewal invoice for household buildings and contents cover for her property. The renewal was from 19 October 2008 at a premium of £340.20. Attached to the renewal invoice was a standing order mandate form which Mrs Burt completed and sent to the Firm. Monthly payments of £36.06 were subsequently made to the Firm under that standing order from November 2008 to July 2009 when, having regard to the events which had happened, Mrs Burt cancelled the standing order.

221. Around 16 July 2009 Mrs Burt became aware that a wall at Mrs Goddard's house was damaged. She telephoned the Firm in order to establish if her mother could make a claim on her insurance policy to cover the cost of repairs. She was

unable to reach the Firm at its Loxwood office, and although she attempted to locate the Firm at what she believed were its new offices in Send, she was unable to find that office.

222. On 20 July 2009 Mrs Burt telephoned her bank to cancel the standing order in favour of the Firm. The last payment was made on 19 July 2009. On the same day Mrs Burt telephoned Higos to ask if Mrs Goddard's insurance policy was active. Higos informed her that although insurance had been in place for the year 2007/08, there was no insurance for the current year. The reason, as described in the evidence of Mr Rowe of Higos, is that the agency agreement between Higos and the Firm had been terminated by Higos on 13 March 2008 on account of the commencement of the criminal proceedings at that time against Mr Jeffery.

223. In his cross-examination of Mrs Burt, Mr Jeffery referred to the Firm's office copy of the renewal invoice sent to Mrs Goddard on 16 October 2008. Noting that the invoice did not refer to any specific insurance company (and did not refer to Higos), Mr Jeffery put it to Mrs Burt that, having regard to the handwritten notes of Mrs Masters on the office copy (Prop o/s and 2nd prop), it appeared that Mrs Masters had sent proposal forms to Mrs Goddard. Mrs Masters confirmed in her evidence that these handwritten notes referred to outstanding proposal forms. Mr Jeffery suggests that Mrs Burt said in evidence that she was reliant on Mrs Goddard informing her of any paperwork her mother may have received and this may have caused things to go wrong if a proposal form was required. In fact Mrs Burt made no such concession. Her answers went to the sending back of the standing order form, and, although she acknowledged that her mother would provide her with the paperwork to be dealt with, she confirmed, when pressed by Mr Jeffery that his position was that no proposal form had been received from her despite two, or maybe more, attempts to obtain one, that she had no knowledge of that. We believe that Mr Jeffery's interpretation of the evidence given by Mrs Burt is nothing more than wishful thinking on his part.

224. In her evidence, Mrs Masters agreed that by reference to the notes she had made on the copy invoice it appeared to be the case that proposal forms had been sent to Mrs Goddard. Her evidence was also that if no proposal form came back, nothing would happen. Mrs Masters also confirmed that she had written "Property empty" on the copy invoice, which suggests that at some stage at least Mrs Masters had become aware that Mrs Goddard was no longer living at the property. It is not clear when Mrs Masters wrote those words on the copy invoice; we saw from another example (an invoice to Mr Dudman dated 12 February 2009) that Mrs Masters was in the habit of writing notes on invoices after the event, in that case the receipt of the insurance certificate. What we do know however is that Mrs Goddard moved in with Mrs Burt in March 2009.

225. In his Reply to the Authority's statement of case, Mr Jeffery states that when the household policy for Mrs Goddard came up for renewal in 2008 he was told by Mrs Masters that Mrs Goddard was in a care home, and that Mrs Burt had confirmed that the property was long-term unoccupied as a result. His instructions at that time were that Mrs Goddard would have to apply to a new insurer that accepted that type of unoccupied property risk. In his evidence Mr Rowe said that there was no record on the Higos files of the Firm having informed Higos that the property was unoccupied. This is not of course surprising, as Higos no longer had an agency with the Firm at the material time. Mr Rowe also confirmed, however, that the insurance policy which Mrs Goddard had with Zurich up to October 2008 would not have been renewed on

an unoccupied basis. Higos would have looked to offer an alternative insurer, probably Norwich Union (now Aviva), as they were usually willing to underwrite such risks on Higos' home scheme.

226. Mr Jeffery submits that a proposal form was sent to Mrs Goddard, and followed up with a copy. The only evidence of this is the handwritten note made by Mrs Masters on the copy invoice. Mrs Masters herself did not recall the sending of the proposal forms; her belief that they were sent was itself based on the handwritten notes. We are prepared to accept that proposal forms were sent. Taking all the evidence into account, however, we do not consider it likely that they were sent at the same time as the invoice. When the fact of Mrs Goddard having moved out of the property in March 2009 was put to Mrs Masters, she was unable to recall why she had written what she had on the copy invoice. There is no reference in the invoice received by Mrs Goddard to the proposal forms. We do not believe it is likely that Mrs Goddard would have passed to Mrs Burt only part of what she had received. Having regard to the fact that Mrs Goddard remained in her own home until March 2009, we regard it as more likely that, if proposal forms were sent, they were sent to Mrs Goddard only in or around March 2009, and that Mrs Masters, as was her custom, recorded that fact on the copy invoice at that time. As Mrs Goddard had by then moved away from the property, that could explain why those forms did not come to the attention of Mrs Burt.

227. Mr Jeffery's Reply went on to assert that his instructions to Mrs Masters in earlier years had been that a standing order should be actioned only after the relevant proposal form had been returned. Mrs Masters was not asked to confirm that this was the case. Mr Jeffery says that he was not aware that the standing order had been submitted to the Firm's bank. However, his belief that Mrs Burt might have sent it directly to the Firm's bank is contradicted by Mrs Burt's own evidence and by the copy standing order mandate signed by Mrs Burt which was produced in Mr Jeffery's own document bundle.

228. Mr Jeffery also said that he would not be surprised if Mrs Masters had also been unaware that the standing order payments were being received into the Firm's bank account. He pursued this in cross-examination of Mrs Masters. Mrs Masters was able to confirm only that, without sight of the bank accounts, she would not have known if the standing order was operating, unless she had been told by someone, such as Mrs Burt. In her evidence, which we accept, Mrs Masters also told us that at some time between January and August 2009 Mr Jeffery had given her strict instructions to forward to him unopened the letters containing bank and credit card statements, an instruction she had complied with even though it made it impossible for her to perform reconciliations. We conclude therefore that Mrs Masters would not have had details of standing order payments being received into the firm's bank account, but that Mr Jeffery certainly would.

229. What is also clear is that Mrs Masters did know that the standing order had been actioned in November 2008. This appears from a somewhat incredulous email sent by Mrs Masters to Mr Jeffery on 3 August 2009 (at the time Mrs Burt was raising questions about the absence of insurance cover) after Mr Jeffery had disavowed knowledge of the Goddard case. At that time Mrs Masters makes it clear, in a manner which shows that this was something she believed was already within the knowledge of Mr Jeffery, that standing order payments were being received. Mr Jeffery continues in the same email exchange to profess ignorance of the position, but Mrs

Masters suggests that he had taken the Higos renewal back to France. (That cannot, of course, be accurate; there was no Higos renewal in October 2008.) Nevertheless, it is clear that Mr Jeffery must have known of the standing order payments: a copy of the client account statement dated 26 April 2009 produced by Mr Jeffery and addressed to the Leatherhead address at which Mr Jeffery could receive correspondence clearly shows the monthly payment from "G Burt".

230. In that email exchange Mrs Masters expresses surprise at Mr Jeffery's seeming ignorance of the Goddard case. Mrs Masters' reply is:

> "What??? you have received monthly standing order payments from Mrs Burt for Mrs Goddard's premiums. I emailed you some time ago when the policy expired October 2008 ??? to ensure cover in place as Police crawling all over the place following Rhys's sudden death. Doing a property renovation programme on the place now and discovered no cover in place. Are you misunderstanding me? Insurance is for Mrs Goddard, paid by Mrs Burt – not insurance for Mrs Burt."

In her evidence, Mrs Masters explained that the three question marks after the date of October 2008 was because she had been unsure of the renewal date. In fact, as we heard, the date of the email was in February or March 2009, as the unfortunate incident referred to was the death of Mrs Burt's son, who had been living with his grandmother, which happened in February 2009. The reference to a property renovation programme is not material; this referred to an abortive attempt on the part of Mrs Burt to interest a television company in using Mrs Goddard's house as a vehicle for a TV programme.

231. We find that at the time the insurance renewal was invoiced by the Firm to Mrs Goddard, there was no Higos renewal proposal. We find that at that time the only documents sent to Mrs Goddard were the invoice, a terms of business document (which is not material) and a standing order mandate. Mrs Burt returned the standing order mandate to the Firm, at which point Mrs Masters sent the mandate to Mrs Burt's bank. No insurance was arranged in relation to Mrs Goddard's property despite the standing order payments being received by the Firm.

232. We find that Mr Jeffery knew that Mrs Goddard's insurance could not be renewed in October 2008 through Higos, and that consequently alternative arrangements for cover would have to be made. This was the case irrespective of whether the property was unoccupied or not; that was not a relevant factor in October 2008, because it had not happened. It was something that could only have become known to both Mrs Masters and Mr Jeffery in February or March 2009 at the earliest. Despite that, the standing order mandate was put into place and Mr Jeffery received bank statements from which he knew, or ought reasonably to have known, that premium payments were being made by Mrs Burt for an insurance policy that did not exist. In our view, the position is the same whether or not proposal forms were sent to Mrs Goddard, and irrespective of the time they were sent. If proposal forms were sent, it is in our judgment wholly wrong for an insurance broker, in circumstances of a renewal of a policy, where insurance premiums are being received by the broker, to shelter behind a failure on the part of a client to return those forms as an excuse for doing nothing more. That appears to us to be the policy adopted by Mr Jeffery, and it is in our judgment an unacceptable one. The proper course would have been to have advised Mrs Goddard (through Mrs Burt) that new renewal arrangements would have

to be made, and of the uninsured position. The failings in this respect by Mr Jeffery and the Firm are worsened still by the receipt and retention of the standing order payments, without regard to the fact that, as was known by Mr Jeffery and Mrs Masters, no insurance cover had been arranged for the property at all.

233. That this displays an entirely cavalier attitude of Mr Jeffery to a client is, we think, something of an understatement. It is reprehensible to a degree which, in our view, is a clear demonstration of a lack of integrity on the part of Mr Jeffery. He knew that the insurance could not be renewed through Higos in October 2008. He took no steps to ensure that cover was obtained or that Mrs Goddard and Mrs Burt were advised that there was no cover. He knew or ought reasonably to have known that the standing order payments were being received. Instead, he did nothing, preferring to rely on an assumed failure on the part of Mrs Burt and Mrs Goddard to return proposal forms that in any event were probably sent much later. That was an abrogation of his responsibilities, which can be explained only in terms of a lack of integrity.

234. For these reasons we find that, in respect of the failure to effect insurance for Mrs Goddard in or after October 2008, Mr Jeffery was in breach of Statement of Principle 1. There is no limitation issue.

Expert reports

235. In common with the approach we adopted in relation to the "pp" letters, we have considered whether anything in the expert report and advice note produced by Mr Jeffery ought to deflect us from the conclusions we have reached on the issue of failure to effect insurance. We find there is nothing.

236. Taking Mr Woods' report first, the only areas covered by him that could have any relevance are the issue of automatic renewals, settlement of insurer accounts and disagreements in that connection, and failures to place cover. In relation to automatic renewal, all the report does is state that automatic renewal (or tacit renewal) can take place. We have no doubt that it can, but this does not affect our findings, on the facts, in the case of Miss Yerbury. Mr Woods says in relation to settlement of insurer accounts that it is quite normal for a deposit premium to be requested, and that premiums would be settled through a periodic account with an insurer. This too is unexceptional, and does not affect our conclusions. We also accept that disagreements arise in relation to accounts between brokers and insurers or other intermediaries. We have held, in relation to 2007/08 in respect of Mr and Mrs Yerbury and Ms Burns, that the risk transfer arrangements make the dispute between the Firm and Home & Legacy irrelevant. Finally, in relation to failures to place cover, we can also accept that occasions arise when brokers fail, through carelessness, to present a case for cover, or where cover is not effected for a reason such as there being a negotiation of the level of cover between intermediary and underwriter. Those generic examples are of no assistance to us in determining the issues on the facts of these real cases.

237. Mr Emblin's note confirms that it is possible for a holding broker to make payments on account in order to make a partial reconciliation of a sub-broker's account or an insurer's account. Again, we find this unexceptionable. Our conclusions in respect of 2007/08 in the cases of Mr and Mrs Yerbury and Mrs Burns, which relate to the transfer of risk, do not in any way depend upon an adverse finding

in this respect. We note that Mr Emblin also deals with offsets, but particularly refers to financial offsets, and not offsets in relation to undifferentiated claims. However, our conclusions do not depend upon any finding as to the nature or propriety of the offsets in the cases we are concerned with.

Post-January 2009 activities

238. The Authority's case in this respect is that Mr Jeffery made false statements to the Authority when, in a letter to the Authority dated 16 April 2009, he stated that "no new business register exists post 25 January 2009", and in response to the Authority's question asking for a written explanation of services provided to clients at the time, Mr Jeffery wrote "none". The Authority says that the evidence shows that the Firm, through Mr Jeffery, was arranging or bringing about contracts of insurance after 25 January 2009 and was therefore engaging in regulated activities after that date, and that this directly contradicts the statements made by Mr Jeffery to the Authority in the letter of 16 April 2009.

239. Mr Jeffery submits that the Authority has failed to prove that he was aware that business was being administered in any way after 25 January 2009. His case is that the Firm had ceased trading at the end of January 2009, and that although it was a fact that insurance business had been conducted by the Firm after that date, this had been done without his knowledge. He argues therefore that the declarations made in the letter of 16 April 2009 and subsequently were true.

240. The Authority's case depends therefore on two factors. The first is that business was undertaken by the Firm after 25 January 2009. But that is not enough. It must also be shown that Mr Jeffery knew, or ought reasonably to have known, the statements he made to be false when he made them, or that he knew, or ought reasonably to have known, that the statement had become false after having been made. The second question goes to the state of his knowledge, or what he reasonably ought to have known, both at the time the statements were made and subsequently.

241. We put the test in this way because of the nature of the duty of a regulated person to the regulatory authority. It is clearly wrong for such a person to make what he knows to be a false statement. It is equally wrong for that person to make a statement without having taken reasonable care to ensure its accuracy, if it later turns out to have been untrue. Furthermore, in our view the duty of a regulated person is a continuous one. That duty extends to correcting an otherwise innocent misstatement within a reasonable time of discovering that it was indeed false. There is in our view also a breach of duty if the regulated person, after having made a statement concerning future conduct, fails reasonably to monitor the situation so as to be able to correct such a statement when it later turns out to be untrue.

242. We turn therefore to consider the evidence on which the Authority bases its case. Evidence was provided in relation to three cases, those of the employer of Ms Leigh, as to which Ms Leigh gave evidence, Mr Dudman and Mrs Goddard, whose case we have considered earlier.

Ms Leigh

243. The evidence of Ms Leigh was that one of her responsibilities was to arrange car insurance on behalf of her employer. This involved dealing with the Firm, with

whom her employer had had dealings over a number of years. Ms Leigh dealt almost exclusively with Mrs Masters.

244. In March 2009 Ms Leigh telephoned the Firm to inform them that her employer and his family would be in the UK and would require car insurance. The Firm sent Ms Leigh an invoice dated 20 March 2009, in the name of her employer company, on the Firm's headed notepaper, with the reference LM. The premium of £212 was paid.

245. Around the middle of May 2009, Ms Leigh's employer sold one of his cars and bought a new one. Ms Leigh telephoned the Firm to arrange for the insurance policy to be changed and was advised by Mrs Masters that the new car would require an additional premium, and made suggestions as to different types of insurance cover. An invoice was subsequently, on 18 May 2009, raised by the Firm, again on its headed paper and again with the reference LM. The premium of £549 was paid.

246. Towards the middle of May 2009 Ms Leigh contacted the Firm as there was an urgent requirement for cover for two additional drivers at the end of that month. It had become, Ms Leigh said, increasingly difficult to speak to Mrs Masters as she always appeared to be out of the office. Because it took Mrs Masters two days to return Ms Leigh's call, Ms Leigh complained and asked for Mr Jeffery to call her back.

247. There is a dispute about what happened next. Ms Leigh says around 14 May 2009 that she received a telephone call from Mr Jeffery, who said he was calling from France. Ms Leigh said that she could recall the approximate date as her employer had just purchased a new car. According to Ms Leigh, Mr Jeffery apologised, advised her that the Firm was having some administrative problems, but that the business was running as usual. Ms Leigh's request for additional insurance was processed, and the Firm issued on 16 June 2009 an invoice for the additional premiums. (The invoice referred to two other invoices issued on 26 and 28 May 2009.) The June invoice was on the firm's headed paper, but on this occasion did not include a reference. The premiums were paid.

248. Mr Jeffery says that he did not speak to Ms Leigh. We shall consider this once we have reviewed the evidence of Mrs Masters and Mr Jeffery in relation to the issue of post-January 2009 activities.

249. It was confirmed that the insurance had been put into place. We saw an email from Insurance World, dated 2 September 2009, which confirmed that the vehicles had comprehensive cover.

Mr Dudman

250. Mr Dudman insured his motorcycle through the Firm from 2005. In the period which concerns us, Mr Dudman's evidence was that he was sent an insurance renewal invoice for his motorcycle in March 2009. To pay the insurance he went to the firm's office in Loxwood and gave Mrs Masters a cheque for the premium. He was then sent the certificate of insurance, and it has been confirmed by the insurance company that the policy commenced in March 2009.

Mrs Goddard

251. We have detailed earlier our findings in relation to the insurance cover on Mrs Goddard's home, and the failure of the Firm to effect that insurance, notwithstanding that a standing order mandate had been completed by Mrs Burt, and the payments under that standing order were being received monthly by the Firm up to July 2009, when Mrs Burt cancelled the standing order.

252. What we need to consider in this connection is whether, having regard to our findings, business was being transacted by the Firm after 25 January 2009.

253. In our view it was. We accept that the mere continued receipt of monthly payments under a standing order which had commenced in November 2008 would not of itself represent the carrying on of insurance business. In the normal course it would be expected that the policy would have been commenced or renewed at the time the payment by standing order was accepted, and that the continuing receipt of monthly payments would be nothing more than the recovery of a debt, accompanied where relevant by the discharge of any liability of the broker to the insurance company or other intermediary. That would not, in our view, amount to the carrying on of insurance business.

254. But the position for Mrs Goddard was different. In her case, as we have found, there was no policy renewal at all. We have accepted Mr Jeffery's argument that policy documents were sent to Mrs Goddard, but for the reasons we have explained we have concluded that those documents could have been sent only after the Firm had become aware that Mrs Goddard had moved to live with her daughter, and Mrs Goddard's house had therefore become unoccupied. That was the rationale given by Mr Jeffery for the issue of the proposal forms, and it is clear from the email exchanges between Mr Jeffery and Mrs Masters on 3 August 2009 that Mrs Masters at least had become aware that Mrs Goddard had moved out of her home to live with her daughter. In our judgment, there is no explanation for this continued involvement in the affairs of Mrs Goddard other than that the Firm was seeking (and failing, as we have described) to deal with her insurance business.

The knowledge of Mr Jeffery

255. Having established that there was indeed insurance business being carried on by the Firm after 25 January 2009, we need now to consider what, if anything, Mr Jeffery knew about this both at the time he wrote the letter of 16 April 2009 and afterwards, and what he ought reasonably to have known.

256. Here there is a conflict of evidence between that of Mr Jeffery and Mrs Masters. In essence Mr Jeffery says that any activity was undertaken by Mrs Masters on her own initiative and without his instruction or knowledge. He also denies having received any financial advantage from that activity, even though monies for premiums were being received. Mrs Masters on the other hand says in her witness statement that during her time with the Firm she never did anything without getting Mr Jeffery's specific instructions, she never gave advice to anybody because she was not qualified to give advice, and if she did give specific information she would always tell the client what Mr Jeffery had informed her.

257. As far as finances were concerned, Mrs Masters' evidence is that prior to November 2006 all bank and credit card statements relevant to the firm had been sent

directly to Mr Jeffery's home. After November 2006 (when Mr Jeffery had gone to live in France) the statements were sent to the office, and Mrs Masters would look at them in order to carry out her own responsibilities, and would then post them to Mr Jeffery. However, as we have earlier described, at some time between January and August 2009 Mr Jeffery gave Mrs Masters strict instructions to forward him bank and credit card statements without opening them. This Mrs Masters did. Furthermore, Mrs Masters also said that whenever any money was received she would contact Mr Jeffery to inform him and seek instructions. However, Mrs Masters was herself responsible for chasing clients who were late in paying; she kept a list on her desk and after 14 days would issue an account rendered by way of reminder.

258. Turning first to the dealings with Ms Leigh, Mrs Masters confirmed in cross-examination that she had sent the invoices of 12 March, 18 May and 16 June 2009 to Neal Street Productions Limited. An office copy of each of the invoices was produced; on that of 16 June 2009 Mrs Masters had written that a cheque for the relevant amount had been received on 2 July 2009. Mrs Masters also confirmed that Ms Leigh had contacted her by telephone, one morning while she was having breakfast, to say that some alterations were needed to the motor insurance policy. Mrs Masters said that she could not remember speaking to Mr Jeffery to obtain his instructions, but was clear that she would have done because of the importance of the client. She was sure that the invoice was raised by her following Mr Jeffery's instructions. She would not have known what to charge but for Mr Jeffery's instructions. Mrs Masters was clear that it was Mr Jeffery who would have to determine the total amount to charge. After that, however, Mrs Masters accepted that she was able to issue further statements for outstanding amounts.

259. Mr Jeffery took Mrs Masters to a print out of a statement from Family Mobile detailing calls made using the mobile sim card which Mr Jeffery said was being used by Mrs Masters at the relevant time, namely between 7 April 2009 and 27 May 2009. He posed the question whether if Mrs Masters was seeking instructions from Mr Jeffery it would have been reasonable to expect his telephone number to have been listed as having received a call. Mrs Masters said that she did not attempt to contact Mr Jeffery by phone, because she would not receive a reply, but used email instead. We know, of course, that Mrs Masters did email Mr Jeffery; we have referred to the email exchange regarding Mrs Goddard and Mr Jeffery himself, when questioning Mrs Masters, accepted that she had occasionally emailed him in the relevant period.

260. In Mrs Masters' witness statement she had said that she did not use the Family Mobile sim card very often. Mr Jeffery put it to her that the statement showed 117 calls in the period (of three months), and that this was inconsistent with Mrs Masters' statement. We do not think it is material, but our own finding, were it required, would be that 117 calls (in fact we think the total is 128 calls) over a working period of some 60 days would not amount to much usage at all. In June 2009, there were 22 calls. We see no inconsistency with Mrs Masters' statement. We should at this stage also mention that, as well as the calls from the Family Mobile sim card, Mrs Masters was also using her home telephone to call clients.

261. Mrs Masters accepted that among the calls she had made using the Family Mobile sim card were calls to Lexus Reading to obtain details of the new car Ms Leigh's employer was buying. Those calls were made between 15 and 18 May 2009.

262. Mr Jeffery produced a call log from Insurance World showing that Mrs Masters made a number of calls to that company (nine in total) between March and July 2009. Mrs Masters accepted that she had made those calls. Mr Jeffery referred Mrs Masters to a call she had made to Insurance World on 6 July 2009, in which Mr Jeffery said that Mrs Masters had told Insurance World not to contact her any more because she was no longer working for the firm. He also reminded Mrs Masters that she had said in interview with the Authority on 7 July 2009 that there was no business going on. Mrs Masters' response was that Ms Leigh's employer was an important client, and that Mr Jeffery had instructed her to make the adjustments.

263. Mr Jeffery and Mrs Masters had an email exchange on the day (27 May 2009) on which Ms Leigh had telephoned Mrs Masters over breakfast. We were shown only part of the email exchange, which was headed "Public Liability Policy Renewal", and in particular did not see what had prompted Mr Jeffery to reply to Mrs Masters to express surprise that she was in the office on that particular day. Mrs Masters had written back to Mr Jeffery within minutes of his email to explain that she had had a "phone call from Millie [Leigh] over my breakfast". There is, as Mr Jeffery rightly pointed out, in this exchange no seeking of instruction by Mrs Masters or any instruction from Mr Jeffery. Equally, there is no query from Mr Jeffery as to why Ms Leigh had called, when the business was no longer operating. Mrs Masters' position, faced with this email exchange, and the record of a call she had made to Insurance World shortly afterwards to arrange a temporary driver on the policy, remained that this was something that Mr Jeffery had instructed her to do.

264. However, in a separate email exchange between Mrs Masters and Mr Jeffery on 3 July 2009, Mr Jeffery is recorded as writing to Mrs Masters that it would only be if Mrs Masters had renewed a policy that there would be an issue, and "nothing has been done since February when the company ceased to trade". It is possible therefore that Mr Jeffery himself was drawing a distinction between the types of activity that would be regarded as "trading" in this sense, renewals being the wrong side of the line.

265. Re-examined by Ms Clarke, Mrs Masters confirmed that she did not send out the invoices to Neal Street Productions Limited dated 20 March 2009, 18 May 2009 or 16 June 2009 without Mr Jeffery knowing about the matter in each case. Mr Jeffery would tell her how much to charge. Although she would have been able to complete the invoice details from information she could obtain from the insurer, she would not herself have known how much to charge; she would have been told by Mr Jeffery. Mrs Masters also confirmed that she only became aware that the Firm had ceased trading when she received her P45 in the post on 14 May 2009.

266. We are satisfied that the call Ms Leigh says she received in May 2009 was from Mr Jeffery. There is in our judgment no reasonable alternative on the balance of probability. Mr Jeffery had raised no issue with Mrs Masters as to the call from Ms Leigh to Mrs Masters in May 2009, and there is every reason to suppose that he would have wished to reassure Ms Leigh (and, more particularly, her employer) that matters were in hand. We regard as entirely fanciful Mr Jeffery's suggestion that the call could have been made by Mrs Masters' husband.

267. In the case of Mr Dudman, Mrs Masters was unable to recall any of the detail, save to say that Mr Dudman used to like to make a day of coming to the office to pay his insurance premium. Mrs Masters said that Mr Jeffery would have known about

the premium paid by Mr Dudman, not because he would have seen the bank accounts, but because Mrs Masters would have told him that the money had been paid.

268. We were taken to the office copy of the invoice to Mr Dudman dated 12 February 2009, on which Mrs Masters had made various handwritten notes. Those included the date of renewal of the policy, the insurer and a policy number, "TOB" standing for Terms of Business, confirming that those had been sent to the client, "DR (debit) 116.55 + £2" referring to the premium, "Paid 26.2.09 £290", referring to Mr Dudman's payment of the invoiced amount and "Cert out 6/6/06 [accepted as intended as 09]", meaning that the insurance certificate had been sent to Mr Dudman on 6 June 2009. It may be noted in particular that the premium quoted by the insurance company was very much lower than the invoiced amount of £290. Mr Jeffery and Mrs Masters agreed that the difference was a fee.

269. In re-examination, Mrs Masters said that Mr Jeffery must have known about the renewal of Mr Dudman's policy in March 2009, because Mrs Masters would have told him that Mr Dudman had been in touch. Mrs Masters was sure that she had not renewed Mr Dudman's policy without Mr Jeffery knowing of it.

270. In relation to Mrs Goddard, we have made certain findings earlier. There is little to add in relation to the issue of what Mr Jeffery knew or ought to have known in that connection. However, we should just note that Mrs Masters herself was aware that Mrs Goddard's policy could not be renewed as at October 2008 because of the loss of the Higos agency. She was aware that it would have to have been new business. Nevertheless, she confirmed that the renewal of a policy or the placing of a policy with a new insurer was something that she would not do on her own initiative, but only on the instructions of Mr Jeffery. Furthermore, Mrs Masters' evidence was that Mr Jeffery would have known of the standing order premiums being received because those amounts were going to the Firm's bank account.

271. On the basis of our own analysis of the Goddard position, we find that Mrs Masters did email Mr Jeffery to inform him of the need for immediate cover, as she had said in her email of 3 August 2009. The notification to Mr Jeffery could only have taken place after February 2009, when Mrs Burt's son had died, and the house was to be unoccupied. Mr Jeffery's knowledge of this must therefore have post-dated January 2009.

Our conclusions on the post-January 2009 activities issue

272. Mr Jeffery sought to discredit the evidence of Mrs Masters, referring in particular to alleged inconsistencies between what Mrs Masters said during her interview with the Authority in July 2009 and her evidence to this Tribunal. As we described earlier, we have seen Mrs Masters and Mr Jeffery give evidence, and we are able ourselves to assess the evidence given by each of them on its own merits. This is not a case, as Mr Jeffery urges upon us, where we reach a conclusion solely by reference to the credibility of a witness, or the lack of it.

273. In our judgment Mrs Masters was capable of performing many tasks effectively delegated to her by Mr Jeffery, and she understood the way the business worked. She kept her own records, such as in relation to payments by clients so that she could initiate reminders, and notes regarding how easy or difficult it was to deal with certain

clients. She was able to deal with administrative tasks, and did so to the best of her ability, although that was severely hampered when Mr Jeffery moved abroad.

274. On the other hand, we do not consider that Mrs Masters was capable of acting on her own initiative in placing insurance, or in assessing the amount to be charged by the Firm. We find that these are matters on which Mrs Masters would, in the normal course, always refer to Mr Jeffery. We find it inconceivable that Mr Jeffery would have relinquished control to Mrs Masters in the way he would have us believe that he did. We do not accept Mr Jeffery's evidence in that regard.

275. That said, we entertain some doubts about the renewal of Mr Dudman's policy. The evidence of Mrs Masters in this respect was that this was something that she would have told Mr Jeffery, but there is no evidence of any involvement of Mr Jeffery at that stage. Mr Jeffery himself appears to have drawn the "trading" line at renewals of policies, as indicated in his email to Mrs Masters of 3 July 2009. We do not think that Mr Jeffery would have written that email in those terms if he had himself been aware of the Dudman renewal.

276. If the business had ceased completely we would have expected to see some reference to that fact having been communicated to clients. There was none. We do not accept Mr Jeffery's assertion that this could not have been done due to the loss of records in the storms in France. Even Mrs Masters was unaware that the business had ceased until she received her P45 in May 2009. It is striking also that in the email exchange of 27 May 2009 regarding Ms Leigh's call to Mrs Masters, Mr Jeffery does not mention the fact that there was no business and that the Firm could therefore no longer take instructions from Ms Leigh.

277. We accept Mrs Masters' evidence concerning the Firm's bank and credit card statements. We are unable to believe that Mr Jeffery, having up until 2006 (when he moved to France) arranged for statements to be sent to his home, would have lost interest in the Firm's financial position to the extent that he would have been unaware of payments and receipts on the bank account. We accept that, up to the indeterminate date in 2009 when the statements were instructed to be sent directly to Mr Jeffery in France, Mrs Masters kept Mr Jeffery informed of the financial position.

278. What then can we say that Mr Jeffery knew when he wrote the letter of 16 April 2009? We find, in relation to Ms Leigh's employer, that he knew about the matters covered by the invoice dated 20 March 2009, and had given Mrs Masters instructions in that regard. On the other hand, we are not satisfied that he knew about the renewal of Mr Dudman's policy in March 2009. We find that he knew in February or March 2009 about the need for cover following Mrs Goddard's house becoming unoccupied, and instructed Mrs Masters to send proposal forms to Mrs Goddard at that time. The matters of which he was aware, in our view, do constitute the carrying on of insurance business after 25 January 2009.

279. We find, accordingly, that Mr Jeffery knew that his statements in the letter of 16 April 2009 to the Authority were false. In our judgment that letter, the terms of which we have summarised earlier, was nothing more than an attempt by Mr Jeffery to say as little as possible to the Authority, and by constructing the pretence that the business was closed, Mr Jeffery was hoping to mislead the Authority into taking no further action.

280. Even if Mr Jeffery had not known of the post-January 2009 activities that we have found he did, and in respect of the Dudman renewal where we have found that he did not, we are in no doubt that, having regard to his position as the CF1 and CF8 in respect of the Firm, he ought reasonably to have known. It is not reasonable for such an authorised person to seek to escape responsibility by turning a blind eye to what is being done in the name of the Firm, or to plead in defence that he was out of the country and therefore unable to have first-hand knowledge. It is the responsibility of an authorised person, as would be appreciated by any reasonable such person, to ensure that they do know what is going on. It is wholly unreasonable for a statement to have been made to the Authority by Mr Jeffery without him first having taken all reasonable steps to ascertain the true position. In this case, that would have required only a simple telephone call to Mrs Masters.

281. Furthermore, we are satisfied that Mr Jeffery knew after 16 April 2009 that the business was continuing. We find that he knew of the matters covered by the invoices to Neal Street Productions Limited dated 18 May and 16 June 2009, and that he telephoned Ms Leigh in May 2009. Even if, contrary to that finding, he had been unaware of these matters, we find that he ought reasonably to have been aware of them, and it would have been incumbent upon him to have informed the Authority of the false statement that had been made in the 16 April 2009 letter at the earliest reasonable opportunity.

282. For these reasons, we find that Mr Jeffery made false statements to the Authority in the letter to it of 16 April 2009. Mr Jeffery knew that those statements were false at the time he made them. We conclude therefore that Mr Jeffery did not act with integrity in this respect and is in breach of Statement of Principle 1. We also conclude that Mr Jeffery did not deal with the Authority in this respect in an open and cooperative way, nor did he disclose appropriately the information concerning the Firm's activities. He is accordingly also in this respect in breach of Statement of Principle 4. There is no limitation issue.

Failure to cooperate

283. The Authority's case is that Mr Jeffery failed to cooperate with its investigation into his and his Firm's conduct. Mr Jeffery says that this is not the case, that he was willing at all times to cooperate, but that the Authority itself made errors in failing to contact him at material times.

284. The Authority appointed an investigation team to investigate Mr Jeffery and the Firm on 25 February 2009. We were also taken to an earlier memorandum of appointment, dated 10 December 2008. Mr Baum explained that the intention had been to make an unannounced visit to the Firm's offices. That would have meant that the memorandum would have been served on the making of the visit, and not before. The case was accepted into the Authority's enforcement division in December 2008, but the notice was not served at that time because of a fear that documents would be destroyed. Between December 2008 and February 2009 the focus of the investigation changed to some extent, in that the investigation no longer concerned alleged non-disclosure of disciplinary action taken by the Insurance Brokers Registration Council (IBRC) in August 1998, and for that reason a new memorandum was issued in February 2009.

285. As we described when setting out the background facts, on 4 and 5 March 2009, the investigation team carried out two unannounced visits to the Loxwood premises. Mr Jeffery disputes that these premises were at the relevant time offices of the Firm; he says that they were the offices of another company Jeffery Flanders (Correspondants) Limited. So far as it is material, we do not accept that distinction; we have seen evidence of correspondence from the Firm at the Loxwood address after March 2009.

286. No-one was present at the office on 4 March 2009. The investigation team returned the following day. Mr Baum and another investigator, Sean Byrne, entered the Loxwood address. Mrs Masters was present. Mr Jeffery was not, and Mrs Masters told the investigators that she did not know where he was. Asked if Mr Jeffery could be contacted by telephone, Mrs Masters said that she did not have a number for him, and that she only contacted him by email. Mrs Masters was asked to send Mr Jeffery an email in the hope that he might contact the office.

287. Mr Jeffery called Mrs Masters, and the telephone was passed to Mr Byrne. Mr Byrne's description of Mr Jeffery's attitude, from his attendance note of the visit, is that Mr Jeffery appeared aggressive and pompous and displayed contempt for the Authority. Mr Byrne explained that the Authority had a document request, but Mr Jeffery's response, as recorded in the note, was that the Firm's documentation was with him in France, so that it was not possible to assist in the request. Referring to files which the investigators could see on the desk, Mrs Masters referred to these as skeleton files. Mr Jeffery refused permission for the Authority to look at any documents at that time.

288. During the conversation, according to the note, originals of the documents served on the Firm were emailed from the Authority's offices to Mr Jeffery's email address. Mr Jeffery was told that he had until 13 March 2009 to comply with the document request, to which Mr Jeffery responded that he would try to arrange flights to the UK in the following week (cost permitting) and answer the document request by the deadline if he could.

289. Mr Jeffery disputes the account of Mr Byrne as recorded in the attendance note (and as supported by Mr Baum) in a number of respects. Mr Jeffery said that he had told Mr Byrne that he believed the visit had been made at the instigation of the police, and that Mr Byrne had denied this. Mr Byrne's note simply refers to Mr Byrne's awareness of the need not to be drawn into such a discussion. Mr Jeffery asked Mr Baum in cross-examination about the length of the call. Mr Baum was unable to recall, but in the end proffered an estimate of 10 minutes. Mr Jeffery produced a call log which suggested that the call lasted only around 2 minutes. We do not consider that this casts any doubt on the record of the conversation by Mr Bryrne, and which Mr Baum supported. Much can be said in a short conversation, and recollections of time in such circumstances are inherently unreliable.

290. Mr Jeffery asserted that he was not in France, but in Spain when he made the call, and that accordingly no documentation was with him at that time. This was in our view a simple misunderstanding. Mr Jeffery might have been speaking from any location (outside the UK) and simply referring to the location of the relevant documents. We have no doubt, however, that Mr Jeffery did say that he had relevant documents, and that he would comply with the document request. Mr Jeffery did not at this stage inform the investigators that the relevant records were all in electronic

form, and had been destroyed by lightning strikes in January 2009. Mr Jeffery's explanation, in cross-examination, was that he thought the references were to financial records and documents relating to the company, rather than client documents. Given Mr Jeffery's experience of the earlier police proceedings, we do not find his explanation credible. We are sure that he knew exactly what the Authority was requesting.

291. On 13 March 2009 Mr Jeffery sent a fax (dated 12 March) to the Authority, for the attention of Mr Byrne, in which he confirmed that whilst the Firm was happy to assist with the Authority's enquiries, it was seeking legal advice before doing so and would write again as soon as possible.

292. The Authority replied on 16 March 2009, saying that it did not consider the taking of legal advice to be a reasonable excuse. After warning of the consequences of non-compliance, the Authority repeated the document request, giving a new deadline for compliance of 4pm on 23 March 2009.

293. By letter dated 20 March 2009, but faxed to the Authority on 23 March, Mr Jeffery, for the Firm, wrote to the Authority complaining of what it characterised as "a malicious prosecution, harassment and/or breach of human rights legislation". The letter made a data protection request that the Authority provide the Firm with all papers relating to any matter involving Mr Jeffery or the Firm from April 2004.

294. The Authority's letter of 16 March 2009 had included specific document requests. We set out here a table showing those requests and Mr Jeffery's replies in his letter dated 20 March 2009:

FSA document request	**Mr Jeffery's response**
1. Documentation relating to the Firm's financial affairs, including the Firm's bank account statements, the Firm's client bank account statements, all correspondence between the Firm and Butterfield bank and copies of the Firm's financial statements since authorisation.	1. From October 2006 Mr Jeffery's office has been "paperless" so all relevant financial records were stored electronically. The company's computers were kept in the Landes region of South West France, but with two lightning strikes, during the severe storms of the 24th and 25th January this year, the computers suffered irreparable damage. The data contained on them was therefore lost, and as the "backup" was destroyed at the same time, it is impossible to retrieve the lost data.
2. A copy of the Firm's sales procedure/process guide.	2. We were advised prior to authorisation, that as there is only one authorised adviser, a guide written by the adviser, to the adviser, was not necessary.
3. A copy of the Firm's up to date	3. as no 1 above

business register.	
4. Any correspondence between the Firm and insurance counterparties, such as brokers, underwriters and insurers.	4. This firm has used the internet to purchase cover for its clients.
5.Fifteen original client files as specified by the Firm.	5. as no 1 above
Details of the Firm's compliance arrangements. This should include: • a copy of the compliance procedures that are in place; and • a copy of all compliance reports (internal and external), if any, together with details of the remedial action undertaken as a result.	6. as no 2 above
Details of the Firm's complaints handling process during which (sic) should include: • a copy of the complaints procedures guide; • a copy of the complaints register with details of all complaints received, to include the date of complaint, the nature and type of complaint received, the status or outcome of the complaint and the name of each complainant.	7. as no 1 above

295. We note, with regard to Mr Jeffery's response to 1. above, that in answer to questions from the Tribunal, Mr Jeffery told us that, contrary to that response, there had been no back up to the information on the hard disk. However, in later submissions Mr Jeffery sought to correct this, saying that the computer had been fitted with a mirror hard drive in 2008, which had been intended as a back up, and that this had been destroyed at the same time as the main hard drive. It is difficult to reconcile these different accounts.

296. Mr Baum replied for the Authority on 27 March 2009, advising Mr Jeffery that the Authority's Data Protection team would be contacting him shortly, and saying that the points made in Mr Jeffery's letter of 20 March 2009 would be addressed after disclosure of the further material. This was followed by a letter from Mr Byrne on 3 April 2009 to Mr Jeffery setting out a modified list of document production requirements. This acknowledged the computer loss referred to by Mr Jeffery, and

sought certain information such as the Firm's new business register since 25 January 2009. Full details of the insurance companies used to purchase cover were sought, along with a written explanation of the services provided to clients at that time. Information was also sought as to the activities of Mrs Masters on behalf of the Firm in the UK, and an explanation of the actions taken by Mr Jeffery since 25 January 2009 to contact existing clients since losing their details.

297. No reply having been received by the Authority, Mr Byrne wrote again to Mr Jeffery on 23 April 2009, to warn once more of the consequences of non-compliance and to repeat the amended document request. Mr Jeffery replied on 1 May 2009, enclosing a copy of his response dated 16 April 2009. We again set out the Authority's questions and Mr Jeffery's responses in tabular form:

FSA amended document request	**Mr Jeffery's response**
1. Provide full details of the Firm's bank account and client bank account.	1. You already have these details.
2. A copy of the Firm's new business register since 25 January 2009.	2. No new business register exists post 25 January 2009.
3. Full details of the insurance companies used to purchase cover for your clients.	3. No records exist.
4. Provide the full name, address and insurance details for all new clients since 25 January 2009.	4. As per my previous letter.
5. Provide a copy of the compliance procedures put in place since 25 January 2009.	5. As 4 above.
6. Provide a copy of the Firm's complaints handling process put in place since 25 January 2009.	6. As 4 above.
7. Provide a written explanation of the services you provide to clients at this time, this should include: • the types of business you conduct; • the level of business you conduct; • how and where you advertise your services; • the method by which clients contact the Firm; • the method by which you select and purchase insurance and/or other	7. None.

products for your clients; • the method by which clients pay for your services.	
8. Provide a written explanation of the activities carried out at your business address The Old Barn, Vicarage Hill, Loxwood, West Sussex RH14 0RH.	8. None.
9. Provide a written explanation of the activities conducted by Linda Masters on behalf of the Firm in the UK.	9. None.
10. Provide a written explanation of the actions you have taken since 25 January 2009 to contact your existing clients since losing their details, as stated in your reply of 20 March 2009.	10. As [unclear] above.

298. Mr Baum wrote to Mr Jeffery on 18 May 2009. He referred to Mr Jeffery's letter of 1 May 2009, but said that the letter of 16 April had not been received. He went on to summarise his understanding of Mr Jeffery's position, in order to give Mr Jeffery the opportunity to confirm or otherwise. The five points summarised by Mr Baum were:

- The Firm has not carried out any business whatsoever, at either your address in France or the Firm's registered address at the Old Barn since 24/25 January 2009, the date of destruction of the Firm's computers due to the lightning strikes.
- You therefore no longer provide any services to clients and have lost all information and knowledge of their names and contact details.
- The Firm used the internet to purchase cover for clients prior to 24/25 January 2009.
- All business records before this date have been destroyed.
- You have not contacted any of your clients to inform them of the destruction of their records.

299. In the same letter Mr Baum made a further request for information under the Authority's statutory powers. There is a dispute over whether Mr Jeffery replied to Mr Baum's letter. Mr Jeffery produced a print of a faxed letter dated 10 June 2009, addressed to Mr Byrne at the Authority, which he said was faxed to the Authority's general fax number on 11 June. In support of this he produced a copy of a print out from a fax machine which indicates that two unsuccessful attempts were made on 10 June 2009 to send a fax to the Authority's fax number, and that a two-page fax was successfully sent on 11 June. Against this, Mr Baum's evidence was that the letter was not received by the Authority, although the Authority does not keep an internal fax log. The Authority say that the last piece of correspondence received from Mr

Jeffery until this matter was referred to the Tribunal was a faxed letter dated 26 May 2009 acknowledging receipt by Mrs Masters on that day of Mr Baum's letter of 18 May 2009 and promising to respond, but not within the deadline set.

300. It is therefore possible that the fax dated 10 June 2009 was sent to the Authority and mislaid once it had been received. We note, in this connection, that the reference quoted on Mr Jeffery's letter is incorrect: it states RF 00467 ENF, whereas Mr Baum's letter has the reference RE00467-ENF. However, the same error had been made on Mr Jeffery's letter of 26 May 2009, which was received by the Authority by fax. The evidence that a fax was sent from Mr Jeffery's fax machine to the Authority's fax number on 11 June 2009 supports this, although we note that the record refers to a fax of two pages, whereas the two-page letter of 10 June 2009 itself refers to an attachment which would have increased the number of pages requiring to be faxed.

301. On balance we conclude that it is more likely than not that Mr Jeffery sent the two-page letter of 10 June 2009 to the Authority by fax, and simply omitted to include the attachment. We say this because, with the possible exception of the address from which the fax was purported to have been sent, and a statement concerning Mr Jeffery's address, or lack of an address, in France (which we shall consider later), we can see nothing in the letter of 10 June 2009 which suggests that Mr Jeffery would have any reason to concoct it at a later stage and then claim that it had been sent on 11 June 2009.

302. We again set out in tabular form the further information request made by Mr Baum in his letter of 18 May 2009 and the replies made by Mr Jeffery in the faxed letter of 10 June 2009. We should note that Mr Jeffery's reply confined itself to the information request. It did not confirm or deny any of the five points summarised by Mr Baum.

Further information request	**Mr Jeffery's response**
1. As you are aware, we attended your Firm's registered address on 4 March 2009 and noted paper files. Please arrange for your office to forward copies of these files by [4pm on 26 May 2009] to me. [This time limit was extended to 4pm on 10 June 2009 by letter from Mr Baum to Mr Jeffery following receipt of Mr Jeffery's faxed letter of 26 May 2009.]	1. You[r] reference to "registered address" is confusing, as to me that would be the company's registered address, as recorded at companies house, which is NOT, the old barn. I assume you do not mean this, despite the phrase, but I have no idea what was "noted" on the 04 03 09, as I was not there. As advised before, the company was "paperless" and hasn't traded since January, therefore any papers "noted" could not have related to it.
2. The names of all members of staff, either employed on a full time, part time or temporary basis, by the Firm since 1	2. I am not sure I am allowed to just issue this information, without the relevant person's consent.

January 2008.	I note the FSA goes to great lengths to delete its employee's names from it's records, that I have seen in the past, and I assume it is for the same reason. Perhaps you would advise why you understand the FSA to do this, as I believe I would need to take advice on this point.
3. Your home and work address, and telephone numbers, in France.	3. I do not have an office, or address, or telephone number in France, perhaps you would explain why you think otherwise.
4. Your intentions regarding the recently incorporated company, Jeffery Flanders (Correspondants) Limited *sic*. I note that this company was incorporated on 10 February 2009, shortly after the computer failure.	4. I do not believe that the FSA has any interest in or ability to request such information. However to assist, the new company you refer to, is a secretarial services company.
5. Have you held client money at any time since 24/25 January 2009 and, if so, the purposes for which it is being held?	5. You must know it is impossible to answer your question accurately, as any balance in a client account could be commission yet to be calculated and/or taken. However, as there are no records available to be able to compile management accounts, I cannot answer.

303. In cross-examination, Mr Jeffery agreed that the Authority's letters made it plain to him that a formal investigation was being conducted into his and the Firm's activities, that investigators had been appointed, that the request for documents was a formal one and the sanctions for failing to comply. He denied that the various answers to the Authority's letters were disingenuous and inaccurate and denied that he had failed to cooperate with the Authority's investigation.

304. In our judgment, the answer to the nature of Mr Jeffery's responses to the Authority's questions is plain on the face of the correspondence. Mr Jeffery's responses were frankly woefully inadequate. It would be difficult, we think, to find more stark an example of disingenuousness and obstruction. Mr Jeffery appears to have believed, and continues to believe, that sweeping statements such as that the data on computers has been destroyed is a sufficient blanket response. We know that documents nevertheless existed; Mr Jeffery himself has produced to the Tribunal more than 800 pages, including correspondence. Mr Jeffery himself accepted in cross-examination that he could have provided banking details and could have obtained copies of bank statements. To answer a request for correspondence with the statement that the Firm has used the internet to purchase cover for its clients displays a wholesale disregard for what is a proper level of disclosure and cooperation.

305. We have found that Mr Jeffery's statements as to there being no new business after 25 January 2009 were false, and that Mr Jeffery knew them to be false at the time they were made. Mr Jeffery was able in these proceedings to call upon his memory in relation to many individual client matters, and yet he thought it was adequate to answer a request for full details of the insurance companies used to purchase cover by simply saying that no records existed. That in itself was untrue, even allowing for the loss of computer data, as the documents produced by Mr Jeffery have demonstrated.

306. Even Mr Jeffery's faxed letter to the Authority of 10 June 2009, which was not received by the Authority, does not assist him. His reference to the registered address as being misleading is disingenuous, as is his reply to the request for names of members of staff. His refusal to provide contact details in France by saying that he did not have an office or address there is disingenuous at best; Mr Jeffery was at pains to tell us of the practical difficulties he had encountered when the storms had hit in France. We also do not consider that it would have been impossible for Mr Jeffery to have answered the question about the client money; although electronic records might have been destroyed, it is clear on the evidence that bank statements were still being received in paper form, and we are in no doubt that Mr Jeffery had access to those statements.

307. The request at 1 refers to paper files which had been noted at the time of the Authority's unannounced visit on 5 March 2009. These had been referred to by Mrs Masters at that time as "skeleton client files". Mr Jeffery's response in his letter of 10 June 2009 is that these could not have related to the Firm, as the business had not traded since January 2009. That we have found not to be true, and we have found that Mr Jeffery knew it was not true. However, it is significant that Mr Jeffery believed, and continues to believe, that a request for unidentified files can be met with a response that they are not related to the business. Such a request should be met openly and transparently by supplying the files to the Authority so that the Authority itself can determine the relevance of those files.

308. In connection with these files Mr Jeffery sought to submit to us that Mrs Masters had given evidence that the only files in the cabinet were her own four policies and a file for Mr Jeffery's father. That is not an accurate representation of Mrs Masters' evidence. Mrs Masters said that, in relation to the premises at Tannery Lane, there were half a dozen files, of which four were her own and one was Mr Jeffery's father's; she could not identify any others. But that was in relation to Tannery Lane, and not Loxwood where the presence of files had been noted by the investigators. In that respect, in response to questions from the Tribunal, Mrs Masters confirmed that the skeleton files she was left with when Mr Jeffery went to France were client files, albeit that they were very thin, perhaps only including the last invoice. We find that Mr Jeffery knew that was the case, and that his response to the Authority's requests in retain to those files was deliberately misleading.

309. Even allowing for the letter of 10 June 2009, the Authority had no further response from Mr Jeffery or the Firm until the receipt of Mr Jeffery's Tribunal reference on 20 September 2010.

310. The dispute in relation to this period is whether, as Mr Jeffery says, the fault lies with the Authority for failing to address communications to him correctly, or if, as the

Authority contends, Mr Jeffery failed to make contact with the Authority and failed to provide the Authority with the means of communicating with him.

311. We have to say that we find this issue straightforward to resolve. There is no doubt in our minds that Mr Jeffery failed in his responsibility to provide the Authority with a contact address for correspondence in relation to the investigation. Instead, he made it as difficult as possible for the Authority to do so. We reject Mr Jeffery's argument that the fact that he had given the Woodland House address to the Authority in his letter of 10 June 2009 was adequate for this purpose, or that the use of the Leatherhead address (Falconwood) on bank statements that came into the Authority's possession should have indicated to the Authority that either was an appropriate contact address. Woodland House was known by the Authority to have been the address of Mr Jeffery's former family home prior to his move to France in 2006. However, it was also known to the Authority (and was a fact) that Mr Jeffery was not living at that property at the material time and that the property had been let to tenants. It was not reasonable for Mr Jeffery to have expected the Authority to have considered that Woodland House was an appropriate address for correspondence. Falconwood was the address of Mr Jeffery's father, and it had never been an address for correspondence with the Authority.

312. Mr Jeffery is clearly a man who prefers not to be found. His own admitted policy of not revealing his whereabouts to clients and others in connection with the Firm speaks volumes for his attitude to open and transparent dealing. His failure to provide the Authority with a proper contact address led to the Authority being unable, despite almost herculean efforts, to engage in any correspondence with Mr Jeffery at the material time.

313. We do not propose to recite in detail the many different avenues explored by the Authority with the aim of contacting Mr Jeffery. The Authority wrote to the Firm's former office address at Loxwood, from which the Authority say that Mrs Masters was collecting post and forwarding it to Mr Jeffery at least until July 2009. Mr Jeffery disputes this, but if post was not being collected, it either should have been or an effective redirection service ought to have been put in place. Mail had been re-directed from Loxwood to the new office premises in Tannery Lane until mid-August 2009. Mr Jeffery made much of certain failures with the mail re-direction service, but the most significant feature of that, in our view, is the fact that, of all the addressees Mr Jeffery had registered for the re-direction service, the most conspicuously absent was his own individual name. If Mr Jeffery had, as he submitted to us, genuinely wished to receive correspondence from the Authority in relation to its investigation into him personally, he would in our judgment have painstakingly included his own name on all re-direction requests. Instead we find that Mr Jeffery studiously avoided putting his own name on any such request; and that he did so deliberately to avoid receiving correspondence from the Authority.

314. The Authority also attempted to contact Mr Jeffery by email. His Tiscali email address was functioning until July 2009. But Mr Jeffery claimed that he did not at the material time check that address, which was being used by Mrs Masters after the move from Loxwood to Tannery Lane. Subsequently, on 18 November 2009, the Authority received further information from Surrey police of another email address for Mr Jeffery (a gmx address) on which Mr Jeffery had been corresponding concerning a complaint made by Mr Jeffery. Mr Jeffery did not respond to an email from the Authority to that address. Nor was there any response to an email sent to a

further possible address (an lcbroadband.co.uk address) suggested to the Authority by Mr Jeffery's brother.

315. The investigation team had been provided by Surrey police with an address for Mr Jeffery in Landes, France. Mr Jeffery had stated this to be his address when he gave evidence in his criminal trial in June 2008, at which time he had said that he had been living in France since November 2006. In her interview with the Authority on 7 July 2009, Mrs Masters also confirmed that Mr Jeffery resided in France, and that his contact address was the Landes address. On 8 July 2009 the Authority sent to the Landes address further copies of all the correspondence that had been sent to the Loxwood address, and from that time wrote to the Landes address as well as to the Loxwood address. The Authority also obtained verbal confirmation on 1 October 2009 from the St Justin town hall that Mr Jeffery owned the Landes property; this was disputed by Mr Jeffery. Mr Jeffery says that the property is owned by his wife.

316. Continuing with the French theme, the Authority received information that Mr Jeffery had a second property in France, namely an apartment in Antibes. The Authority wrote to that address, but received no reply.

317. The Authority attempted to contact Mr Jeffery by telephone as well. Mr Byrne called the Firm's number on 13 July 2009 and was informed by a receptionist that his message would be passed to Mr Jeffery. Mr Jeffery did not return the call. A message was also left that day at the telephone number in France that the Authority had been provided with by Surrey police. On 28 July 2009 Mr Byrne telephoned the Firm's number again, but the call was on this occasion answered by a recorded message indicating that it was no longer possible to contact the Firm. That led to the issue of the consumer alert.

318. Finally, the Authority tried to contact Mr Jeffery in person. Having received information from Surrey police that Mr Jeffery might be attending court at the Principal Registry of the Family Division (in an unrelated matter), representatives of the Authority attended the hearing, with the intention of providing Mr Jeffery with copies of the document requests and compelled interview requests which he had failed to acknowledge. It was also intended to inform Mr Jeffery of the consumer alert. However, the efforts came to nothing as Mr Jeffery was not at the hearing.

319. The Warning Notice, Decision Notice and Final Notice were sent to the Loxwood address, the Antibes address and the Landes address. The notices served on the Loxwood address were sent by special delivery and first class post. All the notices sent to the Loxwood address were returned, and there was no response. Mr Jeffery submitted that the fact that post was being returned should have alerted the Authority to the fact that further enquiries should be made. We reject that submission. The Authority is entitled to be told by an authorised person where correspondence can be sent without risk of it being returned; it is not for the Authority to make enquiries. That would be putting the boot on entirely the wrong foot. The Authority was perfectly entitled to conclude that post was not being accepted, and that any redirection service had ceased.

320. Mr Jeffery's submissions go to what he submits are the failures of the Authority to send correspondence to the correct address. He points to reasons in each case why the Authority were wrong to suppose that any of the addresses, physical or electronic, were appropriate to bring the relevant matters to his attention. We find that none of

that is material. It was not the responsibility of the Authority to act as detectives in seeking to trace Mr Jeffery. Mr Jeffery seeks to rely in this respect on the frank admission by Mr Baum that he had no experience of tracing people. Mr Baum had no need of such experience. The Authority was entitled to expect cooperation from Mr Jeffery in providing a proper address at which he could be contacted.

321. The Woodland House address, which was the address that Mr Jeffery had put on his letter of 10 June 2009, and which Mr Jeffery says could have been ascertained by the Authority from copies of bank and credit card statements which the Authority obtained during the course of its investigation, was not in our view an address to which the Authority could reasonably have been expected to correspond. It was not an address at which Mr Jeffery was residing at the material time, it was occupied by tenants (both of which were facts known to the Authority); and reliance would have to have been placed on a mail redirection service. It is not relevant that Mr Jeffery appears to have been using the Woodland House address for other correspondence.

322. Nor is it relevant that Mr Jeffery used an address in Leatherhead as a correspondence address. That was not Mr Jeffery's own address, and it was not an address specified by him as a correspondence address with the Authority. The fact that the Leatherhead address appeared on bank statements which the Authority obtained from the bank under a disclosure request would not reasonably have alerted the Authority to the fact that this was an address to which correspondence could be sent to Mr Jeffery. Even if it had been reasonable for the Authority to have been expected to engage in this sort of detective work (which it was not), that would not in any way absolve Mr Jeffery from his own responsibility to notify an address for correspondence, and his failure in the circumstances to have done so.

323. The investigation team did not receive Mr Jeffery's letter of 10 June 2009. It would have been evident to Mr Jeffery, if he had acted to any extent reasonably, that the Authority would have been wishing to continue to discuss matters with him. The correspondence entered into up to June 2009 could not in any sense have reasonably been regarded as conclusive. The very fact that, if it were to have been the case, Mr Jeffery had not heard anything further from the Authority ought reasonably to have prompted him to confirm his contact details with the Authority. He did not do so.

324. At any event, we do not accept Mr Jeffery's submission that he did not receive any of the relevant correspondence. We do not accept that the Landes address was erroneous, nor that Mr Jeffery would have remained unaware of the attempts to contact him by email, even though one of the email addresses appears to have been that of his son. Whatever the ownership status of the Landes property, it is clear that Mr Jeffery lived there; in evidence he referred to the fact that "we have a huge barn and there is an office-type building". Any distinction based on ownership is meaningless. Mr Jeffery was there, and we do not consider there was any reason why post sent by the Authority would not have been received by him there.

325. On the basis of our findings in relation to Mr Jeffery's responses to the Authority's requests and his failure to inform the Authority of an address where he could be reliably contacted, we are in no doubt that Mr Jeffery failed to deal with the Authority in an open and cooperative way and failed to disclose appropriately any information of which the Authority would reasonably expect notice. Mr Jeffery was therefore in breach of Statement of Principle 4. There is no limitation issue.

Limitation

326. As we described earlier, s 66 FSMA is the provision which enables the Authority to impose a penalty in the case of misconduct by a person while he is an approved person. That section is subject to a limitation on the period in which the Authority may take action under it, in the form of issuing a Warning Notice. At the material time for the purposes of this application, that period was two years from the first day on which the Authority knew of the misconduct (s 66(4)). Knowledge for this purpose includes having information from which the misconduct can reasonably be inferred (s 66(5)). The question therefore arises as to whether the Authority knew of any of the relevant misconduct, or had information from which the misconduct could reasonably be inferred, before 29 May 2008, which is two years earlier than the issue of the Warning Notice to Mr Jeffery on 28 May 2010.

327. We turn therefore to a consideration of the proper construction to be afforded to s 66(4).

328. The first point we make is a general one. It is that conduct of a person prior to that person becoming an approved person is outside the scope of s 66. Only misconduct while an approved person is relevant: s 66(2). It follows that knowledge, actual or inferred, on the part of the Authority of a person's conduct prior to that person becoming approved is irrelevant to any question of limitation as regards an allegation of misconduct whilst that person is an approved person, and which is thus within the scope of s 66.

329. With the caveat that care should be taken in comparing a time limit in s 66 with the time limit for civil negligence actions in s 14A of the Limitation Act 1980 and related case law on its interpretation, Ms Clarke referred us to *Haward and others v Fawcetts and others* [2006] UKHL in the House of Lords, and to the case law referred to and approved in that case. In our judgment, whilst those cases contain some useful observations to which we shall refer, the construction of s 66 depends primarily on an analysis of its own terms.

330. Section 66(4) limits the power of the Authority to take action under s 66(1). It is necessary to ascertain the time at which the Authority knew of the misconduct, or had information from which the misconduct could reasonably be inferred. Unless a Warning Notice was given under s 67(1) within two years from that time, the Authority may not take action under s 66(1) and so will not be entitled to do any of the things set out in s 66(3), including the imposition of a penalty.

331. The two-year period runs from the time at which the Authority either knew of the misconduct or had information from which the misconduct could reasonably be inferred (s 66(4), (5)).

332. The first of these is a subjective test which looks at the actual knowledge of the Authority. It relates to actual knowledge of the misconduct. That has to be construed by reference to s 66(1). For time to start running in this respect the Authority must have actual knowledge that the particular person against whom action is to be taken has either failed to comply with a statement of principle issued under s 64, or has otherwise contravened as provided by s 66(2)(b).

333. The second test – the inference test – is an objective test. It is whether, absent actual knowledge, the Authority ought, on the basis of the information available to it,

and applying a test of reasonableness, to have inferred that the relevant person had failed to comply with a statement of principle or had otherwise contravened.

334. There is a particularity to each of these tests. It is not sufficient that the Authority has information in its hands that would give rise to a mere suspicion. Nor is it enough that the information might suggest that there was misconduct, but that the person in question has not been identified as the apparently guilty party. The Authority must either know or be treated, by reasonable inference, as knowing of the misconduct by a particular person. The reference in s 66(4) to "*the* misconduct" (our emphasis) clearly refers to the particular misconduct in respect of which action is to be taken against a particular person, and not to conduct of a similar nature in respect of which information may have been obtained earlier.

335. Questions will arise as to the degree of certainty required before time can be regarded as running. There is a clear purpose in s 66 that the Authority should be allowed a reasonable period to investigate before being required to issue a Warning Notice. Consistent with that purpose, and to provide a balance for the affected person, the time at which the limitation clock is set cannot be when the case has been fully investigated and the Authority is ready to proceed. Time must start running at an earlier stage in the process.

336. Some assistance on the correct approach can here be derived from the cases on s 14A of the Limitation Act 1980. In *Haward v Fawcetts*, Lord Nicholls (at [9] and [10]) referred to the degree of certainty required before knowledge can be said to exist, and the degree of detail required before a person can be said to have knowledge of a particular matter. Referring to the guidance of Lord Donaldson in *Halford v Brookes* [1991] 1 WLR 428, 443, it was noted that knowledge does not mean knowing for certain and beyond possibility of contradiction. It means knowing with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking advice, and collecting evidence; suspicion, particularly if it is vague or unsupported, will indeed not be enough, but reasonable belief will normally suffice. In other words, the claimant must know enough for it to be reasonable to investigate further. As to the degree of detail required, what is necessary is not a full appreciation of all the relevant facts, but a "broad knowledge of the essence" of the relevant acts and omissions (*Spargo v North Essex District Health Authority* [1997] PIQR P235, per Brooke LJ).

337. These principles are instructive, but not in our view determinative, of the construction of s 66(4). That construction must have regard to the context and the evident purpose of s 66. On that basis, for time to start running it is not necessary that the Authority has the full picture that would justify the issue at that stage of a Warning Notice. Although the Authority may only take action under s 66(1) if it appears to it that the relevant person is *guilty* of misconduct, the limitation period starts to run from an earlier time, when the Authority knows or has information from which the misconduct can reasonably be inferred. The Authority must, however, have sufficient knowledge of the particular misconduct, or such knowledge must be capable of being reasonably inferred, to justify an investigation. Mere suspicion is not enough, nor is any general impression that misconduct may have taken place.

338. There will be cases where information about possible misconduct will be received by the Authority piecemeal and over an extended period. At an early stage in the process such information may be inadequate for the Authority to know of a

particular misconduct by a particular person, or to be able to infer such misconduct. A mere allegation or assertion unsupported by evidence would be unlikely to be regarded as sufficient to amount to knowledge of misconduct or as information from which it would be reasonable for the Authority to have inferred misconduct, although it might be expected to give rise to further enquiry. Knowledge of an allegation of misconduct is not the same as knowledge of the misconduct. As an investigation progresses more information may come to light as a result of which there comes a time when the Authority either knows, or it can reasonably be inferred from information which the Authority has, that there is substance to an allegation of misconduct in relation to a particular person. It is only at the latter stage that the time limitation begins to run in respect of that misconduct. Provided a Warning Notice is issued in respect of the misconduct within two (now three) years from the earliest time when the Authority knew of the misconduct or the misconduct could be reasonably inferred, the Authority may rely on all the information it has obtained, both before and after that time.

339. Where the Authority becomes aware of more than one act of misconduct of which a particular person appears to be guilty, the time limit operates separately in respect of each. The Authority may not take action in respect of misconduct of which it knew or which could reasonably be inferred more than two (now three) years before the issue of a Warning Notice. But if it also comes to know of misconduct, whether or not of the same nature as the misconduct it knew of earlier, or such misconduct can reasonably be inferred at a time not earlier than two (three) years before the Warning Notice, action in respect of that misconduct may be taken, notwithstanding the earlier failure to act in time in respect of similar misconduct. The fact that the Authority fails to take action in respect of certain misconduct cannot shut the Authority out from taking action, by issuing a timely Warning Notice, in relation to other misconduct, whether of the same or a different nature.

340. Our analysis in this respect accords with that of this Tribunal in the recent case of *Christopher Ollerenshaw and Thomas Reeh v The Financial Services Authority* (FS/2010/0026 and 0028). There the limitation period ran from 6 August 2007. It was argued that the conduct about which the complaint was made, although taking place in the period from September 2006 to November 2007 was in substance identical to that observed by the Authority in the course of a supervision visit in 2005 and a risk assessment in 2006, and that it was accordingly not open to the Authority to allege and rely upon a continuation of the same conduct in the period of two years preceding the Warning Notice.

341. The Tribunal in *Ollerenshaw* rejected that submission. It accepted the submission made by counsel for the Authority that the decision not to bring a case for misconduct based on the situation that prevailed at the earlier time clearly could not bar the Authority from bringing a case based on subsequent misconduct, where the allegations of that subsequent misconduct did not relate to the situation that prevailed at the time of the Authority's visits in 2005 and 2006. The Tribunal said (at [43]):

> "As we see it whether one applies a literal or purposive approach to Section 66(4) the same result is reached. The "misconduct" is that specified in the Warning notice. It is not previous alleged misconduct carried out at a different time. We prefer Mr George's submissions on this point. Further there are many reasons why it would be illogical, undesirable and also unfair to regulated firms and persons for the

> Authority to have to proceed within two years of the first sign of potential misconduct or not at all. The Authority would then have to take action against potential offenders at a very early stage without for example giving them an opportunity to put right minor infringements for fear that if they became major or repeated it would be unable to take action."

We respectfully agree.

342. It follows from this analysis that we agree with Ms Clarke that the correct way to approach the issue of limitation is, first, to determine what the misconduct is that the Authority contends that an applicant is guilty of, and secondly to determine the earliest date on which the Authority knew of the misconduct or had information from which the misconduct could reasonably be inferred. The misconduct in question in this case comprises the specific incidents of misconduct set out in the Warning Notice. Any knowledge of other misconduct, whether of the same nature or not, or other facts not referable to the specific incidents of misconduct so set out are not relevant to the question of limitation bearing upon those specific incidents, and cannot accordingly inhibit the action that may be taken by the Authority in relation to those specific incidents.

The limitation issues in outline

343. As we have earlier described, limitation can preclude action of the Authority only as regards the decision to impose a penalty on Mr Jeffery, and not in relation to the prohibition order. As regards the penalty, limitation is an issue in respect only of certain of the actions taken by the Authority in this case. Those where it is clearly irrelevant are where the alleged misconduct took place after 29 May 2008, namely the allegations in respect of post-January 2009 activities and failure to cooperate with the Authority. In addition, certain of the other allegations concern events falling after the relevant date, namely the allegations in relation to failure to effect insurance or failure to inform clients in respect of the cases of Mr and Mrs Yerbury (in relation to the renewal of the home insurance policy in October 2008), Louise Yerbury, Mr Redfern, Ms Burns and Mrs Goddard.

344. That leaves the matters of the forged documentation, both in respect of the per procurationem letters concerning Mr Jamieson, Mr Marsen and Mr Fisher, and the signature on the insurance proposal purported to have been made by Mr Coxon, and the allegations of failure to effect insurance and failure to inform in respect of Mrs Coxon and Mr Jamieson, and in relation to the renewal of Mr and Mrs Yerbury's home insurance policy in October 2007. In each of those cases we have found that Mr Jeffery was guilty of the misconduct alleged by the Authority. The ability of the Authority to impose a penalty in those respects is, however, subject to action having been taken within the limitation period. The question in each of those cases is whether the Authority knew of the particular misconduct before 29 May 2008, or had information before that date from which that misconduct could reasonably be inferred.

Limitation the facts

345. We had evidence pertinent to the limitation issue from six witnesses: from the Authority, Mr Baum, Ms Schady and Mr Armstrong; from Mr Bennett and Mr Lambert, formerly of Surrey police; and from Mr Poole. As we indicated earlier, we refused applications by Mr Jeffery for further witnesses to appear and give evidence

which Mr Jeffery believed might confirm his own suspicions as to the knowledge the Authority had at the relevant time about certain of the matters at issue. That in our view amounted to mere speculation on the part of Mr Jeffery, and we did not consider that there was any sound basis for supposing that further witnesses would be able to add anything material to the substantial evidence we had received.

346. We make the following findings of fact in relation to the limitation issue. Certain of these matters have already been referred to in our description of the background facts, but are repeated here for ease of reference.

347. Insurance mediation business of the nature carried on by Mr Jeffery through the Firm fell into the scope of FSA regulation on 14 January 2005. Prior to that date neither the Firm nor Mr Jeffery was required to be regulated by the FSA. Applications for registration were submitted by Mr Jeffery and a company called Jeffery Flanders (Life and Pensions) Limited (which later became the Firm) on 31 March 2004. The Authority was aware of Mr Jeffery and the Firm from that time.

The Authority's relationship with Surrey police: April 2004 to February 2006

348. The Authority was aware of the concerns which Surrey police had of alleged insurance fraud in connection with the Firm and Mr Jeffery from a telephone call on 16 April 2004 made by Surrey police to Angela Stephens of the Authority. That call had described those concerns as being that Mr Jeffery had (so it was alleged) been keeping insurance premiums for himself, paying out on a claim on at least one occasion, and providing cover notes but not issuing certificates. The call explained that the police anticipated being able to obtain warrants to search Mr Jeffery's business and home premises but that the police were concerned that they had no power to prevent Mr Jeffery from continuing to carry on business.

349. A meeting took place on 19 April 2004 at the Authority's offices attended by representatives of the Authority and DS Lambert and DC Bennett of the Surrey police. At that meeting the police officers informed the Authority that the criminal investigation related to allegations of obtaining money by deception and theft of premiums. No allegations of forgery were made. There was discussion of various possible methods of seeking to prevent Mr Jeffery from continuing to trade, but concern was also expressed as to the possibility that precipitate action taken by the Authority could tip Mr Jeffery off and run the risk that evidence might be destroyed. There was, as Mr Lambert described it in his evidence, an agreement between the police and the Authority that the police were best placed to continue the investigation and that it might hinder the police investigation if the Authority were to take parallel action.

350. On 29 July 2004 the Surrey police executed search warrants on the offices and home of Mr Jeffery. At the request of the police, an FSA representative, Dick Donouzjian, attended with the police to advise on the type of documents they should look for, and the importance and relevance of the documents and questions to ask, but he did not participate in the search itself. At the request of DC Bennett, Mr Donouzjian agreed to give further assistance if it were needed.

351. The Authority had no further involvement in the Surrey police investigation until a telephone call was received from DC Bennett on 31 January 2005 to inform the Authority that Mr Jeffery had been interviewed under caution and had given the

police a prepared statement but no further information. Further developments were expected within a month.

352. In the meantime, on 14 January 2005, Mr Jeffery and the Firm had been respectively approved and authorised by the Authority. That this was a matter of some concern to Surrey police is apparent from an email dated 1 February 2005 from DC Bennett to Jackie Chapman of the Authority. That email was responding to one from Jackie Chapman to DC Bennett informing him that Mr Jeffery and the Firm were being looked at by the Authority's Small Firms Division, and asking for some information concerning possible non-disclosure of material facts in the authorisation application, and breach of ongoing notification requirements, with specific reference to Mr Jeffery having been aware that he was subject to ongoing investigations. DC Bennett expressed dissatisfaction at the fact that Mr Jeffery and the Firm had been authorised, saying that he had been assured at the April 2004 meeting that this would not happen.

353. In fact, the Authority had commenced an investigation into Mr Jeffery and his Firm, but only in respect of whether the forms for approval and authorisation had been completed honestly. This issue was confined to Mr Jeffery's failure to disclose that he had been erased from the Insurance Brokers Registration Council for unprofessional conduct with effect from 7 August 1998. That investigation was concluded with no action being taken and Mr Jeffery was notified of this on 13 April 2006.

354. On 7 February 2005 Mr Gosden of Higos telephoned Claudine Bertram of the Authority to inform them that the Firm was a criminally dishonest outfit and (as the police were aware) was involved in fraud. Reference was made to the amendment of proposal forms and the doubling up of premiums. Ms Bertram made enquiries and ascertained that the Authority was aware of the Firm. Mr Jeffery submitted that the reference here to amendment of proposal forms was effectively an allegation of forgery. Mr Lambert confirmed that forgery allegations had been made by at least one witness in Mr Jeffery's criminal trial. If Mr Gosden had been referring to allegations of forgery, we find that they were very imprecise, and not of the nature of the forgery allegations we are concerned with in this case.

355. DC Bennett's email of 1 February 2005 had suggested that there be a meeting between Surrey police and the Authority in connection with the action the Authority might take to withdraw the firm's authorisation. A meeting took place, although some little time later, on 17 October 2005, according to the evidence of DS Lambert, at Leatherhead police station when Ms Bertram and a barrister had attended and it had been agreed that certain information would be supplied to the Authority.

356. The police investigation continued independently of any involvement of the Authority. During 2005 there were a number of contacts between the Authority and Surrey police. On 30 June 2005 a representative of the Authority, Christopher Thomas, telephoned DC Bennett for an update on the investigation. Mr Thomas advised Mr Bennett that the Authority intended to visit the Firm and asked for details of the cases under police investigation. DC Bennett at that time agreed to provide the information prior to a proposed visit by the beginning of August 2005. No information had been provided by 25 July 2005, when Mr Thomas sent a reminder to DC Bennett. A further telephone conversation took place on 5 August 2005, when there appears to have been some confusion as to whether the police would be able to

provide information to the Authority. However, DC Bennett confirmed at that time that he would provide information by 12 August 2005 at the latest.

357. The Authority received a copy of an operation log from Surrey police in 2005. This, we infer from the evidence before us, was received by the Authority on or before 15 August 2005. It is thus reasonable to infer, and we find, that this was the information that DC Bennett had promised to provide. We accept the evidence of Mr Baum that the operation log does not refer to the names of any of the Firm's clients who are concerned in this regulatory action.

358. At the October 2005 meeting between Ms Bertram, her colleague and DS Lambert, DC Bennett and Mr Conway (a civilian investigator) of Surrey police, Mr Conway detailed his findings in the investigation. We had no record of what Mr Conway disclosed at that time; there were no minutes of the meeting, and the evidence of Mr Lambert, although referring to the police log, did not assist. The log went on to describe DS Lambert as having outlined the police strategy for the arrest of Mr Jeffery, a search of his home address and subsequent interview and charge. There was a general discussion of the investigation to date and how the police and the Authority could bring matters to a satisfactory conclusion. It was agreed that regular liaison would continue after the meeting between the police and the Authority. The points of contact would be Ms Bertram and DC Bennett. The Authority agreed to investigate the application for authorisation as previously discussed, in relation to the failure to disclose information, with a view to disclosing the results of that investigation to the police so that any possible offences under FSMA could be added to the indictment. There was no evidence as to what, if anything, was handed to the Authority at, or in consequence of, that meeting.

359. The liaison between Ms Bertram and DC Bennett continued into 2006. On 10 February 2006 there was a meeting between the two, also attended by John Kirby of the Authority. By this time Surrey police had executed further search warrants on Mr Jeffery's home and office and had arrested Mr Jeffery on suspicion of various offences, mainly under the Theft Act. At that meeting DC Bennett produced a spreadsheet identifying 43 potential charges against Mr Jeffery that was to be discussed with the CPS. The spreadsheet identified that Mr Jeffery might have taken up to £131,700 in premiums which had not subsequently been passed on to an insurer.

360. The note of the meeting does not suggest that the spreadsheet itself was handed over to the Authority; it merely records that it was produced by DC Bennett. Mr Bennett was not cross-examined on this point, and although Mr Lambert accepted in his evidence that some paperwork had been handed over, there was nothing to indicate that this included the spreadsheet itself. It was not produced as part of the Authority's disclosure. We find that the spreadsheet was not handed over at that meeting. We also find that if it had been it would have been confined to matters similar to those on which Mr Jeffery was subsequently indicted, and would not have revealed any information on which the Authority relies in the case before us.

The Authority's relationship with BGL Group Limited

361. On 15 November 2007 the Authority received a letter dated 12 November 2007 from the BGL Group Limited enclosing a report of that company's investigation into the Firm. The report noted that BGL had identified 86 motor and insurance policies that had been taken out over the internet on behalf of individual policyholders using

four different credit cards in the name of Mr Jeffery. In certain cases Mr Jeffery had also used his own business address as the risk address and the payment details were not in the customer's name. Mr Jeffery's response to BGL's concerns had been that the risks had been placed correctly and that the Firm had acted on its clients' instructions.

362. In its summary the report noted that there did not appear to have been a fraud against BGL as on the face of it the correct risk details had been captured for most policies. However, for eight policies (two of which were in the name of Mr Jeffery himself), the Firm's business address had been given as the risk address, raising concerns whether the underwriter would have accepted the risk. One of those cases was that of Mr Fisher, referring to a policy with yesinsurance numbered 114678411 that commenced on 5 June 2007. There is nothing in the report that suggests any concerns over forged documentation in relation to Mr Fisher. The report referred to a policy with yesinsurance, which is the policy to which three of the letters purportedly written on behalf of Mr Fisher relate. The other four letters relevant to the action taken by the Authority in this case was with Groupama, and related to policy number PMCEB170568. Groupama was, on the other hand, the underwriter in respect of the policy number 114678411 issued by yesinsurance.

363. On the same day that it had written to the Authority, BGL also wrote to Mr Jeffery to outline its concerns. A copy of that letter was attached to the report. BGL had previously suggested dates for a meeting, but Mr Jeffery had indicated that he was unable to attend on those dates and had not suggested any alternatives. The letter set out details of a number of inactive policies where the risk address had been given as the address of the Firm. Included in that list are policies in the names of Mr Jamieson and Mr Marsen.

364. In the case of Mr Jamieson, the policy referred to is the policy to which the per procurationem correspondence relevant to this application took place. There is, however, no reference to that correspondence on BGL's letter to Mr Jeffery; the only issue referred to is that of the risk address. The policy concerned was the motor insurance policy and not the property insurance policy with which the allegation of failure to effect insurance is concerned.

365. In the case of Mr Marsen, the position is the same. The policy referred to is that with yesinsurance to which the per procurationem correspondence relates. But again there is nothing in the letter from BGL that refers to any question relating to those letters.

366. It is convenient at this point to move on to a meeting that took place between the Authority's investigation team and BGL on 30 April 2009. Those representing the Authority were Mr Baum and Iain Wilson and from BGL Mr Poole and Ron Simms. At that meeting a number of issues were raised with specific reference to Mr Fisher, Mr Marsen and Mr Jamieson. In relation to Mr Fisher, this concerned the Groupama policy, on which Mr Poole explained that BGL had received the first notification of loss and had referred the case to Groupama, who were looking to void the policy as it appeared that some of the information had been incorrectly captured at inception. There was no reference to the per procurationem letters. In relation to Mr Marsen, the issue referred to was that he had been over-charged for his policy. Again the letters were not referred to. In relation to Mr Jamieson, the meeting note records that Mr Jamieson had told BGL of his complaint against Mr Jeffery and had subsequently

forwarded to them items of correspondence. It is apparent from the meeting note that none of the correspondence had been seen by the Authority at that time.

367. In his evidence, Mr Baum was asked by the Tribunal why, out of the 86 cases that had been referred to by BGL in its November 2007 report, specific reference had been made to those of Mr Fisher, Mr Marsen and Mr Jamieson. Mr Baum was unable to add anything to what was contained in the note of the meeting. It is apparent, however, from the note of the meeting itself and from the answers given by Mr Baum in re-examination by Ms Clarke that even in April 2009 Mr Baum had no knowledge of the per procurationem letters on which the Authority now relies. Mr Jeffery suggests that Mr Baum was deliberately misleading the Tribunal when he referred to the fact that the letters in question from Mr Jamieson were to the Post Office and not to BGL, making the point that BGL acted on behalf of the Post Office. But all this shows is that Mr Baum did not have information from which it could reasonably be inferred that there was any misconduct by Mr Jeffery in relation to the Jamieson letters.

368. The evidence of Mr Poole, which we accept, provides the answer to the question why the cases of Fisher, Marsen and Jamieson had been referred to. That evidence was to the following effect.

369. Following the sending of the November 2007 report to the Authority, there was no further communication between the Authority and BGL until a telephone call on 14 January 2008 between Julie Raistrick of BGL and Les Green of the Authority in relation to a forthcoming "Arrow II" (annual regulatory review) visit. We are satisfied that this was entirely separate from any issues relating to Mr Jeffery or the Firm, and that nothing material to this case was disclosed to the Authority at that time.

370. Following a telephone call between BGL and Surrey police on 7 January 2008, a meeting took place on 15 January 2008 between the police and BGL. The Authority did not attend that meeting. The agenda for the meeting included an item for DS Lambert to comment on the Authority's perspective on the police investigation and a presentation by Mr Poole on the current status of the BGL review, referring in particular to Mr Marsen and to Mr Fisher and Groupama. The handwritten meeting notes state that the Authority was awaiting Mr Jeffery's "conviction" before taking further action. The notes set out "Actions", none of which suggest any further immediate contact with the Authority.

371. We accept that in his oral evidence Mr Poole recalled from memory that the January 2008 meeting must have been a brief one, and that the documents he was subsequently able to produce to the Tribunal in relation to the meeting showed that it had been scheduled for two hours, and had evidently not been brief. The explanation is that Mr Poole had not, when giving his evidence, been able to find either the agenda or the manuscript notes of the meeting, and his recollection had in this respect not been accurate. But we do not find, as Mr Jeffery urged us to do, that Mr Poole's evidence overall is undermined; on the contrary, we found Mr Poole to be a careful and considered witness who was doing his best to assist the Tribunal, and we accept his evidence.

372. As agreed at the January 2008 meeting BGL prepared a report and sent it to DS Lambert on 25 January 2008. The report was not at that stage sent to the Authority,

as BGL had no contact with the Authority at this time and did not consider that it had any obligation to keep the Authority informed of events.

373. There was further contact between BGL and the police during February 2008. There was a telephone conversation between Mr Conway of Surrey police and Mr Poole during which Mr Conway thanked Mr Poole for sending the January 2008 report and indicated that the police were looking into two of the cases, including that of Mr Marsen. Following that call Mr Poole wrote to DS Lambert sending him details of policyholders to whom BGL had written to ask them to confirm their policy details. Although Mr Fisher, Mr Marsen and Mr Jamieson appear on that list, there is nothing in the details supplied by BGL to the police concerning alleged forged documentation or, in relation to Mr Jamieson, his property insurance.

374. This correspondence was followed on 19 February 2008 by a telephone conference between Mr Poole and Alison Ward (internal audit) of BGL and DS Lambert and Mr Conway. The Authority did not participate. Ms Ward explained in that call that BGL had received comprehensive documentation from Mr Jamieson outlining his complaint against Mr Jeffery which it was agreed would be forwarded to the police. DS Lambert advised that Mr Marsen had contacted the police. Details were provided by the police of the 34 counts of deception in respect of which Mr Jeffery had been charged, and BGL agreed to forward certain information to the police, namely:

> (a) details of motor policies cancelled soon after inception (it was noted in this respect that the police would contact the drivers to ensure that they had alternative insurance in place as the policies had been cancelled by Mr Jeffery);
>
> (b) vehicle details where BGL had incomplete risk addresses for active policies;
>
> (c) copies of website details for the Firm;
>
> (d) copies of correspondence from Mr Jamieson;
>
> (e) details of the bank account used by Mr Jeffery for instalment policies.

375. Further information was provided to the police under cover of a letter from Ms Ward of BGL to DS Lambert dated 21 February 2008. The Jamieson correspondence provided did not include the letters purported to have been sent by Mr Jamieson to the Post Office.

376. In relation to the correspondence that BGL had received from Mr Jamieson, it is worth reminding ourselves of two points. The first is that the Authority's case on failure to effect insurance relates to the property insurance which Mr Jamieson thought he had taken out with Acumus on his rental property in Scotland, and not the motor policy with which BGL was concerned. The second is that in his evidence, which we accept, Mr Jamieson said that he had not been aware of the letters purportedly coming from him to the Post Office until at least 21 July 2009. Those letters could not therefore have been included in the correspondence which Mr Jamieson had sent to BGL before 19 February 2008.

377. Following receipt of this further information, there was a conversation on 26 February 2008 between BGL and DS Lambert in which DS Lambert said that he

would be visiting Mr Fisher and Mr Jamieson to take statements. This was followed by a letter dated 14 March 2008 from BGL to Neil Cox at Surrey police providing copies of documentation sent to 13 policyholders, including Mr Jamieson and Mr Fisher, via the Firm. As that documentation consisted of documents coming from, rather than being sent to, the insurance company, it could not have included the per procurationem letters.

378. There was no communication between BGL and the Authority regarding issues concerning Mr Jeffery or the Firm until the Authority wrote to BGL on 10 March 2009. That letter was a formal requirement under FSMA for BGL to provide all relevant documentation. BGL responded to this letter on 23 March 2009 attaching a summary of BGL's internal investigation and a copy of the January 2008 report which had previously been provided to the police. We are satisfied that this was the first time that the Authority had seen that report. We reject Mr Jeffery's submission that "it is patently clear that the FSA WERE in possession of the 25 Jan 2008 BGL report and that it was probably delivered to the FSA by the Police between Jan 2008 and March 2008"; in our view the evidence points the other way.

379. The January 2008 report makes specific reference (at 3.5 to 3.8) to the cancellation of Mr Marsen's policy with yesinsurance, and includes (at Appendix 4) a transcript of a call made by Mr Marsen in order to cancel the policy. The report also makes reference (at 3.9 to 3.13) to Mr Fisher and the refusal by the underwriter, Groupama, to provide indemnity under the policy. At Appendix 5 copies of the Fisher documentation, including the per procurationem letters, are included. No particular reference is made to Mr Jamieson in the report.

380. Along with the report, however, in its summary of its internal investigation BGL also provided the Authority with details of its liaison with Surrey police from January 2008. Copies of the relevant correspondence with Surrey police and notes of telephone conversations were included. As we have seen, BGL had in February and March 2008 provided the police with copies of the Jamieson correspondence. We therefore find that this correspondence was provided to the Authority in March 2009.

381. We find on this basis that it was the reference in the materials provided by BGL to the Authority in March 2009 to Mr Fisher, Mr Marsen and Mr Jamieson that prompted specific enquiries to be raised by the Authority in those respects at the meeting on 30 April 2009. There is nothing to suggest that the Authority was aware of any material information on those cases before 29 May 2008.

The Authority's relationship with Surrey police: December 2007 to November 2008

382. Having digressed to deal with the evidence relating to the involvement of BGL with both Surrey police and the Authority at the material time, we return to the chronology of the dealings between the Authority and the police. We left that at the meeting on 10 February 2006. In November 2007 the police interviewed Mr Marsen. The police were at that time in possession of per procurationem letters written on behalf of Mr Marsen and addressed to Swinton Colonnade concerning policy number 266710000. Those letters had been sent to the police by Swinton.

383. The next material correspondence took place on 13 December 2007, when Mr Armstrong of the Authority sent to Mr Conway of the Surrey police the BGL report that the Authority had received from BGL on 15 November 2007. Mr Armstrong's

email suggests a meeting in December 2007 or early in 2008. Mr Conway's reply of 17 December 2007 refers to investigation of "another matter" concerning Mr Jeffery and suggests a meeting in the new year, once a submission has been made to the CPS.

384. This was followed, on 20 December 2007, by a letter from Russell Clifton of the Authority's Enforcement Division to Mr Conway with an urgent request for evidence (or a summary of evidence) on Mr Jeffery and the Firm to be provided. This was said to be to enable the Authority to consider removing the Firm's authorisation. The letter refers in particular to evidence of allegations of "recent wrong-doing".

385. Following a call from Mr Conway to Maria Banks of the Authority on 3 January 2008, when Mr Conway again referred to a possible meeting, the response of Surrey police to the Authority's letter of 20 December 2007 was dated 10 January 2008 (and received by the Authority on 16 January 2008). That letter informed Mr Clifton that Mr Jeffery's trial at Guildford Crown Court was due to begin on 5 May 2008. The letter attached a copy of the indictment, and went on to refer to two further allegations of dishonesty, one from an individual client and the other from an insurance broker, said to be similar to the matters that had at that time been reported by BGL to the Authority, involving Mr Jeffery taking out policies in the name of a client using his own credit card to make payment.

386. The individual complainant is not named in the letter of 10 January 2008, but was identified by Mr Lambert in his evidence as Mr Marsen. That complaint related to an issue of Mr Marsen finding that he had been uninsured when he had been summonsed to appear in court to answer a charge that he had not been insured for his vehicle on 6 December 2006. When he appeared in court on 8 June 2007, Mr Marsen had produced an insurance certificate showing insurance cover from 8 February 2007. However, it was ascertained that the insurance had been cancelled in March 2007. Mr Marsen made a statement to the police on 2 January 2008. This complaint does not form part of the Authority's case for the purpose of this reference. The only case made in respect of Mr Marsen relates to the per procurationem letters sent to yesinsurance to which no reference is made in Mr Marsen's police statement.

387. None of the matters that are the subject of this reference appear in the indictment, nor are any of the clients whose affairs are the subject of these proceedings named in the indictment.

388. The meeting between the Authority and Surrey police that had been mooted in December 2007 and January 2008 did not take place. An email dated 2 May 2008 from Mr Armstrong to Derek Smee, an associate in the Authority's Small Firms & Contact Division, explains that a meeting had been arranged a few weeks earlier but had been cancelled by the police. There is evidence, from the police log, that there was a meeting or telephone call between Mr Armstrong (and possibly Mr Clifton) and DS Lambert in March 2008. In his evidence Mr Armstrong told us that he had checked his records, including his Outlook calendar, and could find no record of a meeting. This is borne out by the email of 2 May 2008.

389. It is likely, and we so find, that there was a telephone call in March 2008, which Mr Armstrong kept no record of. The evidence of Mr Lambert was that in March 2008 he had told Mr Armstrong that the BGL report which had been forwarded to the police by the Authority showed evidence of cases where Mr Jeffery had failed to act as a responsible broker, and that there was evidence of further criminal offences.

There is no evidence that at that time the police provided any information to the Authority about the cases with which this reference is concerned.

390. Mr Conway wrote to Mr Armstrong by email on 7 May 2008. Mr Conway explained that this was a note to keep Mr Armstrong informed of the then current situation regarding Mr Jeffery. He wrote:

> "As you are aware we submitted some further cases to the CPS showing ongoing criminality following his committal to Guildford Crown Court. Counsel for the CPS has recently advised that those new matters should be put on hold until the outcome of Jeffery's trial is known.
>
> Jeffery's trial commenced on the 6th May but because of legal arguments and other reasons, it is not likely to actually get underway until Monday 12th May. It is expected to last about 4 weeks.
>
> I understand from your recent telephone message that the FSA are receiving complaints from members of the public regarding Jeffery's ongoing behaviour. If you wish to meet with us to assist in your enquiries please contact DS Simon Lambert …"

391. Mr Jeffery sought to read a great deal into this email. He submitted that the Authority knew a great deal more prior to May 2008 than it has revealed in these proceedings. We reject that submission. In his evidence Mr Armstrong confirmed that he had been aware that the police were submitting information to the CPS and that the CPS were going to make a decision on whether to prosecute but that he was not aware of the content of that information. We accept Mr Armstrong's evidence.

392. The criminal trial of Mr Jeffery lasted from 12 May 2008 and concluded on 19 June 2008, with Mr Jeffery having been acquitted of all charges. There was a meeting on 8 August 2008 between Mr Clifton, Mr Conway and DC Bennett to inform the Authority of what had happened at the criminal trial. Mr Clifton wrote to DS Lambert on 8 August 2008 to inform him that, as no further criminal action would be taken, the Authority was going to consider regulatory action. Mr Clifton requested certain documents, including prosecution witness statements, a jury bundle of exhibits, transcripts of interviews with Mr Jeffery and the defence expert's witness statement.

393. In giving his evidence Mr Lambert was asked specifically when materials concerning the Marsen, Jamieson and Fisher cases were referred to the Authority by Surrey police. His answer, which we accept, was that it was after the conclusion of the criminal trial. He told us that until the end of the trial the police had been concentrating their efforts on the prosecution of Mr Jeffery, and there had consequently been no need to provide materials to the Authority at that time. After the trial had concluded, and Mr Jeffery had been acquitted, the police then formed the view that there were outstanding issues that had not formed part of the criminal trial. The CPS had decided that it was not appropriate for further criminal proceedings to be instigated. The police therefore took the decision that the matter should be referred to the Authority so it could carry out its own investigation.

394. Following Mr Baum having taken over the lead role in the investigation in November 2008, most (but not all) of the requested material was provided by the police to the Authority at a meeting on 5 November 2008. Ten lever arch files of material were provided, mainly consisting of witness statements and exhibits, but including the police case summary of the prosecution. The Authority has not relied

upon any of this evidence in its regulatory action. All the cases considered in the criminal trial involved activity at a time when Mr Jeffery was not required to be authorised.

Mrs Coxon

395. We have referred earlier, when discussing the evidence in relation to the failure by Mr Jeffery and the Firm to place insurance for Mrs Coxon, to the fact that Mrs Coxon made a complaint to the Financial Ombudsman Service ("FOS") on 17 November 2006, and that consequently the FOS awarded Mrs Coxon compensation.

396. A Mr Jeff Hill of the FOS wrote by email on 7 June 2007 to Mr Christopher Thomas of the Authority. This was in response to an email sent by Mr Hill to the FOS on the previous day. That email (which was not produced to us in evidence) evidently had asked for information about Mrs Coxon's complaint to the FOS. We set out the reply in full:

> "I refer to your e-mail of 6/6/07 to Paul Morris. For your information: briefly the complaint is that this firm [the Firm] charged the complainant (Mrs Coxon) £825.85 for a 'Folgate household remewal (sic)' with effect from Dec 2005 – her cheque was cleared in Nov 2005. I (sic) seems that Folgate had terminated the firm's agency in Oct 2005 and refused to accept new business after this date. However, the firm had obtained another quote from NIG for its Home and Legacy policy for a premium of £465.44. NIG became aware of a previous claim and asked for an engineer's report.
>
> The report was not forthcoming and NIG cancelled the cover. Mrs Coxon subsequently needed to make a further claim at which point she found out that in fact there was no cover in place.
>
> Mrs Coxon maintains that she was not told that cover was dependent upon the engineers report and she was not told that the firm had attempted to obtain cover from another provider or that there was no cover in place.
>
> The firm initially made spurious arguments about whether this matter was within FOS' jurisdiction – citing FOS leaflet (your complaint and the ombudsman) as being misleading!
>
> Hope this note is helpful."

397. In reply on 7 June 2007 Mr Thomas asked Mr Hill if it was known what happened to the premium paid of £825.85, and whether any of it was repaid to the complainant, Mrs Coxon. He also asked Mr Hill to let him know the outcome in due course. Later the same day Mr Hill responded to say the it seemed that the Firm had eventually, and after Mrs Coxon had complained to the FOS, refunded the sum of £663.46, calculated pro rata for the period from December 2005 to February 2007. Mr Hill told Mr Thomas that the FOS were on the point of issuing their initial view and that Mr Thomas would be updated accordingly.

398. At that stage the Authority took no further steps. Although the FOS issued a provisional decision on 11 October 2007, followed by a final decision on 30 November 2007, it does not appear that the FOS sent any update to Mr Thomas or to anyone else at the Authority.

399. Indeed, from the evidence we have seen, it appears that it was not until 21 August 2008, when Mrs Coxon herself wrote to the Authority enclosing a copy of the final decision of the FOS on her complaint, that the Authority once again were apprised of Mrs Coxon's circumstances. Mrs Coxon's letter was received by the Authority on 26 August 2008. Mrs Coxon had written to the Authority at that time because the Firm had failed to comply with the FOS award, and Mrs Coxon was requesting the Authority to review the Firm's authorisation.

400. Following certain limited investigations by the Authority's threshold conditions team from December 2008, the case was investigated by the investigation team from July 2009. Mrs Coxon was interviewed by that team on 22 July 2009 at which time the Authority received certain documentation. As a result of consideration of those documents, the team also interviewed Mr Coxon on 10 September 2009. At that interview, Mr Coxon informed the Authority, for the first time, that his name had been forged on the proposal form for Home & Legacy dated 18 January 2006.

Limitation: discussion

Mr and Mrs Coxon

401. We turn first to the case of Mrs Coxon. We do so because it is the only case for which we have seen evidence that information in relation to the actual complaint that has been referred to in the Warning Notice was given to the Authority before 29 May 2008.

402. In relation to Mrs Coxon's case, Ms Clarke submitted that the information contained in the email exchange of 7 June 2007 contained no particulars, provided no evidence in support and no information on which an assessment could be made of the credibility of the complainant. It does not, argued Ms Clarke, provide any facts from which it would be reasonable to infer that Mr Jeffery had failed to comply with a Statement of Principle in a way that is personally culpable.

403. We start by examining the facts. The first point is that we do not know what prompted Mr Thomas to write to Mr Morris of the FOS on 6 June 2007. What we can conclude, however, is that at that stage Mr Thomas was seeking information, and that he was doing so because he did not then have that information.

404. The question then is whether the information provided by Mr Hill to Mr Thomas was such that, by its receipt, the Authority either knew of the relevant misconduct or the misconduct could reasonably have been inferred from that information.

405. In relation to Mrs Coxon's case, we are concerned with the Authority's case that Mr Jeffery failed to act with integrity in carrying out his controlled function, contrary to Statement of Principle 1. It is the failure to comply with a statement of principle that constitutes the misconduct for the purpose of s 66(2) FSMA. For time to start running in this respect, therefore, the Authority must at the relevant time either have known of the failure of Mr Jeffery to act with integrity in carrying out his controlled functions, or have been in possession of facts from which such a failure could reasonably have been inferred. The test is not simply whether the Authority knew, or could reasonably have inferred, facts or circumstances on which the Authority later relies; the test looks at actual or constructive knowledge of the misconduct, which

requires knowledge (actual or constructive) of the relevant failure, in this case to act with integrity.

406. On this basis, we conclude that, whilst the email exchange of 7 July 2007 did provide the Authority with some basic information, it was not information from which the Authority knew at that stage that there had been a failure on the part of Mr Jeffery to act with integrity, or such a failure could reasonably have been inferred. At the stage of receipt of the FOS's email, the information consisted of nothing more than an allegation or assertion unsupported by evidence. Even if the facts stated had been accepted, they were not such as could have resulted in any reasonable inference that there had been misconduct on the part of Mr Jeffery. It may have been enough to justify further investigation, but there was at 7 June 2007 insufficient material available to the Authority to give rise to any proper inference of a lack of integrity on the part of Mr Jeffery in respect of his dealings with Mrs Coxon.

407. The provisional and final decisions of the FOS referred to the FOS's concerns that the Firm had invited renewal of a policy with Folgate when that agency had been terminated, when it had no idea what the premium would be, and failed to provide a refund of the difference between the premium paid of £825.85 and the premium for the Home and Legacy policy of £465.44. It was concerned also that the Firm did not make clear to Mrs Coxon that the Folgate policy could not be renewed and that it had arranged an alternative policy, nor had the Firm informed Mrs Coxon that the policy had been cancelled in early February 2006. It referred to the implication that the fresh proposal had been completed and submitted by someone other than Mrs Coxon and that, although the Firm had implied that it had been completed and signed by Mr Coxon, the FOS did not consider that the signature on the form matched that of Mr Coxon.

408. Had the provisional and/or final decisions been in the hands of the Authority prior to 29 May 2008, we would have taken the view that misconduct in relation to Mrs Coxon, and the forgery of Mr Coxon's signature, could each reasonably have been inferred from the information those decisions provided to the Authority. There is, however, no evidence that those decisions were sent to the Authority at any time prior to 26 August 2008, and we are satisfied that the first time the Authority had information from which it could reasonably have inferred Mr Jeffery's misconduct in this respect was 26 August 2008.

Information obtained from Surrey police

409. Although the issue of the relationship between the Authority and Surrey police occupied a considerable portion of the evidence and the submissions before us, we can deal with the matter quite shortly.

410. As we have described, the actual or constructive knowledge of the Authority must relate to the specific incidents of misconduct set out in the Warning Notice. Knowledge of similar past misconduct, whether actual or inferred, does not start time running generally in respect of different cases of the same or similar misconduct. For this reason, the dealings of the Authority with Surrey police in their initial investigation, and any knowledge that the Authority might have gained from a consideration of the cases contained in the indictment of Mr Jeffery (none of which form any part of the Warning Notice or this reference), have no impact on the limitation question.

411. We have found that on 10 January 2008 the Surrey police had advised the Authority of an allegation concerning Mr Marsen. However, as we explained earlier, that allegation related to the cancellation of a motor insurance policy held by Mr Marsen, and Mr Marsen therefore being uninsured. That issue did not form part of the Warning Notice.

412. Despite the best efforts of Mr Jeffery to persuade us otherwise, we are satisfied that none of the information obtained by the Authority from the Surrey police could have resulted in the Authority knowing prior to 29 May 2008, nor was it information from which, prior to that time, the relevant misconduct could reasonably have been inferred.

Information obtained from BGL

413. We are satisfied on the evidence that no information regarding the per procurationem letters signed on behalf of Mr Fisher, Mr Marsen and Mr Jamieson came into the hands of the Authority prior to 29 May 2008. We are also satisfied that the Authority had no information concerning Mr Jamieson's property insurance before that time. We have found that it was the reference to those three clients in the materials provided by BGL to the Authority in March 2009 that led to the specific enquiries raised by the Authority at the meeting on 30 April 2009, and that the Authority obtained further information in its subsequent investigation that led it to conclude that Mr Jeffery was guilty of misconduct in those respects.

414. We are also satisfied on the evidence that, in relation to information received by the Authority from BGL, the Authority did not know prior to 29 May 2008 of the relevant misconduct, nor prior to that time could the relevant misconduct have reasonably been inferred from that information.

Mr and Mrs Yerbury

415. None of the evidence we received suggested that the issue of the October 2007 renewal had come to the attention of the Authority prior to 29 May 2008. We are satisfied that the earliest date from which that misconduct could reasonably have been inferred was 16 November 2009, the date on which Mr and Mrs Yerbury's complaint was notified to the Authority.

Conclusion on limitation

416. Accordingly we find that, prior to 29 May 2008, the Authority did not know of any of the misconduct to which this reference relates, nor prior to that time did the Authority have information from which such misconduct could reasonably have been inferred. There is no limitation impediment to any of the actions taken by the Authority under s 66 FSMA.

Conclusions

417. We have found that:

> (1) Mr Jeffery is in breach of Statement of Principle 1 in respect of the per procurationem letters purporting to have been written by Mr Jamieson, Mr Marsen and Mr Fisher, and consequently is guilty of misconduct for the

purpose of s 66 FSMA. The Authority is not precluded from taking action by the limitation in s 66(4) and (5).

(2) Mr Jeffery is in breach of Statement of Principle 1 in respect of the forgery of Mr Coxon's signature on the Home & Legacy proposal form dated 18 January 2006, and consequently is guilty of misconduct for the purpose of s 66 FSMA. The Authority is not precluded from taking action by the limitation in s 66(4) and (5).

(3) Mr Jeffery failed to effect insurance for Mrs Coxon, and failed to inform Mrs Coxon of the true position. Mr Jeffery acted without integrity in this respect and is accordingly in breach of Statement of Principle 1. The Authority is not precluded from taking action by the limitation in s 66(4) and (5).

(4) In relation to Mr Jamieson's property insurance policy, Mr Jeffery failed to effect insurance and acted without integrity in that respect and is in breach of Statement of Principle 1. The Authority is not precluded from taking action by the limitation in s 66(4) and (5).

(5) Whilst we do not accept that for the period 1 October 2007 to 30 September 2008 Mr Jeffery and the Firm failed to effect Mr and Mrs Yerbury's household insurance, we do find that Mr Jeffery acted without integrity in his dealings with Home & Legacy and Mr and Mrs Yerbury in the matter of the appraisal. The Authority is not precluded from taking action by the limitation in s 66(4) and (5).

(6) The failures in respect of the October 2008 renewal of Mr and Mrs Yerbury's household insurance demonstrate a lack of integrity on the part of Mr Jeffery and he accordingly is in breach of Statement of Principle 1 in this respect. This is not subject to limitation.

(7) In relation to Miss Yerbury's policy Mr Jeffery acted without integrity, and that accordingly Mr Jeffery is in this respect in breach of Statement of Principle 1. This is not subject to limitation.

(8) In respect of the failure to effect insurance for Mr Redfern, Mr Jeffery lacked integrity and is accordingly in breach of Statement of Principle 1. This is not subject to limitation.

(9) In relation to Mrs Burns the Authority has not made out its case in relation to the 2007/08 insurance cover, but in relation to 2008/09 we are satisfied that no insurance cover was provided and that this was due to the reckless conduct of Mr Jeffery. The failure to have regard to the interests of Mrs Burns as a client demonstrates a lack of integrity on the part of Mr Jeffery. This is a breach of Statement of Principle 1. This is not subject to limitation.

(10) In respect of the failure to effect insurance for Mrs Goddard in or after October 2008, Mr Jeffery lacked integrity and is in breach of Statement of Principle 1. This is not subject to limitation.

(11) Mr Jeffery made false statements to the Authority in the letter to it of 16 April 2009. Mr Jeffery knew that those statements were false at the time he made them. Mr Jeffery did not act with integrity in this respect and is in breach of Statement of Principle 1. Furthermore Mr Jeffery did not deal with the Authority in this respect in an open and cooperative way,

nor did he disclose appropriately the information concerning the Firm's activities. He is accordingly also in this respect in breach of Statement of Principle 4. This is not subject to limitation.

(12) Mr Jeffery failed to deal with the Authority in an open and cooperative way and failed to disclose appropriately information of which the Authority would reasonably expect notice. Mr Jeffery was therefore in breach of Statement of Principle 4. This is not subject to limitation.

Penalty

418. Save only in respect of two matters, the alleged failure by Mr Jeffery and the Firm to effect household insurance for Mr and Mrs Yerbury for the period 1 October 2007 to 30 September 2008 and the 2007/08 insurance cover for Ms Burns, we have found that the Authority has made out its case against Mr Jeffery.

419. We regard this as a serious case of lack of integrity, the making of false statements and failure to deal with the Authority in an open and cooperative manner. We are in no doubt that a substantial financial penalty should be imposed.

420. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business. In our view Mr Jeffery displayed a wholly unacceptable lack of integrity in his dealings with the clients whose cases we have considered, and with other professionals in the insurance market. Far from demonstrating a high standard of conduct, his conduct was of the basest standard. He had a reckless disregard for the interests of his clients, which came a very poor second to his own, and he showed complete contempt for regulation and the role of the Authority in attempting to enforce it.

421. Not only has Mr Jeffery acted without integrity, he has refused to acknowledge, even in the face of substantial evidence, any wrongdoing on his part. Instead, he has sought to impugn the honesty, integrity or competence of others; his employee, Mrs Masters, his clients who placed their trust in him and were poorly rewarded for having done so, the Surrey police, industry professionals, both those who gave evidence and others, the Authority and those working for it, and counsel for the Authority. We reject those submissions, as we reject Mr Jeffery's assertion that these actions are the result of a conspiracy against him. Nothing in his evidence or arguments does anything to deflect responsibility away from Mr Jeffery.

422. The Authority decided to impose a penalty of £150,000. In all the circumstances of this case, we agree that is the appropriate penalty. We have not upheld all of the complaints against Mr Jeffery, but we have found that he has nonetheless been in substantial breach of Statements of Principle 1 and 4. A penalty of £150,000 is in our view amply justified on the basis of our own findings.

423. Not surprisingly, since Mr Jeffery's position was at all times that he had done nothing wrong, we had no submissions on his financial position or ability to pay a financial penalty of this amount. We shall accordingly adjourn that part of the proceedings pending submission by Mr Jeffery of evidence as to his means.

Prohibition

424. A prohibition order may be made if it is considered that Mr Jeffery is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

425. We have found that Mr Jeffery lacked integrity in the performance of his controlled function. We have no doubt that he is not a fit and proper person. His failure to comprehend the nature and extent of his wrongdoing, his inability to accept the basic tenets of regulation and his evident contempt for the regulatory authorities make it perfectly plain that, left to his own devices, he would carry on in precisely the same fashion. He would, in our judgment, pose a serious risk to clients and others dealing with him, and to the integrity of, and confidence in, the financial system.

426. For these reasons, the only appropriate order is to prohibit Mr Jeffery from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

Directions to the Authority

427. Subject only to the question of the level of the financial penalty having regard to Mr Jeffery's financial means, the reference is dismissed.

428. Directions will be given to the Authority with respect to the financial penalty when that has finally been determined by the Tribunal.

429. As regards prohibition, the Authority is directed to make an order pursuant to s 56 FSMA prohibiting Mr Jeffery from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

ROGER BERNER

UPPER TRIBUNAL JUDGE

RELEASE DATE: 27 June 2013

APPENDIX A

Decision released on 15 January 2013 on Mr Jeffery's application for witness summonses and production of documents

Reference number: FS/2010/0039

FINANCIAL SERVICES – application for witness summonses and production of documents – application made during hearing and after substantially all evidence had been given

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

ANDREW JEFFERY **Applicant**

- and -

THE FINANCIAL SERVICES AUTHORITY **Respondent**

TRIBUNAL: JUDGE ROGER BERNER
SANDI O'NEILL (Member)
IAN ABRAMS (Member)

Sitting in public at 45 Bedford Square, London WC1 on 9 January 2013

The Applicant, Andrew Jeffery, in person

Sarah Clarke, instructed by The Financial Services Authority, for the Respondent

DECISION

1. We have before us applications by Mr Jeffery for witness summonses and for production of certain documents.

2. These applications come shortly before the end of a hearing which had already occupied the period from 5 December to 20 December 2012, in which period the Tribunal had received extensive witness evidence, and, subject to one outstanding matter, the evidence which the Tribunal had been due to hear had been completed. The Tribunal did not sit on 21 December 2012; matters had been adjourned over the Christmas and New Year period to enable Mr Jeffery in particular to gather his thoughts and to prepare any evidence in reply to Ms Clarke's cross-examination of him, and for both parties to prepare written closing submissions. The Tribunal re-convened on 9 January 2013 for those purposes.

3. On 7 January 2013 Mr Jeffery wrote to the Tribunal to report certain difficulties caused, he said, by the Authority's "obstructive behaviour". He had, said Mr Jeffery, been unable to send his written submissions to the Tribunal by 8 January 2013 because, despite a number of reminder emails to the Authority (copies of which he produced), he had not received the transcript of the hearing for the final day, namely 20 December 2012.

4. We should say immediately that the Authority disputed Mr Jeffery's assertions in this regard. Ms Clarke produced a series of emails to Mr Jeffery's email address which had successfully resulted in his receiving the transcripts for every other hearing day, together with an email to the same address attaching the transcript of 20 December 2012. The same email included Ms Clarke as recipient; she had received both the email and the transcript. Mr Jeffery's emails to the Authority commenced on 21 December 2012 and were in each case addressed to Beatrice Schady, of the Authority's legal department. Ms Schady was not in the office and had set an automated out of office reply, which should in the ordinary course have been received by Mr Jeffery. Mr Jeffery had continued to send emails to Ms Schady's email address, and had not sought to direct his requests to any other person in the Authority, although there were a number that he would have known that he could have contacted. Mr Jeffery, in turn, said that he did not receive an out of office message from Ms Schady's email. Doubts were raised as to the provenance of one of Mr Jeffery's emails (which Ms Schady had apparently not received); Mr Jeffery put this down to an error in copying and pasting the email into a Word document.

5. There is little for us to take from these opposing positions. As far as dealing with closing submissions was concerned, that had already been overtaken by the fact that, in the same letter of 7 January 2013, Mr Jeffery had signalled his intention to apply for witness summonses and the production of further documents. It was clear, therefore, that we would have to deal with those applications and make consequent directions for the further conduct of the proceedings rather than dealing with closing submissions at that time.

6. We proceeded to hear Mr Jeffery's applications. We should note that Mr Jeffery sought a direction that he be permitted to make the applications in writing, and said that he would be disadvantaged by having to make oral submissions to us immediately. We rejected that proposed course. We concluded that Mr Jeffery had

had adequate time to prepare, even if it were the case that he had received the 20 December transcript only late on 7 January or early 8 January 2013. Despite Mr Jeffery's argument that he had been involved in other litigation, had been travelling and/or working in his occupation, we took the view that preparation could have been made based on the transcripts for the rest of the hearing that Mr Jeffery had received, and would need only to have been supplemented by reference to that part of Mr Baum's evidence which was recorded in the 20 December transcript.

The applications

7. Mr Jeffery made the following applications:

(1) That the police log (which had been referred to by Mr Lambert and Mr Bennett in their oral evidence) and police files making reference to a possible meeting in March 2008, be required to be produced.

(2) That the following witnesses be required to attend:

(a) Mr Andy Poole of BGL Group Limited

(b) Mr Ian Gosden of Higos Limited

(c) Ms Sonia Kowalski of Holman's Independent Lloyds Brokers.

Background

8. Prior to the start of the substantive hearing of this reference Mr Jeffery had made a number of applications for witness summonses and document production. The first such application was heard by Sir Stephen Oliver and included applications in respect of Mr Poole, Mr Gosden and Ms Kowalski, as well as the two police officers, Mr Lambert and Mr Bennett. In his decision released on 15 March 2011, Sir Stephen refused all the applications.

9. Mr Jeffery sought permission to appeal Sir Stephen's decision. That was refused by the Upper Tribunal, but in the Court of Appeal Lewison LJ, whilst refusing permission to appeal on all grounds except those related to the two police officers, adjourned that application to the full Court, Lewison LJ having identified a limitation issue which had not been referred to by Sir Stephen Oliver in his decision.

10. The Court of Appeal [2012] EWCA Civ 178 gave permission and allowed Mr Jeffery's appeal in relation to the two police officers (whose evidence, as a result, we have heard, following the issue by the Tribunal of witness summonses in those respects). The Court was satisfied that a limitation issue arose to be determined. The Court held (at [29]) that, although Mr Jeffery might be able to cross-examine the Authority's witnesses about when and how the Authority first knew of the relevant allegations, his case on limitation would or might be materially weakened if he were not also able to advance positive evidence as to what the Surrey police told the Authority and when. A fair trial of the Authority's case against Mr Jeffery required that he should be entitled to require Mr Lambert and Mr Bennett to attend at trial and give oral evidence.

11. The matter then came before Judge Sinfield on 26 June 2012. Witness summonses were issued, on the judge's direction, to Mr Lambert and Mr Bennett. At the same time Mr Jeffery made further applications for witness summonses, including

repeated applications in respect of Mr Poole, Mr Gosden and Ms Kowalski. Those applications were refused by Judge Sinfield.

The Tribunal's approach

12. That then is the context of the current applications before us. Since those earlier applications were made, and to a large extent refused, we have of course had the opportunity to hear and consider the evidence of those witnesses who have appeared, as witnesses called by a party or by summons. Mr Jeffery's case for making his applications at this stage is that there remain uncertainties which, he argues, may be resolved by the Tribunal requiring further witness evidence and the production of the documents he has referred to.

13. The mere fact that this application is made in the course of a hearing, and indeed at a late stage, does not prejudice it. We should, in this regard, record that Mr Jeffery signalled possible further applications of this nature at an earlier juncture in the hearing, and that we left open the possibility of such applications once it had become clear what evidence had been given on the subjects in question.

14. We do not consider there is any doubt that a court or tribunal can entertain an application for permission to call further witnesses and issue witness summonses during the course of a trial. Such an application may be made after the evidence has been completed, although depending on the circumstances the fact of a late application may be a factor to be taken into account. The Tribunal must be mindful of the possibility that an application made after evidence has been given may be based on a party's perception that examination of the witness evidence, although giving relevant evidence, has not served that party's purpose, and may be driven by a desire simply to have "another bite of the cherry".

15. With those issues in mind, however, the Tribunal may direct additional witness evidence, or issue a witness summons in a particular case, in each case at the discretion of the Tribunal, where the Tribunal considers that there is a real likelihood that such evidence will materially assist the Tribunal in its determination of an issue or issues in the proceedings. The test is not whether the party making the application hopes that the evidence sought will assist its case. That would be in the nature of speculation or, as it is put, a "fishing expedition". The test is whether the Tribunal considers that there is a real likelihood that its determination will be assisted. That may be the case where the Tribunal considers that additional evidence would be reasonably likely, one way or another, to resolve an area of uncertainty.

Police documents

16. With those broad principles in mind we turn to consider Mr Jeffery's applications. The first is in relation to the production of the police log to which Mr Lambert and Mr Bennett referred in the course of their evidence, and other police files which may contain reference to a meeting between the surrey police and the Authority in March 2008.

17. We permitted the police log to be used by Mr Lambert and Mr Bennett to refresh their memories in giving evidence. We were told that it could not be disclosed, as it contained confidential information, and that a court order would be required for its production. In the circumstances we considered that, as Mr Lambert

and Mr Bennett were giving evidence, questions related to the information in the police log could properly be asked, both by Mr Jeffery and Ms Clarke, and that it was not necessary for the police log itself to be produced.

18. Mr Jeffery maintained that both Mr Lambert and Mr Bennett had been unable to recall various matters in the course of their evidence. He took us to a number of examples, but those were unfocused and largely gave rise to a possible submission on the part of Mr Jeffery that the particular evidence had not proved the Authority's case, and not to any realistic application that the Tribunal should seek further evidence.

19. The principal focus of Mr Jeffery in this respect was on the issue whether or not there had been a meeting in March 2008 between the Surrey police and the Authority. In answer to question from the Tribunal judge, Mr Lambert, referring to the police log, made reference to a meeting with the Authority in March 2008, with there being some confusion whether the meeting was with a Mr Russell Clifton or Mr Armstrong, from whom, at the Tribunal's direction, we received evidence. Mr Lambert was reading from the police log (or logs; he had two logs, each dealing with separate investigations), and the transcript records that he then referred to the meeting as having been in May 2008. This was the subject of re-examination by Ms Clarke, in the course of which Mr Lambert said that there had been a telephone conversation on 3 March 2008, a fax on 5 August 2008 to update Mr Armstrong, and a meeting with the Authority on 5 August 2008.

20. The evidence the Tribunal has received has been from police officers concerned at the relevant time with the police investigations into Mr Jeffery. Those police officers had the benefit of referring to the police log (or logs) when giving evidence, and questions could have been, and were, raised by both Mr Jeffery and Ms Clarke, and indeed by the Tribunal, as to the contents of the log.

21. The evidence of Mr Lambert was that the purpose of the log is to record important events. If a conversation had taken place, or an email or fax had been sent, that was significant to the investigation, that would be recorded in the log. However, the log would not be a complete record of every conversation that had taken place. Anything significant would be expected to be found in the log. Mr Lambert also confirmed that the log had not been written with a view to the tribunal case.

22. We do not consider that Mr Jeffery has shown that the Tribunal would receive any assistance by seeking itself to view the police log. Evidence has been given as to its contents, and if Mr Jeffery wishes to challenge that evidence he can do so by submission. Equally, we do not consider that the Tribunal will derive any assistance by requiring production about other material that might exist within the police files. Where evidence has been given with the assistance of what is said to be a record of all significant communications, we consider that the prospect of anything material to the limitation question being contained in other files is speculative at best.

23. For those reasons we refuse the application that the police log and other police files be produced.

Mr Andy Poole

24. We now turn to the applications for witness summonses, and deal first with that in relation to Mr Andy Poole of BGL. Mr Jeffery seeks a witness summons for Mr

Poole on the basis that his evidence will assist in the resolution of the limitation issue. There is an issue in relation to the allegations of forged documentation made in respect of three clients, Holger Marsen, William Jamieson and Paul Fisher; we do however recognise that Mr Jeffery's argument is that limitation is relevant more widely, in relation to conduct generally.

25. The background is that a report was made by BGL to the Authority in November 2008. We received evidence from Andrew Baum of the Authority in relation to a meeting on 30 April 2009 between the Authority's investigation team and BGL, whose representatives included Mr Poole. The Surrey police were also in contact with Mr Poole.

26. The previous applications made by Mr Jeffery for a witness summons in relation to Mr Poole form a context for the present application. In his decision, at [18], Sir Stephen Oliver refused Mr Jeffery's application. He concluded that the application did not relate to any issue in the proceedings. Although he referred to Mr Jeffery's submission in relation to BGL supplying information to Surrey police, he does not appear to have treated this as a limitation issue. And despite the Court of Appeal having identified that issue in allowing the appeal in relation to the police officers, permission to appeal in relation to Mr Poole was refused. Later, when dealing with Mr Jeffery's renewed application in this respect, Judge Sinfield refused that application for the same reasons as those given by Sir Stephen Oliver. No reference was made to the limitation issue.

27. We need to consider if anything has taken place since those applications, and particularly during the course of this hearing, which would give rise to a real likelihood that the Tribunal will be assisted in its determination by requiring Mr Poole to attend and give evidence. This must not merely be speculative, and it must be focused, and not in the nature of a "fishing expedition".

28. The argument on limitation, having regard to s 66 of the Financial Services and Markets Act 2000 as it applied at the material time, is whether the Authority knew of the misconduct, or had information from which the misconduct could reasonably be inferred more than two years before proceedings were begun in respect of it, namely a warning notice was issued under s 67(1). In this case the warning notice was issued on 28 May 2010. The relevant date for limitation purposes is therefore 29 May 2008.

29. The Authority's case in relation to the allegations concerning Messrs Marsen, Jamieson and Fisher is that the information received from BGL prior to 29 May 2008 does not relate to the specific allegations made in respect of those clients. Those allegations relate to what is alleged to be forged documentation. The evidence of Mr Baum is that it was only after the meeting on 30 April 2009, when he had received from BGL the files relating to those three clients, that he discovered the letters on which the forgery allegation is founded.

30. The meeting of 30 April 2009 is important in this respect. According to the meeting note of the Authority, out of the 86 clients whose policies were identified by BGL as having been taken out over the internet using credit cards in Mr Jeffery's name, the Authority had sought further information in relation to four cancelled policies, details of 14 policies where the date of birth had been notified as 1 January and an update on what was described as the "Fisher/Groupama" dispute (which concerned issues surrounding a claim by Mr Fisher on a motor insurance policy that is

not the subject of a misconduct allegation). The only named client files requested were those for Messrs Marsen, Jamieson and Fisher.

31. In questions raised by the Tribunal, Mr Baum was unable to add anything to what was recorded in the meeting note to explain the reason why those particular files had been selected for review by the Authority.

32. Where the question before the Tribunal is what information was available to a party at or before a given time, it is always going to be difficult for another party to be able with certainty to understand the position. If a party says they did not know something at the relevant time the Tribunal will have to evaluate that evidence in the normal way. This may be the only source of evidence, if there is no other indication of how that party might have come into possession of material information. But where a source of information can be identified, as was the case with Mr Lambert and Mr Bennett, it is possible for that evidence to be examined from another perspective, either to confirm the position, or to shed new light. That point is clearly made by the Court of Appeal at [29] to which we referred earlier. In the context of Mr Baum not being able to assist the Tribunal any further in relation to the points raised on the note of the meeting of 30 April 2009, it applies equally to Mr Poole as it did to the two police officers.

33. We have therefore decided that Mr Poole should be required to attend as a witness. In so deciding we have taken account of Ms Clarke's powerful submissions to the contrary. This is a step that we have not taken lightly. We take notice of the fact that a requirement to attend court will inevitably bring with it some measure of inconvenience to Mr Poole, but we are concerned above all with the interests of fairness and justice in these proceedings. Although it has made no difference to our decision, we take account of Mr Poole's position within this regulated industry and the part he therefore has to play, with others, in maintaining its high standards. In that context, we do not consider it is, as Ms Clarke argued it would be, a draconian step to require Mr Poole to attend to give evidence.

34. That evidence must be limited and focused. We will not permit a wide-ranging questioning of Mr Poole. He should give evidence only as to the information concerning clients of Jeffery Flanders (Consulting) Limited or in relation to Mr Jeffery that BGL provided the Authority and/or the Surrey police prior to 29 May 2008.

35. We will give consequential directions regarding the issue of the witness summons to Mr Poole.

Mr Ian Gosden

36. We turn then to the application for a witness summons in the case of Mr Gosden of Higos. The basis for this application is that Mr Gosden might have given information to the Authority during the course of 2008 which had a bearing on Mr Jeffery's conduct generally and thus assist in the determination of the limitation issue. He says that the witness called from Higos, Mr Ben Rowe, was unable to give evidence as to what information had been passed by Mr Gosden to Surrey police in 2008.

37. Ms Clarke argued that the only issue of relevance in relation to Higos is that of Mrs Goddard, as that is the only insurance placed with Higos. The evidence is that Mrs Goddard's home insurance policy came up for renewal in October 2008, but that subsequent enquiry indicated that Higos had terminated its agency with Jeffery Flanders in March 2008.

38. An application for Mr Gosden to be required to appear as a witness was considered and rejected by Sir Stephen Oliver and by Judge Sinfield. The Court of Appeal refused permission to appeal the decision of Sir Stephen in that respect. Mr Jeffery has not identified anything specific enough to persuade the Tribunal that there is any likelihood of Mr Gosden being able to provide any material evidence to the Tribunal.

39. We refuse the application that a witness summons be issued to Mr Gosden.

Ms Sonia Kowalski

40. Finally we move to the application in relation to Sonia Kowalski. Ms Kowalski heads a department within the Holman's Group. Evidence from the Holman's Group is relevant to the cases of Mr and Mrs Yerbury and Mr Redfern, and we received evidence from Mr Beaumont of Holman's in those respects.

41. Asked by the Tribunal what evidence Ms Kowalski could offer which could add to the evidence the Tribunal had already heard, Mr Jeffery could only suggest that Ms Kowalski would be a better witness than Mr Beaumont because she was the person at Holman's to whom Mr Jeffery had spoken throughout his negotiations with that Group.

42. The position is that Mr Beaumont has given evidence based on the records kept by Holman's. If Mr Jeffery has concerns over the adequacy of that evidence, and wishes the Tribunal to draw any adverse inference, that is a matter for submission. We do not consider that the mere fact that Ms Kowalski might have been Mr Jeffery's primary contact at Holman's at a particular time is sufficient to persuade us that she is likely to provide us with evidence that materially assists the determination of the issues in question. The application is lacking particularisation, is speculative in nature and must fail.

Decision

43. In summary therefore, we grant the application for a witness summons for Mr Andy Poole, and will make directions to be issued with this decision. We refuse the other applications.

ROGER BERNER

UPPER TRIBUNAL JUDGE

RELEASE DATE: 15 January 2013

APPENDIX B

Decision released on 22 January 2013 on Mr Jeffery's applications in relation to the witness summons issued to Mr Poole

Reference number: FS/2010/0039

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

ANDREW JEFFERY **Applicant**

- and -

THE FINANCIAL SERVICES AUTHORITY **Respondent**

TRIBUNAL: JUDGE ROGER BERNER
SANDI O'NEILL (Member)
IAN ABRAMS (Member)

Sitting in chambers at 45 Bedford Square, London WC1 on 21 January 2013

On applications made by the Applicant on 18 January 2013

DECISION

1. We have before us a number of further applications by Mr Jeffery in relation to the witness summons we have directed be issued to Mr Andy Poole of BGL Group Limited.

2. The first is for a direction that "the FSA … do nothing to 'prepare'Mr Poole before he gives evidence" and that the Authority should face sanctions for the actions they had taken in contacting Mr Ron Simms and Mr Poole, the latter by email dated 18 January 2013.

3. The Authority has said, in an email of 18 January 2013, to the Tribunal as well as to Mr Jeffery, that it proposes to put together a short bundle of documents for Mr Poole to refresh his memory. Both the Tribunal and Mr Jeffery are to be provided with an index of the proposed documents for consideration and agreement before these are sent to Mr Poole.

4. The short answer to Mr Jeffery's application in this respect is that it must be refused. It is a well-established principle that there is no property in a witness (see, for example, *Harmony Shipping Co S.A. v Davis* [1979] 3 All ER 177, per Lord Denning MR at p 180). This means that (subject to obligations of confidentiality that do not arise here) any party to legal proceedings may speak to a witness or potential witness, whether or not that person is under subpoena or witness summons. This is, by way of example, reflected in the Professional Conduct Handbook of The Law Society, governing the conduct of solicitors, at Chapter 8, para 12. That guidance also refers to the obligation of a solicitor, when approaching a witness, to disclose his or her interest in the proceedings, which in this case the Authority's email to Mr Poole clearly does.

5. Despite Mr Jeffery saying that Mr Simms "will no doubt have been briefed by the FSA on what Mr Poole should do and be saying, when giving evidence – i.e. 'deny all knowledge etc etc', there is no basis for this suggestion. Mr Jeffery will of course be able to ask relevant questions of Mr Poole if he wishes to make any enquiry as to whether Mr Poole has been approached in this way.

6. As a general matter, documents that have been disclosed for the purpose of proceedings may be shown to a potential witness (see *Porton Capital Technology Funds and another v 3M UK Holdings Limited* [2010] EWHC 114, per Christopher Clarke J at [28]). There is no reason for applying any special rule in this case. There can therefore be no objection to such documents being provided to Mr Poole in order that he might refresh his memory.

7. Mr Jeffery's second application is that Mr Poole should be directed in the witness summons to review all three policy records for Mr Jamieson, Mr Marsen and Mr Fisher and all the BGL office records and all notes in whatever media to establish all the dialogues he and BGL had with Surrey police and/or the Authority and/or Swintons between June 2007 and 28 May 2008.

8. Our decision to direct the issue of a witness summons in respect of Mr Poole made very clear the scope of the evidence the Tribunal requires from Mr Poole. For the reasons we explained in our earlier decision, we are concerned with information provided by BGL to the Authority and/or Surrey police. We do not consider that there is any reason why this should be extended, as Mr Jeffery suggests, to any other party, such as Swintons. Such an application appears to us to introduce mere speculation in that respect, which is not a basis on which a witness summons should be founded.

9. Otherwise, we see no objection to the sensible course of Mr Poole being asked to refresh his memory by reference to BGL's records for the purpose of giving evidence to which the witness summons has been directed. It will be helpful if Mr Poole is asked to consider in particular the records available to him in respect of Messrs Jamieson, Marsen and Fisher. We accordingly direct that the witness summons will include the following paragraph:

> "Evidence is required in particular in relation to any communications of this nature concerning Mr William Jamieson, Mr Holger Marsen and Mr Paul Fisher between June 2007 and 28 May 2008 (inclusive). You are asked to refresh your memory by reference to any records (whether physical or electronic) available to you."

10. The final application made by Mr Jeffery in this respect is that Mr Poole should also be directed to search out all the policy records for Andrew Jeffery, referring in particular to a "dialogue BGL had with Ian Jeffery premier underwriting during 2008 to 2010 regarding the use of Woodland House address". Mr Jeffery says that this is to deal with the use of the Woodland House address issue from 2009 to date. That issue is relevant to the Authority's case that Mr Jeffery failed to deal with the Authority in an appropriate, open and cooperative way, amongst other things by failing to notify the Authority of changes to his contact details.

11. This is not a ground on which Mr Jeffery has based his applications for a witness summons in relation to Mr Poole. There has been nothing in the hearing that would persuade the Tribunal that there is a real likelihood that Mr Poole will provide evidence that will materially assist the Tribunal in its determination of the contact details issue. Mr Jeffery's application in this respect is refused.

ROGER BERNER

UPPER TRIBUNAL JUDGE

RELEASE DATE: 22 January 2013

APPENDIX C

Decision released on 7 February 2013 on Mr Jeffery's applications contained in his email to the Tribunal dated 6 February 2013

Reference: FS/2010/0039

UPPER TRIBUNAL

(TAX AND CHANCERY CHAMBER)

BETWEEN:

ANDREW JEFFERY **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

DECISION

TRIBUNAL: JUDGE ROGER BERNER
SANDI O'NEILL (Member)
IAN ABRAMS (Member)

6 February 2013

UPON the representations of the Applicant submitted by email dated 6 February 2013

1. Following the conclusion of the oral hearing on 31 January 2013, at which the Tribunal received the evidence of Mr Andy Poole of BGL Group, who was questioned by Mr Jeffery and by Ms Sarah Clarke for the Authority, Mr Poole sent to the Tribunal certain documents relating to a meeting on 15 January 2008 between Mr Poole and a Julie Raistrick of BGL and DS Simon Lambert and Noel Conway of Surrey police. This meeting had been the subject of questions of Mr Poole at the hearing.

2. Mr Jeffery has made the following points in his email of 6 February 2013, which we shall deal with in turn:

(1) Mr Jeffery raises the question why Mr Poole did not find these documents (which he says "raise more questions that they answer") before attending the

hearing on 31 January 2013. He questions whether the Tribunal can rely on Mr Poole's searching skills or his evidence.

The Tribunal will take account of representations as to the reliability of witness evidence in reaching its decision. Mr Poole's evidence was that he had made enquiries whether there were minutes or notes of the meeting (which he would have expected) but that they had not been found at that stage.

(2) Mr Jeffery raises the point that the meeting agenda suggests that the meeting was, at any event, scheduled for 2 hours. Mr Poole's evidence, given before he had discovered the notes, was to the effect that he thought that the meeting must have been brief, but he could not recall the length of the meeting.

The Tribunal will consider representations as to the reliability of Mr Poole's evidence, and any assertion that he "lied on oath". The Tribunal will also consider a submission that it ought to infer that there are further notes that have not been revealed.

(3) Mr Jeffery points to references in the notes to Mr Marsen and Mr Fisher, which he says are not clear and need further questioning, along with references to what he describes as "many pp letters".

It is not clear whether Mr Jeffery is seeking the recall of Mr Poole as a witness. If that is the case, we reject that application. Mr Poole gave evidence from his memory. The notes are very brief, even cryptic, and we do not consider they are likely to produce any further material evidence from Mr Poole.

(4) Mr Jeffery asks the Tribunal to consider what he says are certain contradictory statements in the notes concerning the Authority. He also asks the Tribunal to consider why Mr Conway of Surrey police was speaking to Mr Armstrong of the FSA on 5 May 2008, when the notes of the January meeting refer to Mr Clifton at the FSA.

In common with other submissions, the Tribunal will consider this.

(5) Mr Jeffery says that he should have had all this revealed to him by the Authority long ago. He refers in this regard to the January 2008 BGL report and the notes of the BGL/Surrey police meeting in that month. The latter document is an internal BGL document, and there is no reason to suppose that these notes were ever in the possession of the Authority. The January report, by contrast, was sent to the Authority on 23 March 2009, as appears from the documents which were produced by the Authority on the afternoon of the final day of the hearing on 31 January 2013. Mr Jeffery argues that his applications for disclosure at the hearing before Sir Stephen Oliver in June 2011 would have been viewed more favourably.

At this distance from the June 2011 hearing, it is impossible to speculate what might have been the outcome if the Tribunal had been provided with all the information it now has. The question is whether at this stage there is any further direction in this respect that this Tribunal should make. The answer is that there is not. The Tribunal has seen the available evidence, and has heard from relevant witnesses. It will take account of Mr Jeffery's submissions as to the inadequacy

of disclosure by the Authority in assessing the Authority's case and Mr Jeffery's reply to it.

(6) Mr Jeffery says that he has not been able to question Mr Lambert on any of this material, and that he should be able to do so.

We do not agree. The question before the Tribunal is not what information might have been discussed between Surrey police and BGL, but what the Authority knew before 29 May 2008. The Tribunal has had the opportunity of hearing from Mr Lambert, and can reach its conclusions based on that evidence.

(7) Mr Jeffery submits that "all this proves Simms, Alison Ward and Raisbrook [Raistrick] of BGL" need to be called as witnesses.

There is no basis, in our view, for further evidence to be obtained from representatives of BGL. The Tribunal itself, on Mr Jeffery's application, ordered Mr Poole to attend by witness summons. There is, in our view, no reason to suppose that the Tribunal will be materially assisted by evidence from any other BGL employees at the relevant time.

(8) Mr Jeffery further maintains that "all this proves" that Mr Conway of Surrey police needs to be called as well as Mr Clifton of the Authority.

There is in our view no basis why either Mr Conway or Mr Clifton should be summonsed to appear. Evidence from Surrey police has been given by Mr Lambert and Mr Bennett. If Mr Jeffery wishes to challenge that evidence he can do so by way of submission. Evidence has also been given by representatives of the Authority, including Mr Armstrong by direction of the Tribunal. Nothing persuades us that the Tribunal would be materially assisted by further witness evidence.

(9) Mr Jeffery refers to "after the event" disclosure, to the questions the papers themselves raise, what he describes as "the shabby conduct" of the Authority on 31 January 2013, when the Tribunal refused to admit certain material produced by the Authority at that time, and his inability to have been able properly to question relevant witnesses (Mr Poole, Mr Lambert, Mr Bennett, Mr Baum and Mr Armstrong). He poses the question of the Tribunal: "what reliance can the Tribunal put on anything the Authority and these witnesses have said?"

These are submissions the Tribunal will consider in reaching its final decision. In relation to the witnesses, we can only say that we are satisfied that there are no material issues that cannot be resolved by the Tribunal on the basis of the evidence it has heard, and there is no reason why any of those witnesses should be recalled for further questioning.

(10) Mr Jeffery asks if the Tribunal can be sure that there is not any other evidence relating to Higos, Holmans, Home and Legacy, Acumus, BGL, and Swintons that has not been concealed from him and the Tribunal.

The Tribunal will take into account Mr Jeffery's representations in considering its final decision.

3. The Tribunal has treated Mr Jeffery's email as a formal application. Our decision on the application is set out above.

4. Mr Jeffery has said that these issues go to the heart of his ability to put his arguments on the limitation issue in this case. He says that awaiting the decision of the Tribunal will delay the making of his submissions. We have dealt with these various points and applications as speedily as possible. We do not consider that, in the circumstances, any delay in Mr Jeffery putting his final submissions on limitation can be justified. In accordance with the direction we gave on 31 January 2013, therefore, we direct that Mr Jeffery serve his final submissions on the Authority and file them with the Tribunal not later than 15 February 2013. The Authority's reply is to be made within 14 days after service of Mr Jeffery's submissions.

ROGER BERNER

UPPER TRIBUNAL JUDGE

RELEASE DATE: 7 February 2013