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Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:* **26/06/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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Between:

THE LAW SOCIETY OF NORTHERN IRELAND

Applicant

-and-

CHRISTOPHER J RAFFERTY

Respondent

IN THE MATTER OF CHRISTOPHER RAFFERTY, A SOLICITOR AND IN THE MATTER OF THE SOLICITORS (NORTHERN IRELAND) ORDER 1976

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John Maxwell (instructed by Mills Selig, Solicitors) for the Applicant
Dessie Hutton KC and Anthony Brennan (instructed by Thompson Crooks, Solicitors) for the Respondent

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SCOFFIELD J

Introduction

[1] This is an application on the part of the Law Society for Northern Ireland ("the Society"), the professional and regulatory body for solicitors in this jurisdiction, for a variety of orders relating to Christopher J Rafferty, the respondent, who is a solicitor who has been practising at Jim Rafferty & Co, Solicitors in Dungannon as the principal of that firm. For present purposes the primary relief sought is an order appointing the Society as attorney of the respondent pursuant to para 22A within Part II of Schedule 1 to the Solicitors (Northern Ireland) Order 1976 ("the 1976 Order"). Pursuant to RCJ Order 106, rule 5, applications under Schedule 1 to the 1976 Order are assigned to the Chancery Division of the High Court. The ruling also deals with a related application brought by Mr Rafferty under para 11 of Schedule 1 to the 1976 Order.

[2] Mr Maxwell appeared for the Society; and Messrs Hutton and Brennan appeared for Mr Rafferty. I am grateful to all counsel for their written and oral submissions.

[3] As appears further below, there is a fundamental difference in outlook between the parties as to the timing and urgency of the Society's application. The Society contends that the orders sought are urgent and should be granted immediately, particularly in the interests of clients of the relevant firm. It further contends that there is more than enough material on which the court confidently can and should grant the application for attorneyship. In contrast, Mr Rafferty contends that the application is premature and precipitous; and that much more must be examined, investigated and done before it would be appropriate to grant the order sought. For the reasons set out below, I consider that the Society has the better end of this argument.

The application

[4] The Society's application was commenced by way of originating summons dated 22 May 2026. The application sought a range of relief in the following terms:

> "1. An Order declaring that Schedule 1 of the Solicitors (Northern Ireland) Order 1976 applies to the Defendant and his firm, on the grounds that it has been resolved by the Professional Conduct Committee acting under delegated authority from the Council of the Plaintiff that:
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> a) the Council of the Plaintiff have reasonable cause to believe and have so resolved on 11th February 2026 that in consequence of the acts or defaults of the Defendant, sums of money due from him to clients or held by him on behalf of clients or subject to a controlled trust of which he is the sole trustee or co-trustee, are in jeopardy while in control of the Defendant; and
>
> b) the Council have reasonable cause to believe, and so resolved on 14th May 2026, that Christopher J Rafferty practising at Jim Rafferty & Co, 4 Northland Place, Dungannon, BT71 6AN has been guilty of dishonesty in connection with his practice as a solicitor;

pursuant to the provisions of Articles 36(1)(b)(ii) and 36(1)(a) of the Solicitors (Northern Ireland) Order 1976 (as amended).

2. An Order that the Plaintiff is appointed as Attorney of the Defendant pursuant to paragraph 22A of Schedule I Part II of the Solicitors (Northern Ireland) Order 1976 and that the Plaintiff shall be at liberty to exercise the powers set out at paragraph 23 of the said Schedule.

3. An Order pursuant to paragraph 15(1) of the 1st Schedule to the Solicitors (Northern Ireland) Order 1976 that for 12 months from the making of the Order, postal packets (as defined by section 125(1) of the Postal Services Act 2000) addressed to the Defendant or his firm at any place or places mentioned in the order for re-direction shall be directed to any other address there mentioned.

4. An Order that the time for service of this summons be abridged.

5. Such further or other relief as to the Court shall seem appropriate.

6. Costs."

[5] At the same time, the Society brought an application for injunctive relief including a *Mareva* injunction. This aspect of the application sought an order restraining the respondent from removing files and documents from the practice; restraining him from operating bank accounts related to the practice (including the office account); restraining him from disposing of assets, including his home and personal assets, up to a sum of £750,000; and ordering him to make disclosure of additional assets available to him.

[6] The matter first came before the court for hearing, for review only, on 27 May 2026, at which time a timetable for provision of replying affidavit evidence and submissions was set out; a date for the hearing of the attorneyship application was set; and the respondent gave undertakings to the court in terms similar to the terms of the injunctive relief sought by the Society.

[7] The hearing of the attorneyship application was on 2 June 2026 although, as appears below, further applications have since been lodged by the respondent; and further evidence and submissions have been received from both parties. This resulted in a further hearing on 16 June 2026.

The relevant statutory provisions

The 1976 Order

[8] There are a range of statutory provisions, mostly set out in the 1976 Order, which are relevant to the present application. Part III of that Order deals with professional practice, conduct and discipline. Article 36, within a section of that Part dealing with control of solicitors' property in certain cases, is the most relevant provision for present purposes. In particular, Article 36(1) provides as follows:

> "Where the Council have reasonable cause to believe and have passed a resolution stating that they have reasonable cause to believe, that—
>
> (a) a solicitor, or an employee of his, has been guilty of dishonesty in connection with his practice as a solicitor or in connection with any trust of which the solicitor is a trustee; or
>
> (b) in consequence of the act or default of a solicitor or of any of his employees—
>
> (i) there has been undue delay in connection with any matter in which that solicitor or his firm has been instructed on behalf of a client or any matter which relates to the administration of a controlled trust; or
>
> (ii) any sum of money due from the solicitor or his firm to, or held by him or his firm on behalf of, his clients or subject to a controlled trust is in jeopardy while in the control or possession of the solicitor or his firm,
>
> the provisions of Schedule 1 shall apply in relation to that solicitor and the other persons mentioned in that Schedule."

[9] There are a variety of other provisions within Article 36 which can lead to the application of Schedule 1 in relation to a solicitor; but they are not immediately relevant in this case. Where the Council of the Society passes a resolution having the effect of applying Schedule 1 to the 1976 Order, this is commonly referred to as an 'intervention' in a solicitor's practice. The application of Schedule 1 gives rise to a range of powers on the part of the Society. For instance, it may require the production and delivery to it of documents in the possession or control of the solicitor, his firm or others (see para 2). It may also, by resolution, take control of all

sums of money due from the solicitor or his firm to, or held by him or his firm on behalf of, his or his firm's *clients* or subject to any controlled trust (see para 10). For this purpose, it may also serve a notice prohibiting the payment out of such sums of money, subject to the Society itself or its agents withdrawing such money and operating a special account into which they may be paid (see paras 10 and 12). The Society also has further powers to require persons to provide information to it about money held on behalf of the solicitor or his firm (see para 14). In summary, however, a basic intervention under Schedule 1 gives the Society access to the solicitor's documents and files and (where para 10 is invoked) over the relevant client account.

[10] In addition, when Schedule 1 applies, the Society is also entitled, pursuant to a number of its provisions, to apply to the High Court for certain *additional* powers. These include the following types of application, namely: for an order that postal packets addressed to the solicitor or his firm be directed elsewhere (see para 15); for an order replacing the solicitor if they are a trustee of a controlled trust (see para 16); and/or for an order appointing the Society as the attorney of the relevant solicitor (see para 13(1)(b)(ii) and para 22A). The first and third of these types of relief are sought in the present case.

[11] The third of these options, which is the centrepiece of the Society's present application, is the most intrusive. One route to attorneyship, under para 13(1)(b)(ii), is where a person has failed to comply with the requirements of a notice given by the Society under para 10 of Schedule 1. However, entirely independently of that, para 22A(1) provides as follows:

> "Without prejudice to paragraph 13(1)(b)(ii), the High Court may at any time, on the application of the Society, by order appoint the Society as the attorney of any solicitor named in a resolution passed by the Council under Article 36."

[12] The basic effect of an order appointing the Society as the attorney of a solicitor is set out in para 22A(2), as follows:

> "Where the Society are appointed under paragraph 13(1)(b)(ii) or this paragraph to act as attorney of a solicitor—
>
> (a) the Society shall have power, either in their name or in the name of the solicitor, to do all or any of the acts and things mentioned in paragraph 23 and all such other acts and things in relation to the solicitor's practice or property or assets as appear to the Society to be necessary for any of the purposes of this Order, as fully and effectively in all respects

as if they were done by the solicitor present in person (irrespective of where he then may be); and

(b) the solicitor shall be precluded from doing any of the acts and things mentioned in head (a) which may be done by the Society as his attorney."

[13] In addition, pursuant to para 22A(3), the Society shall have a claim on the property of the solicitor for all costs (if any) incurred by the Society as his attorney.

[14] The powers exercisable pursuant to para 22A(2) are adumbrated in para 23 of Schedule 1. They are extensive and include (in summary and non-exhaustively) the following:

(i) Power to operate all banking accounts in the name or under the control of the solicitor;

(ii) Power to deal with the solicitor's property and assets;

(iii) Power to "carry on, wind up, transfer, sell or otherwise dispose of the practice of the solicitor";

(iv) Power to charge and pursue costs in matters in which the solicitor was engaged or retained;

(v) Power to effect and maintain insurance;

(vi) Power to institute or deal with legal proceedings in relation to the solicitor's property;

(vii) Power to deal with the solicitor's employees, including engaging new staff, changing their duties or terms of service, or dismissing them;

(viii) Power to act for clients of the solicitor; and

(ix) Power, for all of the other purposes specified, to enter into and sign documents.

[15] The width of the powers available to the Society when acting as attorney are apparent from the list of powers set out in para 23, the breadth of their terms, and the provision in para 22(21) that the Society as attorney additionally has power "generally to act in relation to the solicitor's practice and estate as fully and effectively as the solicitor could do."

[16] In summary, a basic intervention where Schedule 1 applies permits the Society to look into a solicitor's practice and, through the provision of a para 10

notice, to protect monies in the client account. An attorneyship permits the Society to step into the solicitor's practice (and, indeed, into his or her shoes more generally) to run the practice, or even wind it down if that is necessary or appropriate. The authorities recognize that these powers are draconian. However, as explained in further detail below, they are not, nor are they designed to be, punitive or disciplinary in nature. Rather, they are protective and restorative.

The Solicitors' Accounts Regulations

[17] A number of provisions of the Solicitors' Accounts Regulations 2014 ("the 2014 Regulations") – made by the Council of the Society, with the concurrence of the Lord Chief Justice, in pursuance of powers conferred on it by the 1976 Order – are also of relevance in the context of this case.

[18] Regulation 2 sets out principles which must be observed, including that a principal must keep other people's money separate from money belonging to the principal (reg 2.2); must keep other people's money in a bank or building society account identifiable as a client account, save for exceptions set out in the 2014 Regulations (reg 2.3); must use each client's money for that client's matters only (reg 2.4); must establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the 2014 Regulations (reg 2.6); and must keep proper accounting records to show accurately the position with regard to the money held for each client (reg 2.7).

[19] Regulation 4 provides that all principals must ensure compliance with the 2014 Regulations. Regulation 5 imposes a duty to remedy breaches in the following terms (insofar as material):

> "(5.1) Any breach of these Regulations must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account.
>
> (5.2) The duty to remedy breaches rests not only on the person causing the breach, but also on each principal. This duty extends to immediately replacing promptly and without delay missing client money or controlled trust money from the principal's own resources, even if the money has been misappropriated by an employee or fellow principal, and whether or not recovery is available from a third party."

[20] Regulation 11 emphasises the strict dichotomy between client money and office money in terms of funds held or received by a solicitor. Part B of the Regulations makes provision for the treatment of client money and the operation of

client accounts, including a general obligation (at reg 13.4) that client money "must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds." A solicitor must also promptly inform a client (or other person on whose behalf money is held) in writing of the amount of any client money retained at the end of a matter (or the substantial conclusion of a matter) and the reason for that retention (see reg 13.5). Regulation 19 deals with withdrawals from a client account, which are strictly controlled.

[21] Part D of the 2014 Regulations deals with accounting systems and records. Regulation 25 includes a restriction on transfers between clients. In particular, regulation 25.1 provides as follows:

> "A paper transfer of money held in a general client account from the ledger of one client to the ledger of another client may only be made if:
>
> (25.1.1) it would have been permissible to withdraw that sum from the account under regulation 19.1; and
>
> (25.1.2) it would have been permissible to pay that sum into the account under regulation 13."

[22] Regulation 26 makes provision in respect of required accounting records for client accounts, amongst other things. These include a requirement (see reg 26.1) that every solicitor shall at all times keep properly written up such accounts as may be necessary to show all his dealings with client's money received, held or paid by him; to show separately in respect of each client all money which is received, held or paid by him on account of that client; and to distinguish all clients' money received, held or paid by him, from any other money and in relation to each transaction or matter undertaken for any client. The current balance on each client ledger account must always be shown, or be readily ascertainable, from the records kept by the solicitor (see reg 26.5).

[23] Part E of the 2014 Regulations makes provision for monitoring and investigation by the Society, and disclosure to it, for the purposes of ensuring compliance with the Regulations.

Relevant authorities

[24] I was referred to a number of authorities by the parties, both from this jurisdiction and that of England and Wales. I address some of these, particularly those from this jurisdiction dealing with the statutory provisions from the 1976 Order mentioned above, at this point in my ruling. Some of the English authorities, particularly relevant to the respondent's application under para 11 of Schedule 1 to the 1976 Order, are considered later.

[25] Deeny J considered the relevant provisions in his judgment in *Law Society of Northern Ireland v John Bogue* [2013] NICh 15. In that case, the Society applied for an order discharging an earlier order which had been made appointing it as the defendant's attorney. The Society's position was that, although client funds had been in jeopardy, by the time of the application to discharge the attorneyship there were no further sums left to be protected or recovered. The defendant resisted the application, arguing that the Society owed him a number of duties which it was obliged to discharge before it was entitled to have the attorneyship brought to an end.

[26] Deeny J noted the "very extensive range of powers" available to the Society when appointed as a solicitor's attorney under para 22A of Schedule 1 to the 1976 Order, encompassing "all the actions that one can readily contemplate might be required of a solicitor or his attorney" (para [9] of the judgment). He held that the High Court, having made an order appointing the Law Society to act as an attorney, also had power, either implied in the statutory scheme and/or arising from its inherent jurisdiction, to discharge that order (see para [10]). The judge then went on to consider the basis upon which that power might be exercised. This included a situation where "having become attorney the Society ascertains that there was an innocent explanation for the cause for concern and the client's funds are not in fact in jeopardy" (para [12] of the judgment).

[27] More generally, Deeny J commented on the nature of the powers provided in Schedule 1 and on the role of the Society in this context. He made reference to the "public interest in ensuring the honesty and competence of the solicitor's profession" which performs a vital role in society, with the manner in which the Society exercises its powers in this context being "a matter of legitimate and profound public concern" (para [14]). In considering the nature of the Society's role as attorney, he commented as follows at para [18] of his judgment:

> "There is a paucity of authority on the duty owed by an attorney under a power of attorney let alone one in the position of the Society as here. What is the role of the Society? As I have said above it is seeking to recover sums of money in jeopardy here or, depending on the terms of its appointment, more generally to protect sums of money in jeopardy or protect the interests of the clients of a solicitor who may be dishonestly or incompetently acting in breach of his duties. It seems to me therefore that there is merit in the argument by way of analogy that its duty is akin to although not, in my view, identical to that of a receiver."

[28] Deeny J went on to further compare the role of the Society as attorney to that of a receiver or mortgagee. Much of that discussion is not directly relevant for

present purposes. It is clear, however, that the Society must act in good faith when exercising these powers. Nonetheless, in seeking attorneyship and acting as an attorney under Schedule 1 of the 1976 Order, the Society is acting as a public body discharging a statutory function (in principle, amenable to judicial review); but is also "performing an investigative, supervisory and managerial role – not one that is quasi-judicial or quasi-legislative nor typically executive" (see paras [22]-[23] of the *Bogue* case). At para [24] of his judgment, Deeny J held as follows:

> "What further seems clear to me is that the primary duty of the society, in this case, is to recover or protect sums of money in jeopardy and that takes priority over its duty to the solicitor, the subject of the attorneyship."

[29] To like effect, at para [26], Deeny J noted that the Society's "primary duty" in this context was "to prevent dishonesty, preserve clients' funds and the Society's compensation fund which might meet any such losses and to preserve the standing of the profession." Helpfully, Deeny J summarized some earlier aspects of his judgment in a conclusory section at the end. In para [43] of his judgment, he said this:

> "In summary, therefore, the position at law of the Law Society of Northern Ireland acting as an attorney for a solicitor requires it to act in accordance with Article 36 of the Solicitors' (NI) Order 1976 and Schedule 1 to that Order, as amended. The primary duty is to address dishonesty or undue delay by a solicitor, his clerks, apprentices or servants or to protect or recover sums of money in jeopardy with the solicitor or his firm. That duty clearly takes priority over any secondary duty to the solicitor, the subject of the attorneyship. However, a duty is owed to such a person. There is a duty on the part of the Society to act in good faith. If their intervention causes them to be responsible for property they should discharge a similar duty as a manager or receiver i.e. to get in rents, avoid waste and keep property in repair. If selling property they should seek to get the best price but need not expend money on the improvement of the property to do so. In discharging its duty the Society has a discretion or margin of appreciation as to how to exercise its powers but it must do so rationally. It is not liable in negligence to the solicitor the subject of the Court Order."

[30] More recently, Mr Simpson KC sitting as a Temporary High Court Judge (hereinafter for convenience referred to simply as Simpson J) considered some aspects of the statutory scheme in *Law Society of Northern Ireland v Kathy Vivienne Sinclair and Others* [2026] NICh 2. In that case, the Society had already been

appointed as attorney for a number of solicitors. A shortfall in client monies approaching some £6m had been identified. Various steps had been taken to try to recover monies. The issue which came before the court was an application for approval of settlements between a number of the parties, including the relevant professional indemnity insurers. The individual facts of the case, and the details of the dispute concerning the level of fault as between various partners within the relevant firm, are not of particular relevance for the purposes of the present application. The broad context, however, was that the Society's proposed settlement treated all three partners as being at fault and/or liable, whereas two suggested that they were not.

[31] Simpson J set out the relevant provisions of the 1976 Order (including Article 36 and various aspects of Schedule 1) and of the 2014 Regulations at paras [21] to [26] of his judgment. He then considered Deeny J's judgment in the *Bogue* case, discussed above. At para [46], he addressed an argument seeking to attack the authority of the *Bogue* judgment, in particular the holding that the primary duty of the Society was to recover or protect sums of money in jeopardy, which duty took priority over the Society's duty to the solicitor concerned. At para [49], Simpson J addressed the purpose of the statutory scheme in these terms:

> "The scheme of the relevant part of the 1976 Order is to permit the Society to intervene in a solicitor's practice in a variety of circumstances. It seems to me that the purpose behind the entitlement to intervene is first, for the protection of the public, in particular the clients of a solicitor's practice and secondly, to limit claims on the solicitors' compensation fund. It is also important for the maintenance of public confidence in the solicitors' profession "as one in which every member of whatever standing, may be trusted to the ends of the earth" (per Lord Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512). Paragraph 22A(2)(a) of Schedule 1 provides the power to do all things as appear to the Society to be necessary for any of the purposes of this Order.""

[32] In expressing this view, Simpson J had regard to dicta of Gillen J at paras [22]-[23] of *Re Brangam* [2008] NIQB 11, in which the judge had referred to the public interest in how the Society exercised its powers in the 1976 legislation; and to those of Sir Robert Megarry VC in *Buckley v Law Society (No 2)* [1984] 3 All ER 313, at 317 and 319, in the following terms:

> "Statute has put the Law Society in a special position in relation to solicitors generally. The Law Society has many important powers which are exercisable in the public interest. In many ways the Law Society is the guardian

> not only of the profession but also the public in its relations with solicitors…
>
> … In any case, the public interest that is to be protected in this case is the effective functioning of the Law Society in protecting monies held by solicitors, as well as the probity and good repute of the solicitors' profession…"

[33] In Simpson J's view, expressed at para [52] of his judgment, what differentiated the attorneyship of the Society with the duties of (for example) a receiver was "the dual public protection role which the Society performs; both the protection of the public, by protecting clients' money, and the protection of the reputation of the profession." Simpson J rejected a submission, therefore, that the court had to conduct a straight balancing exercise between the Society's public protection duties and the duties owed to solicitors for whom it acted as attorney:

> "[54] I cannot think that that is the proper approach. The whole purpose behind the statutory scheme set out in the relevant parts of the 1976 Order and in the 2014 Regulations is public protection; intervention by the Society is not done for the benefit of the solicitors or the firm. The Society's statutory powers and duties are specifically triggered either by dishonesty or an act of default, the consequence of which is to put clients' money in jeopardy.
>
> [55] If that is correct then it follows in my view that the rights of the individual solicitor, for whom the Society acts as attorney, must be subordinated to the statutory duty of the Society to protect clients' money and protect the reputation of the profession. Any other approach, in my view, would severely dilute those protections. Accordingly, I am in respectful agreement with Deeny J when he said that 'the primary duty of the society, in this case, is to recover or protect sums of money in jeopardy and that takes priority over its duty to the solicitor, the subject of the attorneyship.'"

The Society's evidence

[34] The Society's application is grounded on the affidavit of Laura McCullough, its Head of Professional Conduct, sworn on 22 May 2026. This was supplemented by an affidavit of Ms Emma Hunt, sworn on 1 June in response to the respondent's (first) replying affidavit; and a further rejoining affidavit of Ms Maeve Fisher, sworn on 12 June in response to the respondent's second affidavit (which he swore in response to Ms Hunt's affidavit).

[35] The respondent was admitted to the Roll of Solicitors in Northern Ireland on 8 September 1999. Since January 2004, he has practised as a sole practitioner under the style Jim Rafferty & Co, Solicitors ("the practice"). He employs two assistant solicitors (his daughter Dearbhla Rafferty and Laura McMullan) and a trainee solicitor (Caragh McGeown), as well as a part-time bookkeeper and two administrative staff. However, the respondent is the only principal of the firm.

[36] The respondent first came to Ms McCullough's attention in consequence of a complaint concerning one of his clients, BM, who made a complaint through another firm of solicitors alleging that the respondent's practice held a substantial amount of money on her behalf which she had been unable to retrieve. (In this ruling I have used initials for all of the clients in respect of whose matters concerns have been raised. It seems to me there is no necessity for them to be identified, and perhaps details of their dealings with their solicitor to be disclosed, as a result of the present proceedings. The parties are, of course, aware of their full identities.) As a result of this, Ms McCullough instructed the Society's Compliance Officer, Martin McAlinden, to inspect the practice. He did so on 5 February 2026; and carried out a further inspection on 16 and 17 February 2026.

[37] At the date of Mr McAlinden's inspection, it was noted that the client account receipts had been posted for January 2026; but client payments had not been completed and no office postings through January 2026 had been made. However, as of 31 December 2025, the client balance shown in the bank accounts and per client ledgers matched at £591,710.72. (As appears further below, although this would appear to be a reassuring factor, and a matter which would not immediately have put Mr McAlinden on enquiry, it later transpired to be a matter of significant concern.)

[38] Mr McAlinden was informed that the practice used Exped8 accounting software until 31 March 2023; and then from 1 April 2023 used software known as Klynt. Opening balances were carried over to the new package but historical transactions were not. This meant that, potentially, there was a significant lack of accounting information about transactions prior to 1 April 2023. However, Mr McAlinden was informed by the bookkeeper that she had a backup of the old system on a USB drive.

[39] Mr McAlinden considered documentation relating to HMRC payments and considered that there had been an underpayment of VAT. This was confirmed by the firm's bookkeeper, who estimated the amounts due to HMRC to be £100,000 for VAT and £40,000 to £50,000 for PAYE/NIC.

[40] Mr McAlinden reviewed the books of account and obtained the client ledger in relation to BM. This showed no current client balance for BM and no transactions since 1 April 2023. From this, Mr McAlinden drew the inference that when the defendant had written to BM in May 2023 (confirming at that point that the practice

held £100,000 on her behalf from a settlement payment in 2018 and that the funds were invested and would be accessible from August 2024) either the respondent did *not* hold the funds he had stated or that the funds were not held in his *client* account. Either of these situations would be a matter for concern.

[41] Two further files came to Mr McAlinden's attention, namely one relating to a house sale for YB and an estate case for GW (deceased), in which he noted substantial bills with no evidence of invoices having been sent to the clients.

[42] In light of the initial findings from Mr McAlinden, Ms McCullough was concerned that client funds were in jeopardy and referred the matter to the Professional Conduct Committee (PCC) of the Society which acts under delegated authority from its Council. On 11 February 2026 the PCC resolved that "in consequence of the acts or defaults of [the respondent]… sums of money due from him or his firm, or held by him or his firm on behalf of his clients or subject to any trust of which he is sole trustee or co-trustee as aforesaid are in jeopardy while in control or possession of the said solicitor or his firm" ("the jeopardy resolution"). In consequence, and pursuant to Article 36(1)(b)(ii), the provisions of Schedule 1 to the 1976 Order applied to the respondent from the date of that resolution, namely 11 February 2026. The PCC also resolved that the Society should take control, pursuant to para 10 of Schedule 1, of all sums of money due from the respondent or held by him or his firm on behalf of his firm's clients. A copy of the relevant resolutions, and the covering letter sent to the respondent informing him of them and the application of Schedule 1, were exhibited to Ms McCullough's affidavit.

[43] On the same date, namely 11 February, Mills Selig Solicitors were appointed as agent for the Society in the intervention in the respondent's practice. Emma Hunt and Maeve Fisher of that firm were appointed as signatories on the practice client account as a supervisory measure pending a full investigation. The accountancy firm Goldblatt McGuigan was also instructed to carry out a forensic examination of the books and records of the practice.

[44] In the follow-up inspection he conducted on 16 and 17 February, Mr McAlinden considered the BM case again and noted, which is said to be of particular concern, that eight substantial cheques were drawn on this account to payees of *other* client matters which were entirely unrelated, amounting to approximately £48,000. There were additional transactions in and out of the client ledger in respect of this client which appeared to be entirely unrelated. These include payments apparently to counsel who had no involvement in the case. Mr McAlinden's report went on to find six additional files where there were transfers between unrelated client ledgers.

[45] The Society next places significant reliance on a report from Mills Selig, described as a 'preliminary report', dated 28 April 2026. This was compiled by the Society's agents further to its intervention in the practice on 11 February 2026. I

have considered this report and set out below a number of matters addressed within it or in the Society's evidence in reliance upon it.

[46] In the ledger relating to the respondent's client YB, the respondent acknowledged that he was holding a sum of just over £159,000 on her behalf by letter of 2 July 2025. In its report, Mills Selig identified a range of payments from YB's ledger which were of concern. One cheque for £2,000 was paid to Begleys, which is suggested to be a sports shop in Dungannon, with a ledger entry reflecting a payment to someone else. A cheque for £5,000 was made out to a named recipient who is unidentified, with a ledger entry indicating a payment to YB. A cheque of £12,480 was made out to the accountancy firm ASM, with a ledger entry again indicating payment to someone else. A further cheque for £3,480 was made out to Dee Graham Bespoke Limited, suggested to be a menswear shop in Magherafelt, with a ledger reference again suggesting this was paid to YB. Mills Selig also reported a falsely recorded transaction on the YB ledger which recorded a £30,000 payment to YB. However, on further examination of the Danske Bank eArchive system, the relevant cheque reference was not paid to YB but to another person, S Brown. In his submissions, Mr Maxwell took me to the images of these cheques, noting that some or all of them were signed by the respondent personally. A further concern in respect of a bill of £16,000 plus VAT charged to the ledger was raised. YB has since died. A sum of some £74,000 is still held by the practice to the benefit of her estate. However, from its investigations Mills Selig believes there is a shortfall in the monies held on the relevant files which is now due to the estate of YB.

[47] In terms of financial information available to be analysed, Mills Selig requested and was provided with a copy of the USB back-up of the previous accounting system from the practice's bookkeeper. However, this back-up only covered the period April 2019 to March 2023, showing only the client transactions and no office transactions. There was therefore a lacuna in the financial information available by this means. In addition, there were *no* accounting records prior to 2019 on this back-up, although Mr McAlinden was able to access bank statements and paid cheques from January 2019 to the present during his inspections; and as appears above, Mills Selig has also had some access to information through bank records.

[48] Mills Selig queried why all client ledgers started on 1 April 2019 with a carried-forward balance and no prior information. The respondent suggested that the system was corrupted prior to 2019 and all data was lost and that, although he kept Exped8 case management information, he did not retain the accounts data between 2019 or 2023. He said his responsibility was to retain client account ledgers which was done by way of the USB drive. Mills Selig has instructed an IT specialist to take an image of the computer system which permitted some electronic documents to be identified which related to client files (including in relation to the BM case).

[49] From information available, Mills Selig was only able to verify that BM received (at most) £110,000 out of the £375,000 pounds received by the practice on her behalf. There was no balance in her favour showing on the client account, raising a question as to where the remaining £265,000 had gone. Further interaction with her solicitor confirmed, from that solicitor's review of BM's bank statements from 2016 onwards, that she had not been able to identify any further payments from the respondent's practice other than those identified within the Mills Selig report. One of those cheques, however, in the amount of £30,000, required further investigation. The Society's clear view is that this was supportive of Mills Selig's findings that BM had not received most of the money due to her and that a shortfall exists in her client ledger. In Ms Fisher's recent affidavit, she has indicated that BM's new solicitor has submitted a compensation fund claim. BM has also sworn a statutory declaration and provided bank statements from 2016 onwards. These documents allege that BM was unaware that the settlement figure in her case was £375,000 and she was shocked to learn this; and that she has only received a total sum of £80,000 from the respondent.

[50] The Mills Selig report went on to identify a number of other clients from whose ledgers money had moved to unrelated ledgers for (the Society believes and submits) no lawful purpose.

[51] As to the lack of historic financial records, Ms McCullough has averred that the Society was never informed by the respondent of a catastrophic data loss of client information in 2019. That information was not volunteered to Mr McAlinden when he carried out his first inspection; nor had the Society been provided by the respondent with any detailed information about what happened to the Exped8 accounting system, which he appears to have carried on using from 2019 to 2023. The Society is critical of the facts that the respondent has not explained the nature of the problem which he said occurred in 2019 leading to a significant loss of records; that there is no information about the software company having been approached for assistance or to restore this system; that there is no evidence to suggest that the data was irrecoverable; and that there is no evidence of the practice having engaged a third-party computer specialist to assist with preservation or recovery of data. There is further no explanation of what back-up systems, if any, were employed; and why, if they were employed, they failed.

[52] The respondent submitted to the PCC a chronology and submissions prepared by counsel (Mr Brennan) in May 2026, together with a letter to Ms Hunt of 12 May 2026. Ms McCullough avers that none of these materials provide any satisfactory explanation for events. In fact, on the Society's case they give rise to further concerns, including by acknowledging a significant sum due to a client (RR) with insufficient funds available to clear a cheque posted to that client ledger at the time, arising from payments out to unrelated parties and then rectified by a further movement between unrelated matters. Further, the respondent's submitted materials admitted "temporary deficits" on client ledgers. I have considered the

content of these submissions, which are also liberally quoted in the respondent's first replying affidavit (discussed further below).

[53] As a result of all of this, the Society formed the view that there was a substantial history of teeming and lading, that is, making false entries in client ledgers to support payment due from another, also described as a classic case of "robbing Peter to pay Paul." In the Society's view, all of the false entries fed into the final client balance which was used to give a representation that the client account was in order (see para [37] above). It was since fully acknowledged in the response by and on behalf of the respondent that the position in the client account was far from correct. The Society therefore believes that each false entry led to a false appearance on the practice's client ledgers that there is no shortfall on the client account.

[54] In summary, the Mills Selig report concluded that there were serious concerns arising from their review of the available material, both in respect of client documents and accounting information. There was a failure to retain adequate records which had hampered the investigation and represented multiple breaches of the 2014 Regulations. More significantly, Mills Selig were of the opinion that there were deficits in a number of files, including those of BM and YB (both elderly clients, and now deceased in the latter case); that there was evidence of teeming and lading; and that the explanations provided by the respondent were inadequate and failed to address the serious concerns identified.

[55] In submissions, the respondent has made significant play of the fact that Goldblatt McGuigan has not yet carried out a full forensic examination of the books and records of the practice. In her grounding affidavit, Ms McCullough averred that Mr Gabriel Greene of Goldblatt McGuigan had indicated his agreement with the Mills Selig report. This topic was revisited in Ms Hunt's affidavit. She averred that she had had numerous discussions with Mr Greene, the relevant partner in Goldblatt McGuigan, and that "at all times, Mills Selig's findings were analogous to those of GMCG [Goldblatt McGuigan]" such that "a separate report was not provided by GMCG at this stage as this would have been a duplication of work."

[56] Correspondence to the Society from Mr Green of 29 May 2026 was also exhibited in which he said that:

> "We confirm that pursuant to our own independent analysis of the available accounting records our findings are wholly consistent and in agreement with those contained within the various compliance team reports and the preliminary report of Mills Selig.
>
> Mindful of the costs considerations, and based upon our view that our analysis would merely replicate the contents of the compliance reports and the Mills Selig preliminary

> report we have not simply articulated our analysis as it is considered that same would merely repeat matters addressed in their reports and add nothing by way of further clarity or detail.
>
> **Summary and conclusion**
>
> We confirm that our independent analysis of the underlying financial records wholly supports and is consistent with the findings contained within the preliminary report of Mills Selig and the issues raised within the Law Society Compliance reports."

[57] Ms Hunt's affidavit went on to explain that Goldblatt McGuigan may be instructed by the Society to carry out some further forensic work but that this work "would be carried out to establish the full extent of the shortfall and to identify any further clients who may be impacted."

[58] A further issue of concern is that a bankruptcy petition has been presented against the respondent by CM, represented by another solicitor's firm, as part of an ongoing dispute. The respondent had attempted to have the statutory demand which formed the basis of this petition set aside; but that application has been unsuccessful. (There has since been an appeal of the Master's decision in that regard to this court but, in the meantime, the bankruptcy petition has been served.) There is a complicated background to that matter – with the respondent having made a claim against CM in the county court which he contends must be set off against any sums CM claims to be due from him – but the Society's concern is that it was not informed about the bankruptcy petition, even after significant discussions with the respondent about his practice. The Society remains dissatisfied that queries which have been raised by its agents with the respondent in relation to the bankruptcy proceedings have not been adequately addressed. However, although limited details have been provided, the respondent did confirm that the petition debt related to damages which his former client CM said were due to him rather than to the practice.

[59] On reviewing the report of Mills Selig, the PCC (again acting under delegated authority from the Council of the Society) resolved on 14 May 2026 that it had reasonable cause to believe that the respondent "has been guilty of dishonesty in connection with his practice as a solicitor." This is a further basis upon which Schedule 1 will apply to a solicitor's practice pursuant to Article 36(1)(a) of the 1976 Order.

[60] Subsequently, a further client of the respondent, BW, contacted Mills Selig on his own behalf and through a solicitor alleging that the respondent retained some £300,000 on his behalf which he had had difficulty recovering. By the time of Ms Hunt's first replying affidavit, she had spoken to BW on a number of occasions.

He has concerns that the respondent's practice is holding a sum of £300,000 on his behalf since a property sale in 2016 and that the respondent had told him that the monies had to be held by the practice until the court made an order regarding BW's divorce proceedings. He has now submitted a complaint in writing to the Society. This alleges that the respondent's practice was holding the proceeds of sale of the matrimonial home in the sum of £300,000 from around 2016 and that, during later discussions between legal representatives in the course of his matrimonial proceedings, it was agreed that he (BW) would obtain the full amount of those monies as part of the final settlement agreement; but that he has never received any of the money despite having enquired regularly with Mr Rafferty about this. On a brief review of the relevant client account, Ms Hunt commented that this money does not appear to be held. The funds were "clearly not held" as at 30 April 2024; and further investigations will be required to establish what happened to these funds.

[61] Ms Fisher returned to this topic in her recent affidavit, in which she set out a timeline of contact between Mills Selig and BW. Both BW and his father (MW) had spoken to the respondent directly about the monies held on their behalf and indicated that Mr Rafferty had recently said that the monies were not currently available but would be repaid to them within a period of six months to a year.

[62] Following the suspension of the respondent's practising certificate, another query was received from the executor of the estate of FM (deceased). The respondent's practice had been carrying out work on the administration of this estate since 2022. This is not yet finalised but the executor believed that there were at least two payments outstanding, which the Society said requires further investigation.

[63] In all of the circumstances, the Society's evidence was that there is "a significant shortfall with a conservative estimate of £750,000 in relation to clients" which is still being investigated. Ms McCullough therefore averred that the Society required a power of attorney in order to intervene and attempt to recover client monies and to reinstate the client account insofar as practicable. Further, she averred that the Society needed to be in a position to deal with the sale or wind-down of the practice, which is presently without principal, a position which the Society submits cannot continue.

The respondent's evidence

[64] The respondent provided a lengthy replying affidavit which was sworn on 1 June 2026. On analysis, much of the content of this affidavit consists of extensive quotations from correspondence between the parties and/or from or to Mills Selig, from Ms McCullough's affidavit, from the Mills Selig report, and from the submissions from counsel to the Society on the respondent's behalf of May 2026. The respondent's initial affidavit has since been supplemented by two further affidavits from him, sworn on 5 June and 15 June respectively. There is also an

affidavit from his daughter, Dearbhla Rafferty, also sworn on 5 June, describing the position in the practice after the intervention, although expressly giving no view on the accounting matters which are the subject of the proceedings.

[65] There are a number of themes which run throughout the respondent's affidavit evidence, including the following:

(i) He believes the Society intends to sell on his practice and strongly opposes this.

(ii) He contends that the application for attorneyship (and any appointment of the Society as his attorney) is disproportionate, premature and/or unfair, both substantively and procedurally.

(iii) He has sought to explain queries raised with him by or on behalf of the Society 'as best he could' but says he is hampered in this by his lack of access to the practice and relevant records or documentation.

(iv) He understood that the intervention by the Society in February 2026 was intended as a holding measure whilst the affairs of the firm were investigated (and he was content that there be such an investigation). He accepted that that position may require to continue for some time, particularly as he anticipated a "full forensic examination of the books and records" of the practice by Goldblatt McGuigan.

(v) His understanding was that the investigation would arrive at a determination as to whether there was in fact a deficit in the firm's client balance; that there would be a final forensic accountancy report in respect of this; and that he would then have an opportunity to respond to this report, including by commissioning his own accountancy report if he wished. It is implicit in this element of Mr Rafferty's evidence that he assumed, and/or he asserts, that the Society should not be permitted to exercise any further power unless and until this process has been gone through in full.

(vi) He accepts there have been "accounting difficulties within the firm in years past", which he attributes to a technical server issue with the firm's accounting software and the implications of the Covid-19 lockdowns. He further accepts that certain records pre-dating April 2019 "are not fully available due to the migration of the firm's accounting systems at that time." In April 2019 "certain historic accounting material was printed and retained" but he accepts that complete electronic accounting records pre-dating that are not available.

(vii) The ledger entries of concern which were identified in Mr McAlinden's report related to postings between January and September 2020 which coincided with the introduction of Covid-19 restrictions which disrupted

accounting practices because normal office access, file retrieval and accounting reconciliation processes were significantly disrupted. Errors may have occurred during "reconstruction" of client ledgers in the period after April 2019.

(viii) All of the underlying matters referred to in the inspection report had concluded and were completed to the satisfaction of the relevant clients and parties involved.

(ix) In principle, the respondent is committed to cooperating with the Society and its agents in respect of their investigations; and to making good any shortfall in client funds which may ultimately be found to have arisen. (In oral submissions, it was indicated that the respondent could pay some £50,000 into court if required.)

(x) Although there may have been accounting errors, any errors were genuine; there was no dishonest intent, no intentional deprivation of client monies, and no personal enrichment at the expense of any client; and the firm acted properly towards all clients.

[66] There are a range of matters raised by the Society which Mr Rafferty has simply not explained. In his evidence, he emphasizes that he has "avoided speculation" where matters cannot be verified by reference to contemporaneous records. The absence of such records in many instances means that Mr Rafferty simply says that further detailed investigation – and a process of seeking to 'reconstruct' the accounting and transaction records – is required before he can meaningfully comment. He also relies on the absence of records, not merely those of which he now seeks discovery (see below) but also hard copy documents which he accepts have no longer been retained by the practice due to its file retention policies.

[67] Notwithstanding the above, Mr Rafferty's affidavit evidence does purport to address a number of the particular client matters which have caused the Society concern, largely repeating previous representations made by him in correspondence or through Mr Brennan's earlier written submissions on his behalf. In turn, in many instances, these averments fall within the scope of the themes summarized at para [65] above. I have considered all of the evidence provided by Mr Rafferty in this regard. The following issues seem pertinent:

(a) As to the BM matter, the respondent accepts that there were ledger entries made after April 2019, when the client retainer concluded in 2017 or early 2018. He said these entries "appear to relate to historic ledger reconciliation or posting activity rather than the continuation of substantive legal work." I am not at all sure what this means. He submits that a client account deficit had not been identified. However, he accepted in correspondence and submissions that a credit from DAC Beachcroft "may represent a posting to

an incorrect client ledger during the accounting process rather than a substantive transaction relating to this matter." The submissions on his behalf also accepted his understanding that there were amounts recorded as paid from the BM ledger which represent costs due on other files incorrectly posted to that ledger. He accepts that "the position on this file is both confusing and unfortunate" but denies deliberate dishonesty or bad faith. Significantly in my view, the respondent also accepts that "the ledger as presently reconstructed does not bear out that £100,000 was held to [BM's] credit" at a date when that was represented to her in correspondence, although it is denied that the letter was written dishonestly. In his third affidavit, Mr Rafferty makes the point that it is clear that BM had a number of bank accounts and suggests that payments may have been made to her into a *different* bank account from that of which the statements have been disclosed by her solicitor. Albeit BM has given a statutory declaration that she only used that one bank account into which to lodge cheques, the respondent says this cannot be accepted at face value. He denies her suggestion that she was unaware of the amount of her settlement until recently.

(b) On the CM issue, Mr Rafferty recounted the history of the matter, including the fact that he claims fees from CM and has issued proceedings in the county court in respect of them, which he contends should be dealt with (and any resulting debt due to him set off against CM's claim) before the bankruptcy process proceeds. Given the disputed nature of the debt and his claim for set-off, he believes the bankruptcy petition will not succeed. That has been his position throughout and why he did not consider the petition needed to be brought to the attention of the Society. The Master's refusal to set aside CM's statutory demand has been appealed to this court. The county court proceedings have since adjourned, at least in part due to the developments which are the subject of the present proceedings. Mr Rafferty has averred that, on reflection, the bankruptcy petition ought to have been disclosed to the Society at an earlier stage.

(c) In the YB case, the respondent's evidence noted that he had acted in three related matters: a house sale, a house purchase, and the probate of her husband HB's estate. It notes that YB had permitted and requested Mr Rafferty to retain sale-proceeds on a long-term basis, releasing them in smaller payments to her annually, as she did not have online banking facilities and preferred this approach in the context of earlier family difficulties over her money. The respondent also relies upon outstanding work to be conducted on a related file in relation to HB's estate. He contends that transfers from the client account to office account represent professional fees in respect of a range of work, after a detailed bill of costs had been presented. The tenor of the evidence on this case is simply that much more detailed investigation is required; and Mr Rafferty accepted that explanations have not yet been provided, adding that "the position requires

verification through primary banking records, cheque imaging and the underlying file documentation." Some more detail is provided in the respondent's second affidavit, including reliance on some payments made to JB, YB's brother-in-law, at her request. The respondent believes other payments made in late 2025 would also have been made at her request and direction. As to the provision of correspondence or bills to YB, Mr Rafferty explained that she had concerns about post coming to her home address so that correspondence would frequently be provided to her in person.

(d) As to BW's complaint, Mr Rafferty contests his allegations. He contends in particular that BW's suggestion that sale proceeds are due to him is inconsistent with the case he (BW) made in his matrimonial proceedings to the effect that the beneficial interest in these proceeds belonged to his father MW. The respondent proceeded on the basis that the sale proceeds were due to MW and subject to some other claims (ancillary relief proceedings, subsequent litigation involving BW's former wife, and costs in respect of those matters). Again, it is said that "the precise position with regard to the funds requires reconstruction from accounting records." Mr Rafferty averred to recent contact between him and MW, during which MW indicated that he had told Mills Selig that he was mistaken in his complaint. In his third affidavit, the respondent relies heavily on the email (disclosed in Ms Fisher's affidavit) of 8 May from BW indicating that he had made a mistake and did not want the complaint investigated, which pre-dated the dishonesty resolution of 14 May 2026 and was not disclosed in the grounding affidavit of Ms McCullough of 22 May. He has also raised issues as to BW's character and his having spent time in prison.

(e) In relation to LR, the respondent has accepted that there may have "been posting to an incorrect client ledger during the accounting process" but relies on the fact that no issues or complaints were raised by the client relating to the handling of the matter.

(f) This point – that clients have not raised any complaint – is reiterated in relation to a number of others, including PM, PD, DA, and SMcA. Incorrect postings in respect of these matters are said to be consistent with "incorrect posting during manual reconciliation in the disrupted period of early 2020, rather than evidencing deliberate personal misappropriation."

Consideration

[68] In this case, the Society's application has been met with a range of applications on the part of the respondent: an application under para 11 of the 1976 Order to set aside the para 10 notice within the resolution of 14 May and seeking to undermine the intervention flowing from that resolution; an application for discovery in the course of that application; and an application for discovery in the course of the Society's attorneyship application. There is also an appeal against the

suspension of the respondent's practising certificate which, lodged on 15 June 2026, is to be heard by the Lady Chief Justice pursuant to Article 15(4) of the 1976 Order and is not before me. I propose to examine whether, absent such applications, the Society's attorneyship application would be granted. If so, the next question is whether the applications now made by the respondent either require, or should nonetheless lead to, a different approach.

[69] I am more than persuaded that, absent the further applications made by the respondent, it would be appropriate for the Society's application to be granted. The reasons for this are summarised below.

[70] In the first instance, it is common case that, at the very least, there are significant errors in the accounting records (such as they are) retained by the respondent's practice. In his evidence, Mr Rafferty accepts that "there appear to have been accounting errors" or "errors in the reconstruction exercise", which he says were "principally" in the period of Covid-19 restrictions and after the accounting server or software crash. That, of itself, is a matter of significant concern. I am also persuaded that there are clearly shortcomings, in a variety of respects, with the respondent's practice's compliance with the 2014 Regulations. That is a further basis upon which the Society could have brought about the application of Schedule 1 of the 1976 Order in relation to the respondent (see Article 36(3)).

[71] However, more importantly, I am also satisfied that there is clear prima facie evidence of a shortfall in client funds within the respondent's practice. There is limited authority on the circumstances where a grant of attorneyship under para 22A of the Schedule is appropriate. Some assistance can obviously be drawn from those cases (discussed above) dealing with the purpose of the attorneyship powers. In my judgment, the key factor warranting the grant of attorneyship – at least in what is likely to be the vast majority of cases – is the identification of a significant potential shortfall in client funds held by the practice. What I have referred to as a 'standard' or 'basic' intervention (without a grant of attorneyship) is designed to permit the Society to look into the firm and control dissipation of client funds. It is a mechanism to permit some investigation and steady the ship. It is nonetheless appropriate to step up a gear once there is credible evidence of a significant shortfall which needs to be redressed. It is a matter of commonsense that additional powers are required when the Society is satisfied that it needs to move from merely *protecting* funds held for clients to *recovering* funds which appear due to clients but which are no longer held. Deeny J's observations in the *Bogue* case which are set out at paras [28] and [29] above are also consistent the grant of attorneyship being directed towards recovering moneys for clients. Although this is not necessarily the only circumstance where the grant of an application under para 22A will be warranted, it is likely to be one of the most common.

[72] In my view, on the evidence available, that point has clearly been reached in the present case. The Society estimates the likely shortfall as being in the order of

£750,000. It is true that a precise figure cannot be given; but I do not consider that that is a requirement, either legally or practically, for the Society to seek and be granted attorneyship powers. The matter obviously calls for judgment on the part of the Society and then also on the part of the court, paying due regard to the Society's views in light of its experience and expertise in such matters. In this case, I consider there to be more than enough evidence to justify the Society's concerns that there is a shortfall in client funds which now has to be actively addressed.

[73] One of the respondent's central arguments against such a conclusion is that a forensic accountancy deep-dive, involving consideration and 'reconstruction' of a variety of records and transactions, has not yet been undertaken to identify with complete precision the exact amount of any shortfall in client funds and how it has arisen. In my judgment, this argument cannot be determinative for reasons of both principle and practice.

[74] Although the Mills Selig report is described as preliminary in nature, it was produced some 2½ months after the initial intervention in the respondent's firm and after considerable investigation. It is also clearly endorsed by Goldblatt McGuigan. I accept the thrust of the Society's submission that the reference to further investigation being required was, in context, an indication that further investigation would be appropriate in order to determine how money was wrongly disbursed or used and whether there were *additional* concerns. It was not intended to express the view – which is strongly denied by the Society – that further investigation was required in order to ascertain whether there were in fact any legitimate concerns. The Society's position is that financial mismanagement (and breach of the 2014 Regulations) is apparent. What is required is an examination of whether there are more concerns yet to be uncovered. For example, in the BM case, Ms Fisher's evidence is that "it was always clear that there was dishonesty with this matter." The need for further investigation is linked to the statement in the Mills Selig report that their process of investigation has been "greatly hampered by inadequate retention of accounting records" in breach of the respondent's responsibilities pursuant to regulations 26.6 to 26.9 of the 2014 Regulations.

[75] The Mills Selig report deals with a number of cases in detail, including those of BM, LR, PMcM, DA, PD and YB. A number of these cases, and others, have been addressed in evidence. Looking at the cases of BM, YB and BW alone is sufficient to justify the concern that there may be a shortfall in client funds in the order of the Society's estimate.

[76] In relation to the BM case, on the evidence available, it seems that the respondent has only paid the client some £80,000 from the £375,000 settlement monies he received on her behalf in April 2018 and the remainder of the funds have gone missing. (Costs were agreed and paid separately.) Mr Rafferty has not provided any explanation as to the balance of the relevant funds, save for raising the possibility that funds may have been paid to BM via a different account (which in her statutory declaration she denies using) and in transactions which have not

been recorded by the practice. I agree with the Society's submission that it is not sufficient for the respondent to simply argue that this issue needs further investigation. He has been aware of the nature of this complaint since December 2025, well before the Society intervened in the practice. He has had a significant period of time to examine records and provide an explanation. No plausible explanation has been provided as to how or why BM has not received the majority of the funds; why these monies were used on other files; why payments clearly appear to have been made to unrelated third parties; and why the balance on the ledger was indicated to be nil in 2020 when there is strong evidence to the effect that all of the moneys due to the client had not been paid to her. This is despite the fact that this issue was first raised with the respondent in December 2025, well before there was any intervention in the practice.

[77] I judge the Society to be right also to have very serious concerns about transactions relating to the YB ledger. Indeed, in counsel's written submissions to the Society in May on behalf of Mr Rafferty, it was noted that the matters relating to this file "require direct and candid engagement", raised "serious questions" and that "certain matters – particularly the 2025 transactions – cannot be met solely by reference to accounting reconstruction of Covid disruption." Notwithstanding this, no real explanation is provided for many, if any, of the serious discrepancies identified. Mr Brennan's written submissions accepted that a bill was raised for costs of £16,000 which, on the current evidence, did not appear to have been presented to the client. These submissions also acknowledged that the general explanations given for possible accounting errors could not account for the much more recent concerns in relation to this ledger. The submissions indicated that the respondent "recognized the gravity" of the position and was committed to providing a full response "as soon as the review is complete."

[78] In the meantime, the respondent has provided no explanation whatever as to how or why a cheque of £30,000 recorded as payable to YB on the HB probate ledger in September 2025 was in fact paid to a payee recorded as 'S Brown.' Without making any admissions to this, the respondent has indicated that he is willing to lodge the sum of £30,000 pending "the outcome of the verification exercise." He again denies deliberate dishonesty. I find it difficult to accept that the respondent cannot give any additional information in relation to this relatively recent transaction, who 'S Brown' is, or why the ledger records are plainly wrong. He has further made no attempt in his evidence to explain the various other instances where it appears that funds have been drawn from this client's ledger seemingly to make payments in respect of entirely unrelated matters or purchases (see para [46] above), other than suggesting a belief that this would have been at YB's instruction. The Society is also justifiably concerned at the case being made that the respondent's practice operated a banking or investment facility for the client, which again appears to be a prima facie breach of the 2014 Regulations.

[79] I further accept the Society's submission that, in relation to the BW case, regardless of the beneficiary of the money due, namely whether that is BW or his

father MW, the issue is that they *each* believe that the respondent should be holding a significant amount of money on their behalf or one of behalf of at least one of them. However, that money is not held and there is no explanation as to what happened to the funds. The amounts in the accounts as at 30 April 2024 (the earliest date the client account balance could be viewed on the relevant banking portal) were insufficient for the funds which were allegedly held at that point for BW/MW. Again, the respondent has not provided an explanation for this. The Society's evidence is that, although the respondent seeks a further investigation into this matter to determine what happened to the funds, "the accounts show with certainty that the funds are not held regardless of the beneficiary"; and, in fact, the respondent has acknowledged in conversations with BW/MW that their money is no longer held. It is also clear that, whatever the position at one point after discussion between the respondent and one or both of these parties, they are now proceeding with their complaint about non-payment of monies held by the practice and due.

[80] I find it difficult to understand the suggestion made by the respondent that all of the underlying matters referred to in the Society's inspection report were completed to the satisfaction of the relevant clients and parties involved. This suggestion was made to support the further representation that "the issues identified therefore appear to relate to historic accounting reconstruction and ledger reconciliation associated with that period [the period of Covid-19 restrictions] rather than any ongoing client matter or absence of client funds." There are clearly ongoing complaints and concerns from a number of clients, including most notably BM and BW/MW.

[81] In respect of a number of clients, there is strong evidence of clients being paid from other clients' ledgers; and monies being used in respect of entirely unrelated matters. Taking the analogy of robbing Peter to pay Paul, a significant element of the respondent's case is that Paul was paid and that he has therefore not complained; and that Peter has also not (yet) complained. However, neither of these points is an answer if Peter was indeed robbed. The Society's case includes a submission that deficits in certain accounts have been temporarily remedied through the improper use of funds from another ledger (eg using BM's funds to pay RR); and with a broader pattern designed to disguise a shortfall on the client account, including legal costs received being used to fund various payments on other unconnected matters. It is at least in part for this reason that the Society considers that further investigation is required.

[82] The respondent essentially relies upon his own lack of proper accounting documentation as a reason why the Society cannot have reasonable cause to believe that he has been guilty of dishonesty. I reject that submission. In my view there is more than enough evidence for the Society to have *reasonable cause* to believe that he was so guilty, in respect of the respondent's dealings with at least some of his clients' monies. That is the statutory wording of Article 36(1)(a). In this regard, the BM and YB cases (involving the making of unrelated payments from the ledgers

and the missing funds from the settlement and sale monies respectively) are the prime examples.

[83] However, the respondent's case in relation to the dishonesty resolution also appears to me to miss the point in two important respects. First, it is wrongly treated as being a necessary prerequisite to the grant of a power of attorney; and second, it is wrongly treated as a form of disciplinary "finding" against him.

[84] I return to the first of these points below. Nevertheless, it is open to the Society to apply for, and to the court to grant, a power of attorney in respect of a solicitor's affairs in any case in which Schedule 1 applies in relation to the solicitor. A dishonesty resolution under Article 36(1)(a) is not a condition precedent to a grant of attorneyship under Schedule 1. Schedule 1 may apply as a result of a dishonesty resolution in relation to the solicitor (or an employee of his or hers); as a result of undue delay in administering client affairs; as a result of client funds being in jeopardy by reason of an act or default of the solicitor or an employee not involving dishonesty; as a result of failures to comply with the 2014 Regulations; and on a variety of other bases set out in Article 36 of the 1976 Order. Although, as a matter of fact, the Society's application for appointment as attorney in this case followed its dishonesty resolution in May, that was not necessary (nor, for that matter, sufficient) to ground the present application. The more significant feature is in fact that, after a period of investigation, there was reasonable cause to believe that there is a significant shortfall in client funds which needs to be addressed. That being so, the respondent's denials of dishonest conduct are not really to the point.

[85] The evidence submitted on behalf of the respondent also suggests that he does not accept "the *finding* of dishonesty recorded in the resolution of 14 May 2026" (my emphasis). But that is to misunderstand the position. The Society has not made a finding that there has been dishonesty; nor is it required to. It has merely passed a resolution that it has *reasonable cause to believe* that the respondent has been guilty of dishonesty in connection with his practice. That is one of the thresholds for the application of Schedule 1 entitling the Society to commence an intervention in a solicitor's practice. It is not a finding; nor is it reached for the purpose of discipline. It is a relatively modest threshold, amongst others, justifying the Society making enquiries and taking protective measures. Mr Rafferty's suggestion in his third affidavit that, in order to support the Society's dishonesty finding, BM should give evidence and be cross-examined misunderstands the nature of the process in my judgment. This is clear also from a number of the English authorities relied upon by Mr Hutton which are discussed further below.

[86] I do not consider it necessary or appropriate to await the outcome of a much more detailed and potentially lengthy forensic accounting process before the Society is entitled to exercise attorneyship powers. As Deeny J recognized in the *Bogue* case, those powers are in themselves partly investigative (see para [28] above), permitting more detailed and efficient investigation than the more limited powers in paras 2-8 of Schedule 1. In addition, there is an emphasis within the 2014

Regulations on any shortfall in client moneys being addressed promptly and without delay: see, for instance, reg 5 cited at para [19] above. Replacement of money improperly withdrawn from a client account is to be remedied "promptly" upon discovery; and there is a specific duty on a firm's principals to "immediately" replace any missing client money. These provisions speak towards speed of action. I also note that para 22A itself provides a wide discretion to the court as to the timing of appointment, providing that it may "at any time" appoint the Society as attorney after the passing of a relevant resolution.

[87] In this case, it is also a relevant consideration that the respondent is the sole principal in the firm. There are advantages and disadvantages to so practising. One risk is that, in the event of suspension of one's practising certificate, it may be more difficult for the practice to operate in the absence of the only principal.

[88] The applicant's daughter has provided some evidence on the operation of the practice. She qualified as a solicitor in October 2022 and then had a period working abroad, rejoining the practice only in October 2025. Her affidavit suggests that, notwithstanding Mills Selig's oversight of the client account, work continued as normal in the practice from February 2026 until her father's suspension on 14 May 2026. Since then, she has assumed responsibility for a substantial number of matters previously under his conduct, so that client representation has not been suspended, and the tenor of her affidavit is that this has operated satisfactorily up until 27 May 2026 when the respondent undertook not to operate the office account, save for certain payments excepted from the undertaking. However, Ms Rafferty's affidavit does raise concerns about reputational impact and client confidence arising out of recent events; and about uncertainty on her part as to the proper scope of the Society's agents' involvement in the day-to-day operation of the practice. The concerns about reputational impact and client confidence are unlikely to significantly decrease even in the event that the attorneyship was to be refused, provided (as Mr Rafferty suggested) the intervention at the level commenced in February 2026 continued. Uncertainty as to the proper scope of the Society's powers would be removed if the application is granted. The Society's response is that, in light of what has been uncovered in the investigation to date, it is not appropriate to permit Mr Rafferty to run the practice and that it is also unrealistic to expect it to continue to operate without a principal.

[89] In all of the circumstances, considering the Society's application without reference to the counter-applications filed by the respondent, I would be inclined to grant it. As indicated above, the key factor is that the investigation undertaken by Mills Selig has identified serious concerns about a significant shortfall in client moneys which, in my view, it is entitled to seek to investigate further and remedy by exercising the attorneyship powers set out in Schedule 1 to the 1976 Order. It is unnecessary to await the much more elaborate process preferred by the respondent.

[90] I turn then to the question of whether the respondent's further applications warrant a different approach than I would otherwise be inclined to take.

The paragraph 11 application

[91] In Mr Rafferty's initial affidavit he indicated that, by virtue of Schedule 1, para 11 of the 1976 Order, he believed he had a right to apply to the High Court for an order "directing the Society to withdraw the intervention notice." The Society took issue with this suggestion, submitting that this applied only to the withdrawal of a notice *to a bank* served pursuant to para 10 of Schedule 1 to the Order (which in this case had been served on 11 February 2026). The Society's view was that para 11 related to the bank notice and did not extend to challenging the application of Schedule 1 to the practice.

[92] There has since been additional argument on this element of the respondent's rights. Indeed, an originating summons making an application under para 11 was issued on the respondent's behalf on 1 June 2026.

The nature of an application under para 11

[93] The Society's basic point – that an application to the court under para 11 of Schedule 1 relates to the powers exercisable by the Society under para 10 – is a superficially attractive one. On its face, the para 11 procedure is a means of reviewing the control over the client account afforded to the Society under para 10. However, there is also force in the respondent's point that a challenge to the para 10 powers may also encompass, and in some cases determine, a challenge to the basis of intervention more generally.

[94] Para 10 of Schedule 1 provides as follows:

> "The Society may, on a resolution in that behalf made by the Council, take control of all sums of money due from the solicitor or his firm to, or held by him or his firm (in whatever manner or in whatever account and whether received before, on or after the date of the resolution) on behalf of, his or his firm's clients or subject to any controlled trust, and for that purpose the Society shall serve upon the solicitor or his firm, and, except where the provisions of Article 40 apply, upon any bank or building society and upon any other person having possession or control of any such sums of money a notice, together with a certified copy of such resolution, prohibiting the payment out of such sums of money otherwise than pursuant to paragraph 12 or 13."

[95] In this case, the Society passed a para 10 resolution alongside both the jeopardy resolution and the dishonesty resolution. The result of each enables the Society to take control of client moneys. The Society should then serve a notice

upon the solicitor or his firm and, generally, upon the relevant bank of building society (or other person having control of such moneys) which prohibits the payment out of those moneys unless withdrawn by the Society or its agent. In short, a para 10 notice freezes the client account or accounts holding client moneys.

[96] Para 11 of Schedule 1 provides as follows:

> "Within fourteen days of the service of a notice under paragraph 10 the solicitor or his firm, or the bank, building society or other person upon whom the notice was served may, on serving not less than forty-eight hours' notice upon the Society and (if the notice served under paragraph 10 gives the name of the solicitor instructed by the Society) upon that solicitor, apply to a judge of the High Court in chambers for an order directing the Society to withdraw the notice, and on the hearing of any such application the judge may make such order with respect to the matter as he thinks fit."

[97] The target of an application under para 11 is therefore the notice which was served by the Society under para 10. The objective of any such application is an order directing the Society to withdraw the para 10 notice; that is, an order effectively un-freezing the client account (or unfreezing the client moneys held by the applicant under para 11).

[98] However, Mr Hutton relied upon a number of English authorities in relation similar provisions in that jurisdiction which, he submitted, showed that the court dealing with such an application could, and should, examine more generally the basis for the intervention. These included *Buckley v Law Society and another* [1983] 2 All ER 1039 ("*Buckley*"), a decision of Sir Robert Megarry V-C, relied upon principally in relation to the issue of discovery; *Giles v Law Society* (1996) 8 Admin LR 105 (EWCA) ("*Giles*"); and *Holder v Law Society* [2003] EWCA Civ 39, [2003] 1 WLR 1059 ("*Holder*").

[99] One must approach some of the English authorities with a degree of caution, in my view, since the relevant provisions contained within the Solicitors Act 1974 ("the 1974 Act") are not in materially identical terms to those which apply in this jurisdiction. There are some important differences. For instance, there is a very wide range of bases set out in Part I of Schedule 1 to the 1974 Act on which the Law Society of England and Wales (LSEW) may intervene in a solicitor's practice. These extend well beyond suspected dishonesty but do not include a 'jeopardy' provision in the same terms as Article 36(1)(b)(ii) of the 1976 Order.

[100] Perhaps more importantly, the powers exercisable on an intervention are set out in Part II of Schedule 1 to the 1974 Act. These are both stronger and weaker than the provisions contained within the 1976 Order. They are stronger in the

respect that the LSEW can exercise much greater powers over a solicitor's affairs, particularly in relation to money, *without* recourse to the High Court, than can the Society in this jurisdiction. In particular, under para 6 of Schedule 1 to the 1974 Act the LSEW can pass a resolution which vests in it all sums of money held by or on behalf of a solicitor or his firm in connection with his practice, as well as the right to recover or receive those monies, to be held on trust to exercise in relation to them the powers conferred on the LSEW under Part II of the Schedule. Accordingly, in many cases, the LSEW can vest in itself the solicitor's funds, and rights to funds, *both* client and office moneys, without having to seek an order from the High Court. These powers go further than the effect of a para 10 notice under Schedule 1 of the 1976 Order. Under para 6A of Schedule 1 to the 1974 Act, the LSEW can also pass a resolution vesting in it any right to recover or receive debts due to the solicitor or his firm. In these ways, the LSEW can intervene in a solicitor's practice in a much more intrusive manner without having to receive court sanction.

[101] Moreover, pursuant to section 15(1A) of the 1974 Act, exercise of the para 6(1) or 6A(1) powers of intervention operates to automatically and immediately suspend the solicitor's practising certificate (unless there is a contrary direction on the part of the LSEW). That applies, inter alia, in cases of suspected dishonesty on the part of the solicitor or of his having failed to comply with the relevant accounts regulations. In contrast, in Northern Ireland, where under provision of the 1976 Order Schedule 1 applies in relation to a solicitor, the Council of the Society may in their discretion suspend any practising certificate of that solicitor for the time being in force (see Article 15(2)). This requires a positive step on the part of the Society to suspend a practising certificate which may occur when Schedule 1 applies rather than, as is the case in England and Wales, suspension occurring automatically in certain circumstances unless the LSEW directs otherwise.

[102] In short, the initial intervention by the LSEW in England and Wales may well be more draconian than an initial intervention by the Society in Northern Ireland.

[103] At the same time, the range of powers available to the LSEW under the 1974 Act are weaker because they do not appear to afford the ultimate facility of attorneyship which is available under the 1976 Order (albeit para 16 of Part II of Schedule 1 to the 1974 Act does provide a general power to the LSEW to "do all things which are reasonably necessary for the purpose of facilitating the exercise of its powers" under the Schedule).

[104] An application to overturn a notice served on the solicitor or other party holding moneys under para 6(4) of Schedule 1 to the 1974 Act is therefore not wholly equivalent to a similar application under para 11 of Schedule 1 to the 1976 Order. There is another difference. In the 1976 Order, the High Court judge has power on the hearing of any such application to "make such order with respect to the matter as he thinks fit." Although the 1974 Act contains similar wording in para 6(5) of the relevant schedule, that is only where the court has already determined that it should make an order under para 6(4) directing the LSEW to *withdraw* the

notice. In other words, the broad discretionary power only arises where it has been determined that the Society has wrongly exercised the para 6(1) powers. On the face of the statutory provisions, the High Court in Northern Ireland appears to have a wider discretion as to remedy short of ordering withdrawal of the notice.

[105] However, I accept that there is a broad equivalence between the two procedures set out in the respective Act and Order whereby a solicitor can challenge in the Chancery Division a notice issued by the relevant regulatory body which effects a degree of control over client moneys (or client and office moneys in England and Wales) in the course of an intervention. Drawing on the authorities mentioned at para [98] above, I would identify the following principles from them:

(a) An intervention, including service of an appropriate notice affecting a solicitors' funds, is not disciplinary in nature, even though it may be of great import to the solicitor.

(b) The statutory procedure is designed to be simple and enable the Society to "act swiftly when the possibility of mischief becomes apparent" but, at the same time, allowing the solicitor to apply swiftly to the court (see Nourse LJ in *Giles,* referring to the decision of Walton J in the earlier case of *Yogarajah v Law Society*).

(c) Swiftness of action is an essential characteristic of the scheme, such that notions of procedural fairness in advance of the intervention do not sensibly fit within it. Accordingly, there is no requirement for the solicitor to be given particulars of suspected dishonesty or of the reasons for suspecting it at the time when the notice of intervention is given. There may be reasons why the Society may need to preserve confidentiality in advance of serving notice of intervention, including in order that proper enquiries may not be frustrated by the solicitor.

(d) To similar effect, the powers of intervention conferred by Schedule 1 of the 1976 Order are "intended to enable the Law Society to nip in the bud, so far as possible, cases of dishonesty by solicitors" (see Ward LJ in *Giles*, approving an earlier statement by Sir Robert Megarry in *Buckley v Law Society (No 2)* [1984] 3 All ER 313).

(e) Intervention is a draconian remedy, partly because it often 'strikes a mortal blow to the particular practice.' Although protection of the public has to be held in balance against hardship to the solicitor concerned, the balance has primarily been struck by the legislature in the way in which the statutory scheme works. The draconian nature of the jurisdiction, which is necessary to protect the public interest, is also balanced by the right to apply to the court (see Carnwath LJ in *Holder*, at para [14]).

(f) Although an intervention may be amenable to challenge by way of judicial review, the legislature has provided a bespoke means by which notices affecting solicitors' property or funds can be challenged by way of originating summons in the Chancery Division.

(g) Any want of procedural fairness at the earlier stage of the procedure can be cured when the solicitor makes an application to court challenging the intervention, at which point the Society should place before the court the material on which it relies to show that the intervention was, and still is, warranted (see Sedley J in *Giles*).

(h) Since an application to the court allows it to direct withdrawal of the Society's notice invoking the initial 'key intervention power', it is realistic to describe the relevant provision – here, para 11 of Schedule 1 to the 1976 Order – as "conferring jurisdiction upon the court to direct the Law Society to withdraw from an intervention." The court should decide whether or not to direct withdrawal on the material before it (see Sedley J in *Giles*). The jurisdiction of the court is very wide; and should be exercised on the basis of the material before the court which can include supervening events pointing in either direction (see also *Buckley*, at 1043g).

(i) Withdrawal of the notice may be ordered if the notice was fundamentally flawed in some way, including that it was *ultra vires* or the evidence prompting the intervention was too exiguous to meet the relevant statutory test (see, again, Sedley J in *Giles*). The court has a discretion whether or not to order withdrawal of the notice, even if the intervention was initially flawed, since it may consider evidence post-dating the notice (see, again, Sedley J in *Giles*).

(j) To like effect, it has been said that, on an application by the solicitor, the court should conduct a 'two-stage process': first, deciding whether the grounds for the Society's notice are made out; and second, even if so satisfied, considering whether (in light of all of the evidence before it) the intervention should continue. In deciding the second question, the court should balance the need in the public interest to protect the public from dishonest solicitors and the inevitably very serious consequences to the solicitor if the intervention continues (see Carnwath LJ in *Holder*, at para [15], approving an earlier statement of Neuberger J in the unreported case of *Dooley v Law Society*).

(k) When exercising its discretion, or conducting the balance of relevant interests, the court can and should pay due regard or considerable weight to the views expressed by and on behalf of the Society, as the body entrusted by statute with the regulation of solicitors' practices and having experience in dealing with these matters (see Nourse LJ in *Giles*, on this point approving

the judgment of Carnwath J below, and also Sedley J in the same case; and the judgment of Carnwath LJ in *Holder*, at para [33]).

(l) An application to the court to withdraw an intervention can – and usually should – be deal with very quickly (see Carnwath LJ in *Holder*, at para [16]).

[106] A number of these themes chime with some of the dicta in the Northern Irish cases I considered earlier in this ruling which emphasise, perhaps in even more strong terms, the public interest in the exercise of the Society's powers for the protection of clients, the public more generally, and the reputation of the profession.

[107] I am satisfied, however, as Mr Hutton submitted, that in considering an application under para 11 of Schedule 1 to the 1976 Order, particularly where this is brought by the solicitor concerned, the court has power in effect to determine whether the intervention should proceed. An order directing withdrawal of the para 10 notice, unfreezing the client account, would effectively remove any degree of control over the solicitor's practice on the part of the Society. Some remaining powers, such as those under para 2 of the Schedule as to production of documents, may continue in force; but the intervention would thereafter be toothless. In addressing such an application, the court can consider whether the intervention was unjustified to begin with or unjustified in its continuation, albeit it will pay significant regard to the Society's views in this respect. Plainly, if the para 10 power should no longer be exercised, it is highly unlikely that the full suite of powers afforded by paras 22A and 23 should be conferred on the Society (unless necessary for some particular purpose unrelated to protection of client funds).

The time limit and service issue

[108] As appears above, an application under para 11 of Schedule 1 to the 1976 Order must be made "within fourteen days of the service of a notice under para 10." An issue has arisen as to whether the respondent (the applicant in the para 11 application) has complied with this time limit and, if not, whether it can and should be extended.

[109] The dishonesty resolution and accompanying para 10 resolution were made on 14 May 2026. These were communicated to Mr Rafferty by Ms McCullough by email of Friday 15 May 2026. Mr Rafferty responded to Ms McCullough by email at 1.53 pm on that same day, 15 May. The relevant content of that email for present purposes is as follows:

> "I acknowledge receipt this morning of your correspondence dated 15 May 2026 together with the enclosed Resolution of the Professional Conduct Committee dated 14 May 2026.

> I am presently taking urgent legal advice from Senior Counsel with regard to the decision to suspend my Practising Certificate pursuant to Article 15(2) of the Solicitors (Northern Ireland) Order 1976 and the associated intervention issues referenced within your correspondence.
>
> For the avoidance of doubt, I intend to exercise my rights of appeal under the Order and urgent applications are presently being prepared."

[110] The question arises as to whether Mr Rafferty had therefore been "served" with the para 10 notice on 15 May 2026. Mr Maxwell argues that he obviously had been. Mr Hutton denies this and says that mere acknowledgment of "receipt" is not the same as service under the 1976 Order. The respondent says that, in the absence of specific provision as to service in the 1976 Order, this is governed by section 24 of the Interpretation Act (Northern Ireland) 1954 which provides for service by post, with service being deemed (unless the contrary is proved) to have occurred in the ordinary course of post; by personal service; or by one of the other means identified in that section (eg leaving it at the relevant abode or office).

[111] It is right that the 1976 Order itself does not provide for means of service, or what 'service' of a para 10 notice means for this purpose. It is for that reason that Mr Hutton submitted that section 24 of the 1954 Act governs the situation. Neither party referred me to RCJ Order 106 which appears to be relevant. That Order governs proceedings in the High Court relating to solicitors under the 1976 Order. Rule 9, entitled 'Service of documents', is in the following terms:

> "(1) Any document required to be served on the Law Society in proceedings under this Order shall be served by sending it by prepaid post to the Secretary of the Law Society.
>
> (2) Subject to paragraph (1) an originating summons by which an application under Schedule 1 to the Order is made, an order under paragraph 9 of that Schedule or rule 7 and any other document not required to be served personally which is to be served on a defendant to proceedings under the said Schedule shall, unless the Court otherwise directs, be deemed to be properly served by sending it by prepaid post to the defendant at his last known address."

[112] This provision governs documents required to be served on the Society (such as the respondent's para 11 application) and any originating summons under

Schedule 1 to the 1976 Order. Rule 9(2) also addresses "any other document not required to be served personally which is to be served on a defendant to proceedings under the Schedule." However, I think it unlikely that this addresses service of a para 10 notice under Schedule 1. That is not a document served "on a defendant to proceedings." At the time of service of a para 10 notice, it is unlikely that the solicitor in question will be a defendant to such proceedings, since the notice takes effect without recourse to the court. Mr Hutton is likely to be correct, therefore, that section 24 of the 1954 Act provides for service of such a notice. His central point was that this did not allow for service by email, such that service by that means should be ignored. He relied upon the decision of Waksman J in *Sir Robert McAlpine Ltd v Richardson Roofing Co Ltd* [2022] EWHC 982 in this regard, in which the judge held that provision of particulars of claim by email within time were not validly served by that means. He considered the point "technical and unattractive" but nonetheless correct. However, I do not consider that this authority particularly assists me since, as is clear from para [34] of the judgment, the judge was examining the narrow question of compliance with a particular practice direction which permitted service by email but only in limited circumstances which were set out in that practice direction, upon which the argument turned.

[113] I prefer Mr Maxwell's submissions on this aspect of the case. Section 24 of the 1954 Act provides for a range of ways in which service "may" be effected. It is not prescriptive as to the precise method of service required; nor, in my view, is it wholly exhaustive for all purposes. Mr Rafferty had clearly received and read the correspondence and accompanying resolution on 15 May on that date, even though the posted copy had not actually arrived. He replied by email, indicating that he was already taking advice and planning legal steps in response. Service rules are designed to ensure that the relevant party receives a document and, therefore, notice (or the opportunity of reading it and thereby having notice) of the content. As a matter of common sense and first principles, if receipt of the document is acknowledged by the person requiring to be served, along with an indication of awareness of the content of the document served, it would be strange to permit them to claim that they had not been served with the document. Unlike the *Richardson Roofing* case referred to above, no objection to the means of service was taken at the time.

[114] The usual presumption of service having been effected by post at a certain time is rebuttable by evidence on behalf of either party that the document arrived earlier or later than the presumed date or not at all: see *Hodgson v Hart DC* [1986] 1 WLR 317, cited by Mr Valentine at para 6.02 of his chapter on service of documents in his text on Court of Judicature procedure (Valentine, *Civil Proceedings: The Supreme Court* (SLS, 1997)). Alternatively, I consider that the respondent, by his acknowledgement and actions, plainly agreed to service by a different form than that set out in the 1976 Order or 1954 Act, or waived any issues as to service.

[115] The respondent's para 11 application was therefore required to be made on or before close of business on 29 May. It is common case that the application was

not made on that date. The precise circumstances of the making of the application are set out in affidavit evidence from the respondent's solicitor, Ms Eileen Ewing. It is unnecessary to rehearse the full detail of that evidence. The following matters, however, are salient.

[116] First, Ms Ewing candidly accepts that Mr Rafferty's "legal representatives worked on the assumption that service was effected on 15th May 2026" and assumed that Friday 29 May represented the expiry of the 14-day period. Second, the draft summons was provided by counsel that day (29 May) with directions that it should be filed and served on the same day. Third, since Ms Ewing was engaged that afternoon, she left instructions with a more junior member of staff that the relevant summons (with an unsworn but approved affidavit) should be filed physically with the court that afternoon. However, fourth, "owing to a misconception" on the part of that staff member, this did not occur. Instead, fifth, the same member of staff was instructed to file the summons on Monday 1 June. This also did not proceed as planned, as the summons was endorsed with the ICOS number of the existing proceedings in which the Society sought attorneyship notwithstanding that this was a fresh proceeding. Ms Ewing managed to address this later in the afternoon and the summons was stamped by the Chancery Office on 1 June. However, sixth, it was not served until Tuesday 2 June (by email) and by way of hard copy delivery on the morning of Wednesday 3 June. An unissued and unstamped version, carrying the date 29 May, had been sent by email on the afternoon of 1 June to Mills Selig and the Society, with a covering email explaining some of what had occurred that afternoon.

[117] In summary, it was intended to issue and serve the originating summons for the para 11 application on 29 May but that clearly did not happen. Although some debate could be had about the matter, given a variety of details not summarized above, I proceed on the basis that the summons was issued on 1 June and served (by email) on 2 June. In any event, it was out of time, albeit only by a short period. I leave aside for the moment the fact that the respondent does not appear to have served the application by post to the Secretary of the Society as required by Order 106, rule 9(1); and any argument that Mr Rafferty was required under para 11 to give the Society 48 hours' written notice *before* making the application to the court. I am satisfied that it was made out of time.

[118] There is one further exchange which is worth mentioning at this juncture. During the hearing on 2 June, Mr Rafferty provided instructions that he could not have been served with the Society's notice on 15 May as he was out of the jurisdiction at a wedding on that date and, instead, had received the hard copy of the resolution on 19 May. Ms Fisher of Mills Selig was concerned about the accuracy of these instructions, since she believed that the respondent was at or about court (in the county court proceedings between Mr Rafferty and CM) on 19 May. The instructions given by Mr Rafferty in court have since been corrected, with Mr Rafferty accepting that he was available to give evidence in the county court on 15 May; that the wedding he recalled was in fact on 22 May; and that, on

checking his emails, he could confirm that he did receive the email communication of 15 May set out above (see para [109]). His instructions are that he did not remember having received this email when he gave instructions in court on 2 June.

[119] The 1976 Order does not provide for an extension of the 14-day time limit. It is a statutory time limit which, on its face, is absolute. However, given that the 1976 Order is not primary legislation, it may be read down or disapplied if considered to be in breach of the respondent's Convention rights. In this regard, Mr Hutton relied upon the case of *Foyle, Carlingford and Irish Lights Commission v McGillion* [2002] NICA 3.

[120] As to prejudice, it is correct that the court (and therefore the Society) was advised at the hearing on 27 May 2026 that an application under para 11 was intended. The delay in making the application was short; and I am satisfied that concerted (indeed, somewhat frantic) efforts were being made to have the application made on 29 May and thereafter on 1 June. Those efforts are, themselves, perhaps indicative of a perceived weakness in the respondent's argument that time began to run only from 19 May. There is little or no prejudice to the Society in terms of defending or responding to the application caused by any delay. The Society may prefer not to have to meet such an application; but it is not prejudiced in its defence of any such application by the passage of time. I would be prepared to extend time if there is force in Mr Hutton's submission that the time limit is in violation of Mr Rafferty's Convention rights, requiring it to be read down so as to be capable of extension.

[121] The *McGillion* case relied upon related to the time limit for an appeal by way of case stated from the magistrates' court to the Court of Appeal. The appellant sought to challenge a forfeiture order which had been made in the magistrates' court. Upon request, the magistrate stated a case which, as required by the relevant statutory provisions (contained within the Magistrates' Courts (Northern Ireland) Order 1981), was transmitted by the appellant to the Court of Appeal but *not*, as also required, served on the respondent until outside the relevant 14-day time limit. Previous authority had held that the relevant provisions were mandatory and not directory (in the nomenclature used at that time), that is to say that default could not be cured and had the effect of depriving the court of jurisdiction to consider the proposed appeal. The Court of Appeal accepted, however, that the operation of the time limit was disproportionate (in the absence of prejudice) and therefore a breach of the appellant's rights under article 6 ECHR. (Although not analysed in this way, the appellant's A1P1 property rights were clearly also engaged as the order appealed from was for the forfeiture of his two boats.) The court read down the provision in the 1981 Order as being directory only, permitting of extension in an appropriate case, and then granted an extension of time.

[122] The *McGillian* case was an early case decided in January 2002 shortly after the Human Rights Act 1998 came into force. The reasoning in this part of the judgment of Carswell LCJ is uncharacteristically thin. The question for me is

whether it would be breach of the respondent's rights not to permit an out-of-time application under para 11 of Schedule 1 to the 1976 Order.

[123] I have not found this issue easy to resolve; and the submissions on either side in relation to it were fairly cursory. It is clear that limitation periods generally, and court rules properly regulating access to the court, are not of themselves contrary to Convention rights (see, for instance, the well-known case of *Stubbings v UK* (1996) 23 EHRR 213). A lot will depend on the circumstances. Unlike the *McGillion* case, this is not a criminal proceeding; nor is he deprived of an appeal from an adverse judgment of a lower court. Moreover, if Mr Rafferty's A1P1 rights are engaged at all by service of a para 10 notice, this is only in an attenuated way. It is to be recalled that a para 10 notice (which is what is under challenge in a para 11 application) relates only to moneys held by him or his firm *on behalf of clients* or subject to a trust. Such a notice does not freeze his own personal funds. (An application for attorneyship plainly does; but the Society must apply to court for an order having that effect and Mr Rafferty is a respondent to that and has a right of appeal against any order with which he is dissatisfied.)

[124] I have also had regard to the statutory scheme. As noted above, a variety of persons who have received a para 10 notice are entitled to make an application under para 11. Third party rights may be affected by such a notice. The statutory intention is plainly that the validity and effect of such a notice is challenged promptly, if it is to be challenged at all. That is borne out in some of the English authorities discussed above. Indeed, the equivalent time limit in the 1974 Act is one of only eight days (see para 6(4) of Schedule 1 to that Act, as amended by the Administration of Justice Act 1985). Time is plainly of the essence.

[125] Considering all of these matters, I have not been persuaded that the time limit provided in para 11 of Schedule 1 to the 1976 Order is disproportionate and in violation of the respondent's Convention rights such that I am entitled or required to read it down or read in a power of extension.

[126] A consequence of the reasoning above is that the para 11 application is out of time and cannot proceed.

Where would an extant para 11 application take the matter?

[127] Conscious that there may be an appeal in respect of certain aspects of this determination, and that the argument on the service and timing issues was not as full as it otherwise might have been, I consider it appropriate to set out my views on what the position would have been assuming that Mr Rafferty *did* have an outstanding para 11 application to be dealt. This would be an application challenging the para 10 notice served on him by the Society on 15 May 2026 (and, generally, challenging the control over the practice's client funds arising on foot of that notice). Where would that take him on the present application? The respondent's suggestion is that the Society's attorneyship application must be held

in abeyance pending the resolution of his para 11 application, which itself requires the provision of detailed discovery before it is determined. The Society's suggestion is that its application cannot and should not simply take a place in the queue. Implicit, if not explicit, in Mr Maxwell's submissions was the suggestion that the respondent's strategy is simply a stalling tactic and/or that it would be merely be staving off the inevitable.

[128] In my view the basic flaw in the respondent's contended-for approach is that he would be able to challenge *only* the para 10 notice which was issued in May alongside the dishonesty resolution. He is manifestly out of time to invoke the para 11 procedure to challenge the para 10 notice which was issued in February alongside the jeopardy resolution. In effect, he would still therefore be too late to seek to wind the clock back to pre-intervention times. A central argument marshalled by Mr Maxwell was that the attorneyship application rested on two pillars, both the jeopardy resolution and the dishonesty resolution, and the respondent could only be in a position to attack one of those pillars. That appears to me to be correct. In this regard I note that in the *Giles* case the challenge to the second intervention was academic, and so liable to be dismissed, once it was determined that the challenge to the first intervention must fail.

[129] Mr Hutton sought to meet this concern in two ways. First, he submitted that, had he been engaged earlier, he would have advised Mr Rafferty to challenge the February para 10 notice but 'park' the para 11 application at that time pending further investigation. However, that did not happen. No such application was made. Second, Mr Hutton submitted that, in dealing with the recent para 11 application, the court is entitled to "make such order with respect to *the matter* as" it thinks fit (my emphasis). In his submission, "the matter" in this context must extend back to the *original* intervention and para 10 notice from February. I reject that submission for a number of reasons. First, the ordinary and natural meaning of those words, in my view, relates to the opening words of para 11, namely "the service of a notice under paragraph 10." "The matter" is the particular notice which is under challenge. Second, since not only the solicitor but also any other person served with the notice can apply to the court under para 11, it seems likely that "the matter" in respect of which the court is empowered to give directions relates specifically to that notice and its operation, rather than some more general wide-ranging power relating to earlier steps in the intervention. Third, since the provision imposes a time limit of 14 days after service, it seems clear that the statutory intention was that a notice should be challenged promptly. If the respondent's submission was correct, in a case such as this the effect of the statutory time limit could be avoided in a manner which appears to me to be contrary to the intention of the scheme.

[130] However, even if I am wrong in the above analysis and the court would be empowered to examine the February intervention (and the para 10 notice issued in February) on foot of the June para 11 application, I would not consider that to be a

proper basis on which to refuse or adjourn the attorneyship application. That is for the following reasons.

[131] In the first instance, there is a patent inconsistency between a number of the positions which the respondent has advanced. His primary case was that attorneyship was not warranted because the effect of the Society's para 10 notice, giving it control over client funds, was adequate to meet any concerns which had been raised and to ensure supervision and client protection pending a fuller investigation. Mr Rafferty's initial replying affidavit and submissions made clear that he was content to submit to continued supervision of his client account; and that he was requesting that "the protective position which has obtained since 11th February 2026 be preserved" pending the conclusion of matters, in preference to a grant of attorneyship. He submitted that the Society's control of the client account protected the public. At the same time, his para 11 application must necessarily be a challenge to the continuing control which arises from service of a para 10 notice. Mr Rafferty cannot credibly maintain both that the para 10 freeze on the client account is adequate to provide client protection and, simultaneously, that it is unjustified or unwarranted and should be set aside.

[132] In the second instance, considering things as matters stand at present, I find it difficult to assess the recent para 11 application as having any reasonable prospect of success. That is really for two reasons. First, as discussed above, it has essentially been conceded by the respondent that there were significant issues with his practice's accounting and record-keeping. In those circumstances, it is in my view highly unlikely that an application designed to remove the basic control over client moneys afforded by a para 10 notice is likely to be successful, at least at any time in the short or medium term. Second, and insofar as the para 11 application is really an attempt to challenge the basis of the dishonesty resolution, this too appears to me to be ambitious at this stage. As I have already emphasized, all the Society need establish at this time is that there is "reasonable cause to believe that" the relevant solicitor has been guilty of dishonesty in connection with their practice. This is not a particularly elevated threshold. Moreover, on at least a number of the client matters which have been highlighted in the Mills Selig report, there are transactions recorded in respect of which it is difficult to see how a plausible, innocent explanation can be given. I accept the points made by Mr Hutton, by reference to the case of *Solicitors Regulation Authority v Wingate* [2018] 1 WLR 3969 amongst others, that it is important not to characterize 'run of the mill professional negligence' either as manifest incompetence, nor, indeed, as necessarily being indicative of dishonesty. Notwithstanding that, there are a range of payments which appear (i) clearly to be unrelated to the client matters to which they have been attributed in the relevant ledgers, (ii) to have been misleadingly entered in those ledgers, and (iii) to have been so entered in circumstances where the respondent personally signed the relevant cheques to the unrelated parties.

[133] In any event, as I have also already explained, dishonesty is not required for the grant of attorneyship to be warranted. There appears to me to be clear evidence

in this case of monies being paid between unrelated client ledgers and/or to or from ledgers from and to unrelated parties in order to make payments as and when required, but in a manner which demonstrates a wholly casual approach to the required accounting standards. In short, I consider there to be very clear *prima facie* evidence of the respondent playing fast and loose with client monies. Whether this was through dishonesty, recklessness or incompetence is ultimately neither here nor there for the purpose of the application of Schedule 1 of the 1976 Order and/or an application for attorneyship under para 22A of that Schedule. The key factors are (a) that one of the statutory gateways or springboards to the application of Schedule 1 applies; (b) that there appears to be a significant shortfall in client funds; and (c) that attorneyship is appropriate to seek to redress that shortfall. I reject any suggestion that the shortfall has to be quantified to the penny, or that precise chapter and verse has to be given in respect of each transaction leading to the shortfall having arisen, before the grant of attorneyship is warranted.

Discovery

[134] In addition to the submission that the Society's application for attorneyship should neither be dealt with nor granted pending a full forensic accountancy exercise and/or the determination of his para 11 application, the respondent further submits that it should not be allowed pending the provision of discovery. To this end, he has issued two summonses seeking specific discovery, in materially similar if not identical terms: one in the Society's attorneyship application and the other in his para 11 application. Each summons is grounded on an affidavit of Ms Ewing.

[135] The documents sought are extremely wide-ranging. The requests are under nine headings, accommodating some 56 sub-categories of documents sought. Documents are sought relating to (i) the PCC and its resolution of 11 February 2026; (ii) the PCC and its resolution of 14 May 2026; (iii) the reports and working materials of Mills Selig; (iv) the forensic accounting materials of Goldblatt McGuigan; (v) the examination of the practice's IT systems; (vi) the complaint materials relied upon; (vi) various other documents said to be related to procedural fairness; (viii) documents related to the application for the appointment of an attorney; and (ix) as to the conduct of the agents since the Order of 27 May 2026. The sub-categories of documents sought include all relevant minutes, notes and records of varying types, including draft materials, working papers and legal advice, records of discussions and conversations, and requests for communications in the widest of terms. Documents are also sought which are not only within the possession of the Society but also within its power and/or the possession of its servants or agents, including Mills Selig and Goldblatt McGuigan.

[136] Both parties agreed that I should not consider in detail the discoverability of each sub-category of document at this stage but, rather, should deal in principle with the question of whether discovery was necessary before addressing the Society's application. Generally speaking, Mr Hutton submitted that the documents sought were relevant and pertinent to the issues in both applications,

particularly in relation to the dishonesty aspect which is under challenge by the respondent; and Mr Maxwell submitted that most of the documents were either irrelevant or privileged, and that the discovery sought was oppressive.

[137] In neither the Society's application nor Mr Rafferty's application is standard discovery by list a requirement of the rules: see RCJ Order 24, rule 1 which applies only to actions begun by writ. That is the starting point for the discovery application. However, it is clear that discovery can be ordered in either set of proceedings. Order 24, rule 3 permits the court to order "any party to a cause or matter (whether begun by writ, summons or otherwise)" to provide discovery by list either generally or as to particular matters in question. It is this provision under which the respondent's application is made. Order 24, rule 7 further permits the court, on the application of any party to a cause or matter, to make an order requiring specific discovery of certain documents. Both of these rules are subject to rule 7 which provides as follows:

> "On the hearing of an application for an order under rule 3, 7 or 8 the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs."

[138] There is no suggestion in this case that discovery is necessary for saving costs. On the contrary, it seems likely that the provision of discovery – certainly in the terms sought by the respondent – would likely increase the costs of the proceedings. The key issue is whether discovery is necessary for disposing fairly of the cause or matter.

[139] I accept the submission on behalf of the Society that further discovery is not necessary for fairly disposing of its application for attorneyship. For the reasons discussed above, I consider that the respondent's approach to this application is misplaced, viewing it as akin to an adversarial proceeding based on disciplinary findings when, in truth, it concerns the exercise of powers granted in the public interest for the protection of clients and the profession more generally, with the attorneyship itself having an investigative aspect. The key question for the court is whether, in light of what has come to light, the Society should be afforded additional powers to investigate and deal with the situation over and above those which arise on a standard intervention. The respondent is already in possession of the key documents which led the Society to the conclusion that it was appropriate to seek these additional powers, namely the Mills Selig report and the submissions made to the Society on his own behalf. These matters have been further explored in a sequence of evidence on behalf of the parties. I do not consider it necessary to see, or order disclosure of, all the underlying documents and records to fairly dispose of

the argument that the threshold has been crossed where the Society should properly be granted additional powers of intervention.

[140] The respondent's discovery application is stronger, in my view, in relation to the para 11 application (if it were proceeding). That is for two reasons. First, there is more of a lis between the Society and the solicitor concerned on such an application, since the issue is in effect whether the Society was ever entitled (or should remain entitled) to intervene in the practice in the first place or at all. Although I have expressed views above on the ultimate prospects of any such application in this case, the issue is whether the Society should withdraw from *any* control over the client funds. Second, the respondent relies strongly on the decision in *Buckley* referred to above, in which it was determined that discovery was appropriate and should be provided on the solicitor's challenge to the intervention.

[141] It is necessary to observe – as noted by Sir Robert Megarry at the end of his judgment in the *Buckley* case– that, in that case, there was considerable evidence to the effect that Mr Buckley's financial difficulties were at least in part due to certain acts by a partner of his (who was then deceased) in relation to a deposit in a conveyancing transaction. Documents in the possession of the LSEW could well have been expected to throw some light on the matter and, in particular, how far there was reason to suspect dishonesty on the part of Mr Buckley himself. There seems to have been a prospect that the documents contained a knock-out blow to the suggestion that Mr Buckley himself was guilty of dishonesty; and it also appears that the documents are likely to have been limited in number and nature, contrary to the wide-ranging request made in this case.

[142] If the para 11 application had been brought in time and was proceeding, discovery would have to be addressed, considering each category of documents sought by the respondent. However, in light of the length of time which that would be likely to take, and which the further process envisaged by the respondent thereafter would be likely to take once he was armed with additional documents, I would not have been inclined to refuse or adjourn the attorneyship application in the meantime.

Supervision of the attorneyship

[143] A point of some substance made by Mr Hutton was that the grant of attorneyship is an 'all or nothing' step. There does not appear, at least on the face of the 1976 Order, to be any power on the part of the court to grant limited or partial powers to the Society from the menu set out in para 23 of Schedule 1. The scheme of the legislation is very much, where a grant of attorneyship is appropriate, to trust the Society to exercise those powers properly and to give it broad scope to act as it sees fit. Although I need not decide this issue in the present case, and it was not fully argued before me, it appears to me that it may be possible to create a somewhat more bespoke attorneyship if the court was minded to grant an application under para 22A only in circumstances where the Society was prepared

to give an undertaking (either generally or for the time being) not to exercise its powers in a particular way.

[144] Once a power of attorney has been granted, it is not the court's job to generally oversee, much less manage, the exercise of the Society's powers. The Society has broad discretion to act and is expected to do so in light of its experience and expertise in these areas. Again, however, the situation is not entirely stark. The *Bogue* case makes clear that there are limits to the Society's discretion. It must act in good faith and rationally. It is conceivable that, in an extreme case, it could be subject to an application for judicial review of its actions or, alternatively, an application could be made to revoke the grant of attorneyship. The *Bogue* case also establishes that the court granting the power must also have power to revisit and discharge its order.

[145] The respondent is understandably concerned that the Society intends to sell his practice. His affidavit evidence says that they "propose to sell on the practice." In some instances this may be appropriate; although a benefit of attorneyship is that the Society is also entitled and enabled to *carry on* the solicitor's practice, in much the same way as a receiver might. In the *Holder* case, it was thought by the judge below that appointment of a receiver to carry on the practice and attempt to deal with clients' cases would be a beneficial approach, and at least in some cases less draconian, than the type of intervention which the 1974 Act permits. In this aspect, in appropriate cases the intervention powers in Northern Ireland could be more conducive to the continued operation of the practice. Much will depend on the context and individual circumstances, including of course the attitude and ability of other solicitors in the firm; the length of time for which the intervention needs to continue; clients' own responses to the circumstances; and the outcome of any related disciplinary processes. It should not simply be assumed, however, that attorneyship will inevitably and inexorably lead to the closure of the practice; albeit practices with sole principals may be more at risk in this regard.

[146] As Deeny J also made clear, it is open to the Society (and, I would add, incumbent on it since it is obliged to act in good faith) to apply to the court to discharge the attorneyship in certain circumstances. This will include cases where the need for the powers has been entirely exhausted. This may arise where the shortfall has been entirely remedied; where, as in *Bogue*, there is no more that could realistically be done to remedy the shortfall; and also, although this might be a rare case, where further investigation shows that there was no shortfall and/or no need to intervene in the first place. These are obviously matters which the court would expect the Society to keep under review.

Conclusion

[147] For the detailed reasons set out above, I have reached the following conclusions:

(1) The Society should succeed in its application for attorneyship in light of the circumstances as they are now known, further to its initial compliance investigation and the more recent investigation by Mills Selig following the February intervention. I am satisfied that there appears to be a significant shortfall in client funds and that it is appropriate for the Society to be granted additional intervention powers to investigate and deal with this.

(2) It is not necessary for discovery to be granted in that application for it to be fairly disposed of.

(3) The respondent's application under para 11 of Schedule 1 to the 1976 Order was brought out of time. I am not at liberty to simply extend time, notwithstanding that no material prejudice was caused to the Society by the late application. That application therefore cannot proceed.

(4) If I am wrong in the above – either because the application was brought within time or I could and should have extended time – I nonetheless consider that any outstanding para 11 application should not act as an impediment to the grant of attorneyship to the Society. That is because:

    (a) the para 11 application in relation to the May para 10 notice could not be effective to overturn the February para 10 notice in any event, which is an alternative pillar on which the Society's attorneyship application rests;

    (b) I consider the challenge to the May para 10 notice to have limited prospects of success; and

    (c) the approach proposed by the respondent would result in undue delay, which I consider to be contrary to the purpose and intention of the statutory scheme and not to adequately protect the interests of clients of the firm and the profession more generally.

[148] I will make the orders sought by the Society at paras 1-3 of its originating summons, as set out at para [4] above. (The orders declaring that Schedule 1 applies to the respondent's firm are probably strictly unnecessary; but I understand that, in the interests of certainty, the usual approach is for a declaration in those terms where a further application under Schedule 1 of the 1976 Order is made.)

[149] I will hear the parties on the issue of costs and any consequential issues.