Neutral Citation Number: [2015] EWHC 1897 (QB)

Case No: TLQ/14/0918

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/07/2015

Before:

MR JUSTICE HAMBLEN

Between:

Timothy Wright	**Claimant**
- and -	
Lewis Silkin LLP	**Defendant**

Nicholas Davidson QC and Muhammed Haque QC (instructed by **Rosenblatt LLP**) for the **Claimant**
Michael Pooles QC and George Spalton(instructed by **DWF LLP**) for the **Defendant**

Hearing dates: 15, 16,17,18,19 and 22 June 2015

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE HAMBLEN

Mr Justice Hamblen :
Introduction

1. In 2008, the inaugural season of the Indian Premier League ("IPL") took place - a venture which has transformed the cricket world.

2. An impression of the heady times of that first season is given by an article from Forbes Magazine in 2009 entitled "*The World's Hottest Sports League*":

> "The IPL was conceived in 2007 near some hallowed ground for sports: in London's Wimbledon suburb. There, Lalit Modi, representing the Board of Control for Cricket in India (BCCI), the governing body of Indian cricket, and Andrew Wildblood, an executive at sports management powerhouse IMG, discussed the disconnect between cricket's worldwide popularity and the lack of commercial success of any domestic league. Their solution: a franchise ownership structure modeled after top U.S. sports leagues. Since then, the league has grown at breakneck speed.
> ...
> How successful was that first season? The 2008 semifinals and final drew 62 million viewers in India, with a per-match average of 11% of the nation's total cable audience. In the months that followed, Modi, now IPL commissioner, opted out of TV deals with Sony and World Sports Group, risking nearly $1 billion of guaranteed payments over the next nine years. The gamble paid off, to the tune of a 98% annual increase from those broadcast partners, both of which deemed the IPL too valuable a property to lose.
> ...
> ...private franchise ownership coupled with the commercial possibilities of the new, abbreviated version of the game in India's cricket crazed marketplace has upended the sport's established order."

3. By 2014, it was estimated that the brand value of the IPL was over US$3 billion.

4. The Claimant, Mr Wright, was in at the start of the IPL. He rode the wave of excitement and expectation created by it and the prospect of extravagant riches were held out to him. Unfortunately, in 2009 that wave came crashing down all around him and he has been left picking up the expensive pieces ever since. This litigation is one such piece.

Overview

5. There were eight IPL franchisees in the first IPL season. The IPL franchisee for the city of Hyderabad was the Deccan Chargers. The Deccan franchise was held by Deccan Chargers Sporting Ventures Limited ("DCSV"), a subsidiary of Deccan Chronicle Holdings Limited ("DCHL"), a media group who owned India's fourth largest English language newspaper, the Deccan Chronicle. In 2008, the Deccan Chargers came last in the IPL. In 2009, they won the league.

6. Mr Wright was the Chief Executive Officer of DCSV from 1 June 2008 until the end of January 2009 when he was constructively dismissed.

7. Mr Wright engaged the Defendant, Lewis Silkin LLP, the well known firm of solicitors ("LS"), to assist him in the drafting and making of his employment contract. Mr Wright was assisted and advised by Mr Burd, one of the two joint heads of LS's Employment Department.

8. The contract concluded ("the Heads of Terms") included a "Severance Guarantee" under which Mr Wright was entitled to be paid £10 million in the event of Mr Wright being constructively dismissed ("the severance guarantee"). Under the Heads of Terms DCHL guaranteed DCSV's financial obligations to Mr Wright.

9. Since early 2009, Mr Wright has taken various steps to obtain payment of the severance guarantee from DCSV and DCHL, to no avail.

10. Proceedings were issued by Mr Wright against both DCSV and DCHL in this country on 2 February 2009 ("the first English proceedings"). DCSV and DCHL disputed both service of the proceedings and the English court's jurisdiction over the claim. To address the service issues a second set of proceedings was issued by Mr Wright on 19 November 2009 and served in April 2010 ("the second English proceedings"). DCSV and DCHL again challenged jurisdiction ("the jurisdiction challenge").

11. The jurisdiction challenge was dismissed by Master Fontaine on 15 December 2010. On 25 May 2011 Tugendhat J dismissed an appeal from that decision.

12. DCHL paid to Mr Wright the interim costs orders made by Master Fontaine (£90,000) and Tugendhat J (£47,000), but after serving a Defence and Counterclaim and a List of Documents in the second English proceedings, DCSV and DCHL ceased to take any active part in them. On 16 July 2012 Mr Wright's claim was tried in the absence of DCSV and DCHL by HHJ Seymour QC. The claim succeeded and Mr Wright obtained judgment in the sum of £10,323,094 plus £210,384.65 interest, indemnity costs (which, while not assessed, are quantified by Mr Wright at £956,878.23), and an order for interest on costs (together, "the Judgment").

13. From August 2012 to September 2014, Mr Wright was engaged in protracted proceedings to enforce the Judgment in India at a further cost of about £55,000. These have got nowhere and Mr Wright has been advised that there is no prospect of recovering the Judgment debt. Meanwhile, in September 2012, DCHL (into which DCSV had been amalgamated in May 2011) lost its IPL franchise and is seemingly insolvent.

14. Mr Wright's attempts to obtain payment of the severance guarantee have accordingly been disastrous. He has incurred costs of over £1 million but has not recovered a penny; nor does there appear to be any realistic prospect of him doing so.

15. Mr Wright claims that these losses are the result of LS's negligence. In particular he alleges that LS was negligent in:

(1) Failing to consider or advise on securing effective means of enforcement of DCSV and DCHL's obligations and in particular the obligation under the severance guarantee; and

(2) Failing to advise in relation to jurisdiction matters and to include an exclusive jurisdiction clause with provision for service of proceedings in the UK.

16. LS denies both negligence and causation of loss.

The parties and witnesses at trial

Mr Wright

17. Mr Wright has a background in sports management. From 1990 to 1999 he was employed by the International Management Group ("IMG"), probably the leading global sports management and marketing company. In 2000, Mr Wright entered into a contract to become CEO of Global Golf and he then set up his own company to provide consultancy in sports marketing.

18. In February 2008 Mr Wright rejoined IMG under a consultancy contract to act as IMG's representative in assisting the Board of Control for Cricket in India ("BCCI") to develop the IPL. He was given the title of Managing Director of IMG India, oversaw the company's operations there and was IMG's main point of contact with Mr Lalit Modi, the chairman and commissioner of IPL and vice-president of BCCI.

19. Between February and April 2008, Mr Wright worked closely with Mr J Krishnan who held the title of "President and Chief Executive" of Deccan Chargers.

20. In April 2008, when Mr PK Iyer first approached Mr Wright on behalf of DCSV/DCHL, Mr Wright was well placed. He had a background in international sports management and marketing. He knew cricket. He had had close involvement with the development of the IPL.

Lewis Silkin

21. A description of LS's practice at the material time is provided in "sales pitch" material supplied by Mr Burd to DCSV/DCHL in May 2008. It describes itself as a "full-service commercial law firm based in the City of London" with 46 partners and a total staff of around 250. In relation to employment law it is stated that "employment law has been a key area of expertise for Lewis Silkin for many years" with a team of 53 dedicated employment lawyers which is "consistently highly ranked by the legal directories". It then sets out various reasons for choosing Lewis Silkin for employment law advice, including: offering the full range of employment law advice, strength in depth, and international capability through Ius Laboris. This was described as "the international alliance of leading employment, employee benefits and pension

law firms" which was said to enable them "to provide a unique and truly global solution". It linked them with an Indian law firm, Kochhar & Co.

22. Mr Burd joined LS in September 1984 as a trainee solicitor and has worked there ever since, being made a partner in 1988. He started his career in the Commercial Litigation Department but from 1995 onwards he began to specialise in employment law. From around that time he and Mr James Davies had built up the Employment Department to its present size and are its joint heads.

23. Mr Wright had been a client of LS since the 1980's and first met Mr Burd around 1990. Mr Burd acted for Mr Wright on a number of occasions thereafter and had a good professional and personal relationship with him.

Other witnesses

24. Aside from Mr Wright and Mr Burd oral evidence at trial was given by Mr Hampel, the Chief Executive Officer of the IMG joint venture company, International Stadia Group ("ISG"), by Mr Modi (called by Mr Wright) and by Mr Roger Alexander, former senior partner of LS (called by LS). There was also a witness statement from Ms Sara Cohen of LS but in the event she was not called as no criticism of her was pursued. LS also adduced an expert report on Indian law from Mr Sameer Tapia of ALMT Legal, Mumbai, which addressed the issue of enforcement of judgments in India. Mr Wright provided no Indian law expert evidence of his own and Mr Tapia's evidence was unchallenged.

Factual background

25. The first contact between Mr Wright and Mr Iyer occurred on 20 April 2008, when Mr J Krishnan invited Mr Andrew Wildblood, Mr Michael Fordham (both IMG employees) and Mr Wright to a meeting with Mr Iyer, in Kolkata. Mr Iyer told them that DCHL intended to create a big sports and entertainment company in India. He had a vision to create what he called a "sports city" which would consist of a multi-use sports stadium on the scale of Wembley Stadium and a sports and entertainment arena on the scale of London's O2.

26. Mr Wright met Mr Iyer again twice, in Hyderabad, during late April 2008. He introduced Mr Wright to his fellow promoters, Mr Ram Reddy, Chairman of DCHL, and Mr Ravi Reddy, Vice Chairman of DCHL.

27. On 6 May 2008, Mr Wright, together with Mr Hampel of ISG, met Mr Iyer at an apartment at St James' Court, in Buckingham Gate, London.

28. Mr Iyer presented a business plan document for DCSV, a "newco". The business plan showed the scale of the sports city project. Mr Iyer said that within 4 years he anticipated that the enterprise value of DCSV could be billions of dollars.

29. At the end of the meeting, Mr Iyer requested to speak to Mr Wright in private. He asked Mr Wright to assure him that, in the event of IMG/ISG successfully bidding for the contract to advise DCHL on the development of its sports city, Mr Wright would personally run the project. Mr Wright told Mr Iyer that he was a consultant to IMG and that accordingly he could give no such guarantee. Mr Iyer asked Mr Wright to have lunch with him the following day.

30. On 7 May 2008, Mr Iyer and Mr Wright met for lunch during the course of which Mr Iyer offered Mr Wright the position of Chief Executive Officer of DCSV. Mr Iyer explained that DCSV would take ownership of the Hyderabad IPL franchise and that it would be the corporate vehicle through which the sports city would be developed. Mr Iyer told Mr Wright that he, together with Messrs. Reddy, would inject US$100m into DCSV and would raise a further US$900m via an IPO, probably in London.

31. Mr Iyer set out the headline terms of his offer; an initial annual salary of £300,000 rising to £500,000 and the grant of 3.5% of the equity in the newly created company which, he said, would be "marketable from day one". Mr Iyer reminded Mr Wright that the business plan indicated the enterprise value of DCSV could, within four years, be US$4 billion, and that therefore his 3.5% could be worth US$140 million. He said to Mr Wright: "Get used to it: you are going to be a wealthy man."

32. Mr Wright told a trusted friend of his about the offer and he suggested that Mr Wright meet an Indian associate of his, who he described as being "well-connected and wise". On 9 May 2008, Mr Wright met this associate, subsequently referred to as the "Wise Indian".

33. The "Wise Indian" reasoned that DCHL was so keen to have Mr Wright run DCSV because they needed someone with his international sports marketing and management CV to front the IPO which was being planned and that nobody in India had that. He expressed that view that Mr Wright was in a "strong position".

34. The "Wise Indian" advised Mr Wright to be sure to get an option in any agreement signed so that the equity would have a ready buyer at an agreed price. He also told Mr Wright that if DCHL was serious, Mr Iyer would offer him a generous signing on bonus and that, in his view, the signing on bonus should be £250,000.

35. It was Mr Wright's evidence that the "Wise Indian" also advised him to ensure that any dispute was resolved in England. Mr Wright recalled him saying "because, as you know, India very slow, no good, must be here" and that as he said, "here", he was tapping on his desk. In response Mr Wright explained that he was already aware of how slow India was with regard to legal matters because of a dispute there had been between IMG India and the Indian owners of an American jeans brand. The meeting concluded with the "Wise Indian" offering to check out DCHL and the three promoters through good contacts of his in Hyderabad, to which Mr Wright agreed.

36. It was disputed by LS whether the "Wise Indian" ever said anything to Mr Wright about dispute resolution given that, in particular, this aspect of the conversation is not referred to in the contemporaneous emails which followed. I accept, however, Mr Wright's vivid evidence on this issue.

37. Mr Iyer and Mr Wright met again on the morning of 12 May 2008 at St James' Court. During the meeting, Mr Iyer spent time talking about India, about DCHL and about how he saw DCSV developing. Mr Wright expressed some reservations about the optimistic financial projections being made for DCSV. Mr Iyer agreed these could be refined and seemed keen for Mr Wright's further input. At the end of this meeting Mr Iyer asked Mr Wright to bring a lawyer to meet him on 14 May 2008 to discuss the deal further. Mr Iyer told Mr Wright that he was not available on 13 May 2008 as he was flying by helicopter to the Bentley factory to inspect the production of his latest car.

38. Following this meeting with Mr Iyer, Mr Wright telephoned LS to discuss the offer which had been made to him.

39. His call was returned by Mr Alexander. Mr Wright described the opportunity to him in some detail. Mr Wright appeared to be very excited about the prospect of running the venture and wanted a deal to be done quickly. Mr Alexander's note of the conversation states: "Time of the essence". Although it is unlikely that Mr Wright used this expression, I accept that he did stress the need for urgency and in particular that he wanted someone to accompany him to the proposed meeting with Mr Iyer on 14 May 2008. Mr Alexander suggested that that should be Mr Burd. Mr Alexander's note also recorded Mr Wright saying that DCHL was "registered in Singapore with sub in Hydrabad".

40. Later the same day Mr Wright spoke to Mr Burd. Mr Burd made a hand written note of that conversation. It records Mr Wright outlining the terms of the proposed deal. It notes that Mr Iyer had made "a rather seductive offer. Saying they want Tim and after 5/6 years he would be able to retire". It refers to Mr Wright seeing "wise Indian guy" and his advice in relation to the put option. It does not record the advice of the"Wise Indian" on dispute resolution and I find that this was not raised.

41. Mr Wright told Mr Burd that the headline terms were agreed. Mr Burd understood that Mr Wright wanted the agreement to be documented in a binding way and for that to be done quickly as Mr Iyer might not be in London for very long. Mr Burd suggested that a binding Heads of Terms be used, with which Mr Wright agreed.

42. On 13 May 2008, Mr Wright sent Mr Burd an email at 12.15 ("the 12.15 email") setting out the headline commercial terms which had been agreed with Mr Iyer and the main points to be covered by the Heads of Terms. The email provided as follows:

"We are agreed so far that the salary should be on basis of 2 years initial fixed term at £300k becoming 12 months rolling and increasing to £500k after two years or opening of the sports city, whichever is the sooner.

The equity should have a clear put option with a minimum value based on at least the cost of the IPL Hyderabad franchise (US$100+m) the "promoters" of DCSV have told me they are investing. I like your idea of asking PK Iyer to tell us what he considers DSCV to be worth at this point and that within reason we take that as the minimum put price. Agree also that one of the "big four" accountancy practices, agreed by both parties, should be able to determine the value of the equity at any future point and that their valuation should apply if I leave DCSV for any reason, unless it is less than $4m which would always be the minimum.

We talked about key milestones that might trigger bonus payments. These could include the following:

1) Raising US$ 900m via IPO
2) Signing a naming rights deal
3) Selling all hospitality boxes
4) Selling all premium seats
5) Completing the construction project
6) Deccan Chargers reaching IPL semi finals in a given year

Agree these are all points the Managing Director of DCSV should be achieving to justify salary but PK has agreed a bonus structure should be included and these achievements will all deliver more value to the equity and therefore to the major shareholders' upside.

I have discussed fact that Helen, Theo and I live in London. Current agreement is that we continue to do so with sufficient travel to Hyderabad....I can see a point when the amount of time required in India makes that difficult and therefore agree we should include relocation expenses if we agree to move.

Also agree we need all normal executive benefits including, private health, life insurance cover and pension.

With regard to signing on bonus I am a little shy regarding my Wise Indian friend's figure £250,000, but agree there should be a six figure sum.....

Should we ask them to cover Lewis Silkin fees as well as any tax advice?

Let's discuss at 4.00 with a view to creating and presenting the majority of Heads of Terms at 12.00 in Buckingham Gate tomorrow at 12.00.

While the Heads will be binding, are we still able to give due consideration to best tax aspects once they are signed?"

43. As the email makes clear, the aim was to be in a position to present "the majority of Heads of Terms" at the 14 May meeting scheduled with Mr Iyer.

44. About an hour later, by an email at 13.21 ("the PRR email"), Mr Wright forwarded an attachment to Mr Burd consisting of a note from "PRR", which Mr Wright had received earlier that day in relation to DCHL and its directors and which he understood to come from the "Wise Indian". It was not and is not known who "PRR" is. The note stated as follows:

> "Deccan Chronicle is run by Mr. T. Venkataram Reddy and his brother T. Vinayak Ravi Reddy.
> They are second generation businessmen.
>
> Their father Mr. Chandrashekar Reddy was the brother of the current Congress MP Mr. T. Subbarami Reddy (former union minister for mines in the current congress government). Their father split with his brothers a few decades ago.
>
> Mr Venkataram Reddy has a reputation for being brash and fairly flashy. I do not believe they don't have any cases for fraud against them. But they also don't have a completely clean reputation like the "Hindu" family.
>
> In the mid-1990's their current MD – Mr. P.K Iyer became a close associate and subsequently joined their board. Mr Iyer is currently the MD of DC Holdings. Mr Iyer was a 50% partner in the Odyssey book chain – which is how Deccan Chronicle ended up buying the book chain. I do know from Odyssey's MD (Ashwin) that they lose between Rs. 5 and Rs 10 Cr. a yr., but the reported figures don't indicate this loss. Last year's P&L indicates a loss of Rs. 700 k only for Odyssey.
>
> I don't have any knowledge about the Deccan Chronicle numbers, though I have heard N.Ram commenting in parties that the DC numbers are cooked up.
>
> I have heard from several people that Mr P K Iyer and the two brothers' regularly play the DC stock and that P K Iyer is the brain behind this entire stock scheme.
>
> The two brother's have in private, indicated to some common friends that P K Iyer was given a fair bit of equity in DC holdings in return for his contribution.
>
> There are several common friends so if there is any specific area that you would like me to find some info on, I could make some discrete enquiries.
>
> Regards
>
> PRR"

45. As reflected in Mr Burd's recording sheet for 13 May 2008, at 13.42 Mr Wright spoke to him for up to 12 minutes ("the 13.42 call"). Mr Wright did not recall that conversation in detail. Mr Burd said that during the call Mr Wright recounted and elaborated on some of the terms set out in the 12.15 email.

46. Soon after the 13.42 call Mr Wright sent Mr Burd an email at 14.13 ("the 14.13 email") with the subject line, "English Law" stating:

> "English law or otherwise, can we just give some thought to how we would enforce the provisions of the contract on a company based in Singapore? Talk after 4.00 pm".

47. It was Mr Wright's evidence that this reflected his having raised with Mr Burd during the 13.42 call the recommendation made by the "Wise Indian" for dispute resolution in England. This was denied by Mr Burd. His evidence was that the topic of English law as governing law had initially arisen because he had said that he was only competent to advise on English law. He said that there had been some discussion about whether DCSV was already incorporated and, if so, where it was or would be so incorporated.

48. It is clear that there was some discussion between Mr Wright and Mr Burd about the Heads of Terms being governed by English law. This had caused Mr Wright to wonder how, even with an English law contract, a company in Singapore or elsewhere, could be forced to do what the English courts directed them to do. It did not cause him to wonder about jurisdiction since he presumed that having a contract subject to English law meant that any dispute would be heard in England. I find that Mr Wright never did raise with Mr Burd the issue of dispute resolution or jurisdiction. To his mind that issue had been addressed by the proposed inclusion of the English law term.

49. Mr Burd replied to the 14.13 email a few minutes later. He wrote, "Sure. Can we make it 5pm, as I've had an urgent conference call put in for 4pm". Mr Wright confirmed that that was fine with him.

50. During that afternoon, between that exchange of emails and the planned telephone conversation, a terrorist bomb exploded in Jaipur, India, killing 63 people and injuring 216. The cities of Mumbai and Delhi were put on red alert. This made Mr Wright understandably apprehensive. He also had some concerns about jumping into such a venture too quickly and was reluctant to uproot his family. After the terrorist bombs he decided to turn down the opportunity and the considerable sums of money being offered to him.

51. At or just after 17.00 that afternoon, Mr Wright spoke to Mr Burd and told him that in the light of the terrorist attack in Jaipur he now intended to turn down Mr Iyer's offer and that he would not need him to attend the planned meeting with Mr Iyer. Mr Burd understood that there would be no further work for him to do and that he was not to spend any more time on the matter.

52. On 14 May 2008, at the meeting with Mr Iyer at St James' Court, Mr Wright explained that he had decided to turn down the employment offer, referring to the terrorist bomb in Jaipur and to the general threat of terrorism in the region. Mr Iyer appeared disappointed and made clear that he would do what he could to persuade Mr Wright to change his mind. Mr Iyer suggested that the real reason Mr Wright was turning down his offer, was that he had been told that Indian owners did not permit executives to have genuine authority. He then said that in order to allay any concerns Mr Wright might have, he would offer Mr Wright a guaranteed severance payment which would be payable if he was dismissed. He apologised for not having mentioned it in their previous conversations. He told Mr Wright that this would protect him from any such interference, but that Mr Wright had nothing to fear as he intended that they should work together until Mr Wright had so much money he did not want to work any longer.

53. Mr Wright asked Mr Iyer what figure he had in mind for the severance guarantee. He said, "You tell me." Mr Wright said that in view of the potential value of the equity he would hold – which Mr Iyer had estimated previously at £140m within four years – £10 million seemed to be a reasonable figure. Mr Iyer asked if that was a number with which Mr Wright was comfortable. Mr Wright said that it was. Mr Iyer said: "Done. Have your lawyer put it in the contract."

54. Discussions with Mr Iyer continued over lunch. Mr Iyer agreed that Mr Wright would be based at an office in London which DCHL would open specifically for him and a small staff. Mr Iyer suggested the office should be in Mayfair. As they walked back towards St James' Court after lunch they discussed a signing on bonus. Mr Wright told Mr Iyer that someone senior in Indian business had advised that this was appropriate. Mr Iyer asked Mr Wright for a figure. Mr Wright proposed a figure of £250,000. Mr Iyer asked, "Is it the right number; can you look me in the eye and tell me it is the right number?" Mr Wright said he could. Mr Iyer replied "Done. And if you had asked for £500,000, I would have given you £500,000. That is why I asked if you were comfortable with the number."

55. Mr Iyer and Mr Wright spent the rest of the day discussing DCSV, Mr Iyer's objectives, Mr Wright's role and his reservations about the financial projections in the business plan.

56. At 22.04 that evening, Mr Wright sent Mr Burd an email setting out the terms of the improved offer that Mr Iyer and he had agreed. The email stated that: "I am now much more comfortable and spent 9 hours discussing! Let's talk when you can in the morning". It also referred to "severance payment agreed £10m" and to Mr Iyer still being keen to sign Heads of Terms "as soon as possible".

57. On 15 May 2008, Mr Burd telephoned Mr Wright at around 09.30 and they agreed to meet at LS' offices on Chancery Lane at 11.00. The meeting started at 11.24. Mr Wright told Mr Burd about his meeting with Mr Iyer the previous day and appeared buoyed up. He said that he had arranged to meet with Mr Iyer at 14.00 to sign the Heads of Terms. Given the time pressure Mr

Burd explained that this would of necessity be a simple document setting out the key terms. In the event, the drafting session took just over three hours and the meeting was put back for about an hour.

58. Mr Wright and Mr Burd sat down side by side at a table in a LS meeting room and Mr Burd drafted the Heads of Terms by hand. Mr Burd had a copy of the 12.15 email and Mr Wright's email of the previous evening which he used as a guide.

59. Mr Burd started the draft by setting out the contracting parties, Mr Wright's job title, salary, terms and bonus arrangements. In that first draft Mr Burd described the employer as: "Deccan Chargers Sporting Ventures Limited (or such entity as is the operating company for the IPL (franchise (currently known as "the Deccan Chargers")) ("the Company")". As he explained in evidence, the reason why he described DSCV in this way was because it was not clear that DCSV had been incorporated or where it was or was to be incorporated. He said that it was his understanding at the time that Mr Wright thought it was intended to be a Singapore based company, but he was not sure. Whilst one can understand the reasoning behind Mr Burd's expanded definition of "Employer", it was not suggested that this was explained to Mr Wright at the time.

60. The 12:15 email referred to the agreement needing "all normal executive benefits including, private health, life insurance cover and pension (?)" and during the drafting exercise Mr Wright and Mr Burd talked about what benefits should be included in the Heads of Terms. Mr Wright said he had discussed with Mr Iyer that "normal" benefits would be included. Mr Burd explained that if getting the Heads of Terms signed by Mr Iyer that day was his objective, then it was a question of striking a balance, with which Mr Wright agreed.

61. The first part of the draft Heads of Terms included bonus arrangements. A signing-on bonus of £250,000 had been agreed the day before. Mr Wright and Mr Burd then discussed the other bonus milestones set out in the 12:15 email.

62. The draft Heads of Terms also included equity provisions. Mr Burd relied upon the 12:15 email and his instructions from Mr Wright in drafting that provision. The first draft referred to 2% of the shares in DCSV vesting immediately and that a further 1.5% would vest when the company made an operating profit.

63. During this time, Mr Burd mentioned to Mr Wright that it would be usual for a recital, or preamble, to be included in the Heads of Terms which would set out the nature of the agreement and which could be useful when interpreting the agreement and Mr Wright offered to draft this.

64. Mr Burd also drafted a parent guarantee clause. Mr Burd was concerned about contracting with an entity that may not yet exist. Mr Burd had been told, during his conversations with Mr Wright, that DCHL was the owner of the third largest newspaper in India, and he assumed this meant it was substantial.

Mr Wright and Mr Iyer had agreed a substantial severance guarantee and if DCSV turned out not to exist or to have insufficient funds to pay that severance guarantee, Mr Burd wanted to make sure that Mr Wright would have recourse to a party that could pay. He therefore included a form of parent guarantee to ensure that DCHL would guarantee any of the financial obligations of DCSV. Whilst one can understand Mr Burd's rationale for including this provision, I accept Mr Wright's evidence that this was not explained to him at the time.

65. It was Mr Burd's evidence that during consideration of this iteration of the Heads of Terms he had a brief discussion with Mr Wright about the governing law of the agreement. He said that when considering governing law "we naturally went on to touch on the jurisdiction of the agreement".

66. It was Mr Burd's evidence that he briefly explained to Mr Wright that if one does not know where a party is (or would be) located then there could be a problem including a jurisdiction clause specifying a particular country, whether that be England or another. This is because that might cause difficulties in enforcement if DCSV, or its assets, turned out to be located in another jurisdiction which might not recognise a judgment of the exclusively chosen country. Mr Burd said that he explained that he had a concern that, even if they included a non-exclusive jurisdiction that might be enough to prevent suit in another jurisdiction (e.g. Singapore). Mr Burd said that he told Mr Wright that if a Singapore Court ended up dealing with any claim then it would have to interpret the Heads of Terms in accordance with English law, and therefore if they adopted the same process as the English courts they would need an English law expert. He said that he suggested that with so many unknown elements the best course was to ensure that the agreement was governed by English law. Having touched on the "pros and cons" of whether to specify a jurisdiction for the contract, he therefore cautioned against it and suggested that in the circumstances it was preferable to leave the question of jurisdiction open. He said that he told Mr Wright that he would have the protection of the agreement being governed by English law but, depending upon where DCSV ended up being located, there could be an argument about which country had jurisdiction. He said that Mr Wright appeared to take in what he was saying and signalled to him to proceed on the basis he had suggested, which was to leave jurisdiction open.

67. It was Mr Wright's evidence that there was no such discussion then or at any time. His evidence was that if it had been suggested to him that he might want to sue DCSV somewhere other than England he would have been surprised as this was not what the Wise Indian had advised him or what he wanted. He said that if Mr Burd's rationale of keeping jurisdiction open because it was unclear where DCHL or DCSV were incorporated had been explained to him he would have said that DCHL is obviously an Indian company and that even if DCSV was incorporated in Singapore he would not want to sue there and that it was better to be sure where a case could be brought rather than to have uncertainty. This important conflict of evidence will be addressed when considering the issue of breach of duty.

68. Once the agreement had been drafted both Mr Burd and Mr Wright read it through and Mr Burd asked his secretary to prepare three engrossed copies of the final agreement,

69. Mr Wright and Mr Burd then went to St James' Court to meet Mr Iyer. After some small talk, Mr Burd handed Mr Iyer a copy of the Heads of Terms. Mr Iyer reviewed the document quickly and made some amendments. These included striking out the proposed bonus milestones and amounts, the provision that DCSV would fund any tax liability of Mr Wright arising on the equity grant and the provision for payment of Mr Wright's legal fees. When striking out the last of these he said words to the effect that he was paying Mr Wright quite enough and that he could pay his own legal fees.

70. Referring to the choice of law, it was Mr Wright's evidence that Mr Iyer said: "You may have English law. If I wanted to bring an action against Timothy Wright I would want to do so under Indian law in Hyderabad but as I do not, you may have your English law in London, or Timbuktu for all I care." Mr Burd's evidence was that Mr Iyer made no reference to "in London" or the place of any proceedings and said words to the effect of: "You may have English law or Timbuktu law for all I care". Mr Burd agreed that this was in the context of a consideration of the choice of law clause and said that it was also in the context of Mr Iyer saying: "I don't intend to break this contract" or something similar. I prefer the evidence of Mr Burd on this issue. The context was the choice of law clause and there was no reason for Mr Iyer to mention anything other than governing law. It is also to be noted that Mr Iyer was later to deny so doing.

71. Once they had finished going through the draft and discussion of the changes to be made, Mr Burd volunteered that the LS office could make the changes. Mr Iyer agreed and Mr Burd telephoned his secretary to make the necessary arrangements.

72. When the revised Heads of Terms documents were delivered, Mr Burd checked the three copies for the changes and there was a discussion about when Mr Wright would be available to start work for DCSV and a start date agreed for him "as soon as free from current IMG commitments". The amended documents were passed to Mr Iyer who initialled the handwritten amendment and signed each one on behalf of DCSV and DCHL. Mr Iyer then passed each one across to Mr Wright for counter-signature. Once each copy was signed Mr Iyer kept one copy and gave two copies to Mr Burd. Mr Wright and Mr Burd then left and went out for a celebratory dinner.

73. On 17 May 2008 at 20.24, Mr Wright sent an email to Mr Burd regarding the notice clause in the Heads of Terms and raised a concern as to how the reference to the "term" in the contract and the £10m severance guarantee related and whether DCSV could terminate on payment of 3 times the agreed salary. Mr Burd replied by email the same day stating: "That's not how I'd interpret. The key is in your use of the word "terminate". If they (as opposed to you) terminate then they have to pay a minimum of £10m including whatever you are then due under the contract (currently 3 years' pay) and the

then value of the stock. No need to change it, (not that I think it would be a good idea to try just now anyway)." Mr Wright considered that this met his concern.

74. The Heads of Terms dated 15 May 2008 provided that the parties would cooperate in the structuring of the arrangement to achieve "optimal tax efficiency" for Mr Wright. In this regard, on 20 May 2008, Mr Burd sent Mr Wright an email with a note prepared by Ms Sara Cohen, a partner in LS' Tax Department. The note summarised the tax implications arising from the acquisition of Mr Wright's shares in DCSV.

75. On 21 May 2008, Mr Wright met Ms Cohen in Pimlico, together with Mr Iyer and Mr J Krishnan. Ms Cohen brought up the suggestion of DCHL/DCSV buying TW Sports for £250,000 instead of DCSV paying me £250,000 as a sign on bonus. Mr Iyer dismissed the idea.

76. On 23 May 2008 Ms Cohen sent Mr Wright by email an amended Heads of Terms.

77. At 09.45 on the morning of 24 May 2008, Mr Wright met Mr Burd in Buckingham Gate and they ran through the amended draft Ms Cohen had sent.

78. At 10.00 on the morning of 24 May 2008, Mr Burd and Mr Wright met Mr Iyer and Mr J Krishnan at St James' Court. Mr Iyer reviewed the amendments made to the language around the provision of equity and the severance guarantee. Mr Iyer requested that Mr Wright's title be changed from Managing Director to Chief Executive. Mr Burd asked Mr Iyer to confirm that, notwithstanding the change in title, Mr Wright would always be the most senior employee of DCSV and was assured that he would. The start date was also discussed and it was agreed that the start date would be 1 June 2008. Revised agreements were then produced and Mr Wright took them back to Mr Iyer for signature and dating.

79. The final version of the Heads of Terms provided so far as material as follows:

Binding Heads of Terms

Deccan Chargers Sporting Venture Limited

and

Tim Wright ("TW")

Preamble

The Company (as defined below) has described to TW its plans to create a "sports city" in Hyderabad. This may be summarised as a multi-use stadium, arena and hotel complex with state of the art facilities to showcase sports, music and other entertainment.

The Company wishes TW to help engage the services of certain sports and music industry companies and to collaborate with them in the development of a business model and a business plan that will be key documents to support an Initial Public Offering ("IPO") for the Company's stock on the London Alternative Investment Market or other investment exchanges ("listing exchange").

TW will be expected to lead an executive team he will identify and engage as well as the Company's various external agencies and other out-sourced project management, architects and constructors. TW is to play a pivotal role in the development of the sports city brand and all of the commercial and other associated opportunities.

It is understood and agreed that TW will have responsibility for the strategic management of the Hyderabad IPL franchise currently known as Deccan Chargers. TW is to advise the Board on issues to include, but not be limited to: transfer targets player contracts, coaching staff acquisition and management, marketing and management, commercial exploitation and other brand building worldwide.

It is agreed and understood that certain of TW's fellow Directors will act as "promoters" of the IPO and noted that they have a proven track record in this regard. It is further understood and agreed that the Company will not look to TW to take a lead role in the acquisition of a suitable property site in Hyderabad or in obtaining all necessary planning approval and other permissions.

TW agrees to cooperate and collaborate fully and closely with the Managing Director of Deccan Chronicle Holdings Ltd and with any and all other Directors of the Company from time to time.

It is agreed that, unless and until otherwise agreed in writing, this role is to be TW's exclusive executive employment activity.

Employment

Employer: Deccan Chargers Sporting Ventures Limited (or such other entity as is the owner of the Hyderabad IPL franchise (currently known as 'the Deccan Chargers')) ("the company")

Title Chief Executive Officer of the Company reporting to P K Iyer

Start date: 1 June 2008

Board: A member of the Board of the Company

Salary £300,000 until such time as the Company is generating revenue, at which point rising to £500,000 per annum, payable monthly in arrears

Term Initial fixed term of three (3) years and thereafter 12 months rolling notice on either side.

Severance guarantee

In the event that TW's employment is terminated by the Company (including as a result of a constructive dismissal) at any time, TW will receive immediate payment (to include contractual notice entitlement and payment for any then vested equity ("total package") of the higher of the then value of his total package and £10 million. If the shares are not listed at the time, their value for this purpose shall be as determined independently in accordance with normal UK unlisted company share valuation principles by one of KPMG, Deloitte, Ernst & Young or PWC (as agreed between the parties and not being the Company's auditors) within 60 days of being instructed, the cost of such valuation to be borne by the Company and the result to be binding on the parties (save in the case of manifest error). Any unvested equity then held by TW shall be forfeited for an amount equal to the acquisition price paid or still to be paid, and any vested equity shall be transferred by him to the Company or its nominee as soon as is practicable after such payment is made.

Tax efficiency

The parties will cooperate in the structuring of these arrangements to achieve optimal tax efficiency for TW.

Guarantee

Any financial obligations to TW arising out of these arrangements to be guaranteed by Deccan Chronicle Holdings Limited.

Law

These terms to be governed by English law.

80. Mr Wright commenced his employment with DCSV in early June 2008. He was paid his sign on bonus and his salary but did not receive his equity share.

81. In September 2008 Lehman Brothers collapsed and the financial crisis ensued. Mr Wright immediately realised that DCSV/DCHL's sports city plans were unlikely to be realisable and that his position was vulnerable. At around the same time Mr Iyer made Mr V Shankar Chairman of DCSV and he soon made it clear that he regarded himself as the company's chief executive. In November 2008 Mr Wright briefly spoke to Mr Burd about their relative roles and what he should do about it. Mr Burd advised him not to be confrontational and to raise his concerns in a measured way.

82. On 27 November 2008, the day after the Mumbai terrorist attack, Mr Wright met with Mr Iyer, Mr N Krishnan and Mr E Venkratran Reddy (a cousin of Messrs. Ram and Ravi Reddy) in Hyderabad. They briefly discussed Mr

Shankar and Mr Iyer assured Mr Wright that in the "new order" of things, there was no role for Mr Shankar and that he would be working directly with Mr Iyer. Mr Wright reminded Mr Iyer about his equity and the fact that he had not yet received his shares. Mr Iyer told him that in view of the financial crash, and now the terrorist atrocity, nothing would happen in India in relation to sponsorship and raising money over the next three months and that Mr Wright was potentially unsafe in India. He told Mr Wright to return immediately to London and not to come back to India until 1 March 2009. Mr Wright duly left for London.

83. In London, Mr Wright continued to work on DCSV business, in particular continuing with the development of brand guidelines for use of the new corporate identity for Deccan Chargers and working with the head coach and captain on player targets at the IPL player auction due to be held in early February 2009. By January 2009, however, Mr Wright had concluded that the continuing failure on the part of DCHL/DCSV to act in accordance with the Heads of Terms, including failure to provide any of the benefits, failure to appoint him to the board of DCSV and failure to transfer to him 3.5% by value of the shares in DCSV, meant there was a serious problem. Accordingly, on 15 January 2009 he wrote to Mr Iyer setting out some of the issues and saying that: "...a number of the issues we agreed on over several days in London in May 2008 and which were reflected in the contract we signed have not eventuated.". Mr Wright sent a copy of the letter to Mr Burd who replied. "Good letter".

84. On 17 January 2009 Mr Wright received a letter in response from Mr Iyer. The letter stated that the police in Hyderabad had opened a dossier into his visa and that, if he travelled to India, he faced arrest, "from which we would not be able to extricate. " Mr Iyer suggested that, in these circumstances, they should "mutually rescind the agreement." Mr Wright spoke to Mr Modi and asked him whether he was aware of any investigation of visa misuse by foreign workers in relation to the IPL. Mr Modi replied that he was not. Mr Wright also mentioned to Mr Modi that he had a £10m severance guarantee in his contract with DCSV.

85. On 26 January 2009, Mr Wright instructed Maitland Hudson & Co ("MH&Co") in relation to his dispute with DCHL/DSCV.

86. In January 2009 MH&Co wrote on behalf of Mr Wright to DCSV asserting and accepting repudiatory breach of contract by DCSV and claiming a right to be paid sums in accordance with the Heads of Terms, including the £10m severance guarantee.

87. Following a review of the Heads of Terms dated 24 May 2008, MH&Co advised Mr Wright that the contract was silent on jurisdiction, and therefore DCHL/DCSV would almost certainly challenge the jurisdiction of the English courts should he bring a claim against them in England. It was Mr Wright's evidence that he was shocked by this and that this was the first time he was made aware that the clause providing for English law did not provide that any

dispute would be resolved in England. In addition, MH&Co advised that the severance guarantee of £10million might be regarded as a penalty.

88. After he had instructed MH&Co, it was Mr Wright's evidence that he rang Mr Burd to tell him that he was not instructing LS in relation to the dispute with DCHL/DSCV and that he had been advised that the Heads of Terms were silent as to jurisdiction and that this would be a major problem. He said that Mr Burd replied, "Err I know." Mr Burd had no recollection of this exchange and did not believe it happened. I find that there was a conversation along these lines and that, whether or not Mr Burd said the words attributed to him, he did not claim that he had given Mr Wright detailed advice in relation to jurisdiction.

89. On 18 March 2009, MH&Co wrote to LS "Without prejudice save as to costs". The letter asserted that "the failure to include proper machinery in the Heads of Terms to enable proceedings to be initiated in England was negligent", that Mr Wright had a valid claim against LS in that regard and that LS should bring the matter to the attention of their professional indemnity insurers.

90. LS replied by letter of 24 March 2009 denying any negligence. The letter stated that:

> "Mr Burd and Mr Wright also discussed the issue of having an exclusive jurisdiction clause. Mr Burd advised that there were pros and cons to this, but it was not known if Mr P K Iyer would agree to one, and it was also thought better to have the issue of jurisdiction open. As he explained, this was because of possible problems in enforcing an English judgment in India and because on consideration of the circumstances at the relevant time, it might be thought better to sue directly in India rather than England."

91. Mr Burd confirmed in evidence that he was consulted about this letter and that he read it before it was sent out.

92. The above passage in the 24 March 2009 letter was later corrected in a letter from LS to MH&Co dated 9 September 2009 as follows:

> "Mr Burd has, as a result of your most recent request gone back through the file in greater detail and reviewed the emails which are attached to this letter. The e-mail dated 13 May, timed at 12:15 and already referred to above is when Mr Wright first outlined to Mr Burd in writing the possible deal he had been discussing with Mr Iyer. There is no mention of jurisdiction. The second email sent on 13 May timed at 13:21, with the heading: "Comments on Indian group" was understood by Mr Burd to attach a note Mr Wright had received from this unnamed "wise Indian". It contains no mention of jurisdiction. In the third email sent to Mr Burd by Mr Wright on 13 May and timed at 14:13 Mr Wright states: *"English law or otherwise, can we just give some thought to how we would enforce the provisions of the contract on a company based in Singapore?"* This email

> (and a reading of the time recording entry made by Mr Alexander on 12 May) has reminded Mr Burd that, at the time, Mr Wright thought the Deccan Chronicle holding company was a Singaporean corporation. Nothing happened between 13 May and the rushed drafting and meeting on 15 May to clarify the position and, as far as Mr Burd was concerned, he was having to deal with the drafting against the background of that uncertainty. It follows that what was stated in the final sentence of the paragraph numbered 1 of our letter to you dated 24 March 2009 was incorrect, and has to be qualified and corrected by the foregoing."

93. Meanwhile, on 2 February 2009, Mr Wright had issued the first English proceedings seeking damages in excess of £10 million. Permission to serve out of the jurisdiction was granted and the first English proceedings were purportedly served on DCSV and DCHL.

94. DCSV and DCHL disputed that the first English proceedings had been validly served on DCSV or DCHL and also, in the alternative, applied for orders that the English court should refuse jurisdiction over the dispute between Mr Wright and DCSV and DCHL and should set aside the order granting permission to serve out of the jurisdiction.

95. On 19 November 2009, Mr Wright issued the second English proceedings so as to nullify any complaint relating to the validity of the service of the first English proceedings. In the second English proceedings Mr Wright again sought damages of more than £10 million, but also asserted an entitlement to have the 24 May 2008 Heads of Terms rectified to include an express English jurisdiction clause.

96. Permission was once again granted to serve the second English proceedings on DCSV and DCHL out of the jurisdiction. Thereafter the papers to be served on DCHL and DCSV were lost and a second set of the papers to be served on DCHL and DCSV was received by DCHL and DCSV on 6 April 2010. In order to meet a further objection by DCHL and DCSV over the validity of service, Mr Wright obtained an order permitting alternative service of the second English proceedings on DCSV and DCHL.

97. In the jurisdiction challenge DCSV and DCHL again applied for orders that the English Courts should refuse jurisdiction over the dispute between Mr Wright, DCSV and DCHL, and that the order granting permission to serve the second English proceedings out of the jurisdiction should be set aside.

98. The jurisdiction challenge was dismissed by Master Fontaine on 15 December 2010. On 25 May 2011 Mr Justice Tugendhat dismissed an appeal by DCSV and DCHL against Master Fontaine's decision.

99. After serving a Defence and Counterclaim and a List of Documents in the second English proceedings, DCHL and DCSV ceased to take any active part in the second English proceedings.

100. Mr Wright's claim in the second English proceedings went forward to trial before HHJ Seymour QC on 16 July 2012. Mr Wright was represented by counsel. DCHL and DCSV were not represented.

101. HHJ Seymour QC awarded Mr Wright Judgment in the second English proceedings in the sum of £10,323,094, indemnity costs (which, while not assessed, are quantified by Mr Wright at £956,878.23) and interest on costs.

102. Since that time Mr Wright has made substantial attempts to enforce the Judgment against DCSV and DCHL in India, but with no success and, indeed, hardly any progress. Up to November 2014 the case had been vacated 41 times out of 44 hearing dates. In the proceedings DCSV and DCHL have taken every conceivable point open to them to challenge the enforceability of the Judgment. These include that the English court had no jurisdiction, that there was no proper trial, that there was no enforceable agreement and that the severance guarantee and resulting judgment is a penalty.

103. The undisputed Indian law expert evidence of Mr Tapia is that the time for execution of foreign judgments in India "may vary from three to five years or longer in some cases when the execution proceedings are heavily contested by the opposite party...". This has been borne out by Mr Wright's experience to date and he has been advised that there is no realistic prospect of him making any recovery, even if he had the financial means to pursue the proceedings further.

104. Aside from the difficulty of enforcement proceedings in India there is also the fact that DCSV/DCHL would appear to be insolvent. DCHL lost the IPL franchise in September 2012 following its failure to pay its players and its failure to put up the £10 million security required by the Indian court as a condition of any interim order preventing the loss of its franchise.

The Issues

105. The Issues to be determined may be summarised as follows:

(1) Was LS in breach of its duty of skill and care in:

(i) Failing to consider or advise on securing effective means of enforcement of DCSV and DCHL's obligations and in particular the obligation under the severance guarantee?

(ii) Failing to advise in relation to jurisdiction matters and to include an exclusive jurisdiction clause with provision for service of proceedings in the UK?

(2) Were these breaches causative of any and, if so, what loss?

The law

Standard of duty of care and skill

106. As a professional man and a solicitor Mr Burd was contractually obliged to exercise reasonable skill and care. The precise content of that duty will

depend on the circumstances of the case and the nature and scope of any retainer.

107. Lewis Silkin and Mr Burd were retained to draft an employment contract to reflect the commercial terms agreed between Mr Wright and Mr Iyer. Mr Wright wanted a binding agreement to be concluded whilst Mr Iyer was in London so there was a degree of urgency. It was suggested by Mr Burd at an early stage and agreed by Mr Wright that this was best done by a Heads of Terms agreement.

108. Mr Burd was retained to consider and advise upon the appropriate terms for such an agreement, not merely to produce a draft which reflected what had already been agreed.

109. As Mr Burd accepted in evidence, his retainer included giving such advice as might appear appropriate to the work he was doing. As LS accepted in its final submissions, it was being asked to provide input and advice in relation to the Heads of Terms.

110. A helpful summary of the standard of skill and care required of a specialist solicitor such as Mr Burd is set out in *Jackson & Powell on Professional Liability* (7th edition) at 2-131:

> "The standard of skill and care which a professional person is required to exercise is that degree of skill and care which is ordinarily exercised by reasonably competent members of the profession, who have the same rank and profess the same specialisation (if any) as the defendant."

111. In relation to solicitors, rank is of less importance since work will be done under the supervision and responsibility of a partner, even if not carried out by one. In this case Mr Burd was a partner and the joint head of the Employment Department.

112. The relevant specialisation was employment law, including multi-national, cross-border work. This was also the nature of the work LS were being asked to undertake in this case.

113. To similar effect to the summary set out in *Jackson & Powell* is *Eckersley v. Binnie & Partners* (1998) 18 Con. L.R. 1 or (1955-1995) P.N.L.R. 348 at p382 per Bingham L.J:

> "The law requires of a professional man that he live up in practice to the standard of the ordinary skilled man exercising and professing to have his special professional skill".

114. Mr Burd's "special professional skill" was as a specialist in employment law, including multi-national, cross-border work – see also *Matrix-Securities Ltd. v. Theodore Goddard* [1998] S.T.C. 1 at p.27; *Swain Mason v Mills & Reeve* [2011] EWHC 410 (Ch) [2011] W.T.L.R. 1589 at [149].

115. Mr Wright placed emphasis on the publicity materials produced by Lewis Silkin and the "sales pitch" it made to DCHL. These emphasised that Lewis Silkin was a leading and top ranked firm, as borne out by statements made in various legal directories. Whilst such material may fuel expectations, it does in itself not mean that the standard of skill and care is subject to a sliding scale according to whether solicitors are or claim to be a "leading" firm.

116. Mr Wright submitted that the appropriate standard was "solicitors fully equipped to handle, at the leading edge as at May 2008, complex multi-national employment work, in particular, the drafting of high-value employment contracts for senior executives consulting English solicitors when proposing to work for Asian organisations". If one removes the sales pitch language, this is essentially a statement of the general standard already identified, but related to the particular factual context of the present case. Multi-national, cross-border employment work will often be complex and will include high value contracts, senior executive contracts and contracts to work for Asian organisations, amongst others.

Causation

117. The proper approach to the issues of causation was common ground between the parties in accordance with the guidance provided in *Allied Maples Group Ltd v. Simmons & Simmons* [1995] 1 W.L.R. 1602.

118. Where the relevant contingency depends on what the claimant would have done then that has to be proved on the balance of probabilities.

119. In the present case the alleged breaches of duty include failure to advise. In such a case the next step is to consider whether the claimant would have acted in a way different from the way in which he did in fact act. This, although a hypothetical question, is to be decided on the balance of probabilities. In deciding this question, the court will have regard not only to the current opinion of the claimant as to how he would have behaved in any hypothetical situation, but also to the contemporaneous facts insofar as they show what the considerations were for the decision-maker at the time or provide a basis for inference.

120. If it is not proved on the balance of probabilities that the claimant would have acted in a different way had the defendant advised correctly, the claimant loses and recovers only nominal damages

121. If it is proved on the balance of probabilities that the claimant would have acted in a different way but what would then have happened depends on the actions of third parties, or other hypothetical contingencies independent of the claimant, then the claimant recovers damages provided he can prove that he had a real or substantial as opposed to a speculative chance of a better outcome - see *Allied Maples* at pp.1610D-1614, particularly 1614D.

122. If this threshold is crossed then the court awards damages on a loss of a chance basis. This may be simple if there was only one potential favourable

outcome, or more complex if there were others. If the one favourable outcome was a certainty, the award will be 100% of the loss; down at the bottom of the range the percentage may be very low.

Issue (1) - Was LS in breach of its duty of skill and care in failing to consider or advise on securing effective means of enforcement of DCSV and DCHL's obligations and in particular the obligation under the severance guarantee?

123. Mr Wright's pleaded case was that his position could have been secured by:
(1) "obtaining a UK bank guarantee or performance bond in favour of the Claimant;
(2) the placing of a sum of money equal to the amount of the severance guarantee by DCH into an escrow account in the UK; and/or
(3) obtaining personal guarantees from Mr Iyer, Mr Ravi Reddy or Mr Ram Reddy; and/or
(4) securing a charge over the property at Buckingham Gate which Mr Burd understood belonged to Mr Iyer."

124. By the time of the trial only the first of these options was still pursued, namely that security should have been sought in the form of a UK bank guarantee or performance bond.

125. There was no satisfactory evidence as to whether, how or at what cost an Indian company could have provided such UK security. Such evidence as there was suggested that there would have been exchange control issues and that the cost would have been at least £100,000 a year.

126. There was equally no evidence of any such provision ever having been included, or even having been proposed to be included, in any employment contract.

127. Mr Burd's evidence was that: "I can say categorically that in all my years of practice, I have never seen it proposed, either on behalf of a prospective employer or employee, that such a clause be included in an employment contract".

128. That evidence was not changed in cross-examination during which he emphasised that: "I have never once seen that [a security provision of the type contended for] in any employment contract … Even these large financial institutions do not, ever, provide security for often very, very large payments". I accept that evidence.

129. Mr Wright stressed that Mr Burd's experience is primarily on the employer side and therefore his evidence is of limited value. However, Mr Burd did on occasion act for employees and, even when he did not, the counterparty would be an employee. Nevertheless, he had never seen such a provision being proposed.

130. It is correct that there are many commercial contracts in which an obligation of payment may be required to be backed by a bank guarantee or performance bond. Mr Wright cited some reported examples. None of these cases concern contracts of employment or analogous contracts.

131. It is also correct that Mr Burd was alive to the possible difficulties of enforcement against DCSV: hence his inclusion of the owner of the franchise in the definition of "Employer" and his inclusion of a parent company guarantee. He was also aware from the PRR email that somebody had some concerns about whether those behind DCSV/DCHL were completely honourable and that this could be a risk. At the time, however, DCHL and the owner of the franchise were considered to be substantial businesses with valuable assets. As Mr Wright said in evidence, he was confident that DCHL was able to pay £10 million if that became necessary. In any event, the reliability of a contractual counterparty is essentially a commercial rather than a legal matter.

132. The evidence shows that for a solicitor in Mr Burd's position to consider the provision of security would be unprecedented. It would also run contrary to and potentially undermine the relationship of trust and confidence upon which an employment relationship is based. As a general matter, it would simply not be on an employment lawyer's radar.

133. After careful consideration of the evidence and the parties' written and oral submissions I find that Mr Burd was not in breach of duty in failing to consider or advise on securing effective means of enforcement of DCSV and DCHL's severance payment obligations for the reasons outlined above and in particular:

(1) There is no evidence of such a provision ever being included or even proposed for inclusion in an employment contract.

(2) Mr Burd, with his very considerable experience, has never seen such a clause being proposed.

(3) No authority, textbook or article has been identified describing or discussing the possible inclusion of such a provision in an employment contract.

(4) It runs contrary to and would undermine trust and confidence.

(5) Reliability of performance is essentially a commercial rather than a legal matter.

(6) At the time both Mr Wright and Mr Burd understood DCHL to be a substantial business.

(7) It is striking that such an allegation was not included in the initial allegations of negligence made against LS by MH&Co (who

were advised by leading counsel at the time) and was made for the first time in 2014.

(8) It is also striking that three of the four means of providing security suggested for the first time in 2014 have since been dropped.

134. Even if I had found there to have been a breach of duty, I would have rejected Mr Wright's case on causation. This would have been a complicated, controversial and costly proposal. It was complicated because the exact form of security would have had to be discussed and agreed and, once that had been done, it would have been necessary to investigate whether and how it could be done and, if it could, the costs of so doing. That was going to take considerable time. It was controversial because it implied that DCSV/DCHL would not only fail to honour their contract and the financial obligations assumed thereunder, but that they also would fail to honour a court judgment (the likely trigger of any such security arrangement). It was costly because any arrangement was going to have a significant annual cost for DCSV/DCHL to cover an eventuality which Mr Iyer was saying was never going to occur. Further, Mr Wright wanted to get the deal done. As Mr Burd explained in evidence, he wanted to create as few obstacles as possible to the signing of the deal and did not want to do anything to scare Mr Iyer away.

135. In these circumstances I find that, if he had been fully advised as to what was involved in putting forward such a proposal, Mr Wright would have chosen not to do so. Even if he had decided to put forward such a proposal, I am not satisfied that there was a real or substantial chance of Mr Iyer accepting it. Mr Iyer had refused a number of lesser, simpler and uncontroversial financial requests and I have no doubt that he would have refused this too. Even if that be wrong, I am not satisfied that there was a real or substantial chance of DCSV/DCHL providing and maintaining such security as they may have agreed. This is made manifest by their complete failure to honour most of their contractual obligations, including all financial obligations other than those for immediately due, up front payments.

Issue (2) - Was LS in breach of its duty of skill and care in failing to advise in relation to jurisdiction matters and to include an exclusive jurisdiction clause with provision for service of proceedings in the UK?

136. The central matter to be decided in relation to this issue is whether or not Mr Burd did in fact advise Mr Wright in relation to jurisdiction matters. He says that he did. Mr Wright says that he did not.

137. Mr Burd's evidence therefore implicitly acknowledges that it was appropriate for him to consider and advise upon jurisdiction issues, as he claims to have done. Indeed it was realistically accepted by LS that any solicitor dealing with an international contract of this type should consider and advise upon jurisdiction. If he did not do so then he was negligent.

138. After careful consideration of the evidence and the parties' written and oral submissions I find that Mr Burd did not advise in relation to whether or not a jurisdiction clause should be included for the following reasons in particular:

(1) Neither party put the case on the basis that either of the key witnesses was lying. On both sides the essential case was put as one of faulty memory or reconstruction. In any event, I accept that both witnesses gave truthful evidence to the best of their recollection. In such circumstances the inherent probabilities are of particular importance.

(2) There are a number of evidential matters which support the inherent probability of Mr Wright's account that he was not advised in relation to the jurisdiction clause. In particular:

(i) As already found, he was advised by the "Wise Indian" that he should ensure that dispute resolution was in England and that India should be avoided.

(ii) Mr Wright's own experience at IMG reinforced the good sense of avoiding litigation in India.

(iii) Mr Wright had concerns about enforcement abroad, as borne out by the 14.13 email.

(iv) Mr Wright's understanding was that choice of law carried with it choice of jurisdiction.

(v) Against that background, if Mr Burd had advised as to the "pros and cons" of choosing English jurisdiction Mr Wright's immediate and strong response would have been to insist on English jurisdiction. That is what he had been advised to do and that is what he thought the choice of English law would be achieving. Moreover, leaving jurisdiction open would have meant the possibility of litigation in India which, as far as Mr Wright was concerned, was to be avoided at all costs.

(vi) If Mr Wright had been advised that it was unwise to include a jurisdiction clause because it was not known where DCSV and/or DCHL were incorporated or based he would have asked Mr Burd to find that out. He would also have said that as far as DCHL was concerned, it was obviously based in India.

(vii) On any view there would have been a discussion about the matter, and that is something Mr Wright would have remembered. This is all the more likely if the discussion was in anything like the detailed terms suggested by Mr Burd.

(viii) This was a matter of abnormal importance to Mr Wright at the time. As such, he is likely to have a good general memory of it. Although I do not accept that his recollection is accurate on every point of detail, it is virtually inconceivable that he could have forgotten the suggested detailed discussion on jurisdiction.

(3) By contrast there are a number of evidential matters which detract from the inherent probability of Mr Burd's account. In particular:

(i) The initial account given by Mr Burd of the "pros and cons" discussion was that he advised that jurisdiction should be kept open because it might be better to sue in India. As was later acknowledged, this was incorrect. However, it is the first account in time and it would have been provided after careful consideration and reflection, given that it was in response to a letter of claim from MH&Co.

(ii) The corrected version gave a different explanation. Now it was said that jurisdiction was kept open because of the uncertainty surrounding where DCHL was incorporated and the possibility that it was in Singapore.

(iii) These differing accounts indicate that in March 2009 Mr Burd had no clear recollection of the claimed discussion. Further, the reason given for the changing account was going through the file in greater detail. This suggests a process of reconstruction rather than recollection.

(iv) There are also differences between the corrected account, the pleaded account and Mr Burd's evidence. The corrected account refers only to uncertainty surrounding the position of DCHL. The pleaded version refers to uncertainty surrounding the position of both DCSV and DCHL. Mr Burd's witness statement evidence refers only to uncertainty surrounding the position of DCSV. These inconsistencies are also indicative of reconstruction rather than recollection.

(v) Neither of the reasons given in Mr Burd's initial accounts are compelling. The notorious delays involved in litigation in India means that it is not a place you would advise someone to sue, as Mr Wright knew and Mr Burd should have known. The uncertainty of where DCHL or DCSV was incorporated could have been simply addressed by making inquiry, if necessary of Mr

Iyer. In any event, it was clear that DCHL's operations were based in India and that that was where its principal assets were.

(vi) If Mr Burd had been concerned about being tied down to litigation in England by an exclusive jurisdiction clause the obvious alternative to consider and discuss would have been a non-exclusive jurisdiction clause, in accordance with LS's own contract precedent. Mr Burd claimed to have done so (in which case it is even more likely that the discussion would have been remembered by Mr Wright), but his reason for advising against it is again not compelling. He suggested that such a clause might prevent Mr Wright suing in Singapore, but there is no reason why a non-exclusive clause should have that effect.

(vii) In contrast to Mr Wright, for Mr Burd this was a matter of normal importance and his memory therefore less likely to be heightened.

(viii) Mr Burd had no notes or record of any advice given. Notwithstanding the haste with which the drafting exercise was being done, if detailed advice was given and followed on such a potentially important matter one would expect there to be some record of it.

(ix) Mr Burd did not claim to have given detailed advice to Mr Wright on jurisdiction when the issue was first raised with him by Mr Wright on the telephone in early 2009.

(x) I accept that Mr Burd is a generally careful and competent solicitor and that he did have concerns about the fact that DCSV might not exist. This is reflected in his definition of "Employer" and his suggestion that there be a parent company guarantee. However, on neither of these matters was his thinking explained to Mr Wright. The same is likely to be the case in relation to his omission of a jurisdiction clause.

(xi) I also accept that Mr Burd is a truthful witness and that he genuinely believes that he did go through the "pros and cons" with Mr Wright at the time. However, I find that this reflects faulty reconstruction rather than accurate recollection.

139. I accordingly find that Mr Burd did not advise Mr Wright in relation to jurisdiction matters. Alternatively, if he did, he did not do so in sufficiently

clear and explicit terms for Mr Wright to appreciate that this was an issue and, moreover, one which required consideration and choice.

140. In all the circumstances I find that LS was in breach of duty in failing to advise Mr Wright properly or at all in relation to jurisdiction matters.

141. Mr Wright further contended that Mr Burd was negligent in failing to consider and advise upon the inclusion of a provision for service of proceedings in the UK.

142. With the benefit of hindsight one can see how Mr Wright would have been better off with such a clause. However, there was no evidence that this is a usual provision in an employment contract, or indeed of any employment contracts containing such a clause. By contrast, jurisdiction clauses clearly are a common feature of international employment contracts, as is reflected in LS's own precedent. That precedent contains no service of process provision.

143. Service of process involves different issues to jurisdiction. It is a more obvious concern to a litigator than a contract lawyer. It also raises practical questions of who is to be authorised to accept service and how that is to be arranged. Unlike the issue of jurisdiction, it clearly did not occur to Mr Burd. I do not find that surprising. Nor was there anything to put him on notice that there might be serious service issues.

144. In all the circumstances I am not satisfied that it has been proved that LS was in breach of duty in failing to advise upon or include a provision for service of proceedings in the UK.

Issue (3) - Was LS's breach of duty in failing to advise in relation to jurisdiction matters causative of any and, if so, what loss?

145. The first issue which arises on causation is whether Mr Wright would have insisted on an exclusive English jurisdiction clause had he been advised in relation to it. I am satisfied that he would have done so given the advice he had received from the "Wise Indian", the importance of avoiding proceedings in India and the obvious desirability for him, as a private individual, of a home jurisdiction. Indeed I am satisfied that this would have been his decision even if Mr Burd had advised in the negative terms he suggested. For Mr Wright the choice was clear and he would have insisted that this be included in the Heads of Terms to be presented to Mr Iyer.

146. In these circumstances it is not necessary to determine precisely what LS's advice should have been. On any view LS should have set out the "pros and cons" so that an informed decision could have been made. Mr Wright's decision would have been to include an exclusive jurisdiction clause regardless of the further advice Mr Burd would or should have given.

147. It is similarly not necessary to decide whether LS was in breach of duty in failing to include an exclusive jurisdiction clause. As a matter of fact such a

clause would have been included had Mr Wright been advised in relation to jurisdiction.

148. The next issue which arises is whether there was a real or substantial chance that Mr Iyer would have agreed to English jurisdiction. I find that there was and that the probability of him so doing is high. Although I have found that Mr Iyer made no comment about jurisdiction, his general attitude was that he was not concerned about being sued since, as he stated, "I don't intend to break this contract". He would also have been aware that even if English jurisdiction was agreed that would still leave open the question of enforcement in India, which he would have known was far from straightforward. Viewed at the time, there was no real downside to agreement to English jurisdiction and he is very likely to have so agreed.

149. This leads on to the issue of whether there was a real or substantial chance that Mr Wright would have been paid the judgment amount or a lesser settlement sum if the Heads of Terms had contained an exclusive jurisdiction clause. This falls to be addressed on the basis of no security being provided in this country against which a judgment could have been enforced and for the consequent need to seek enforcement in India.

150. In the light of the evidence as to the delays involved in enforcement proceedings in India, Mr Wright realistically had to accept that, even if judgment had been obtained in England earlier because of the jurisdiction clause, he would not have obtained an enforceable judgment in India before DCHL became insolvent and the franchise was lost in around September 2012. His case was that, if he had been armed with an English court judgment in 2010, DCSV/DCHL would have been constrained to pay it or at least settle with him for reputational reasons and because of the risk that they would otherwise lose the IPL franchise. In support of that case he relied on the evidence of Mr Modi, who was the IPL commissioner until 26 April 2010. This case involves consideration of a number of steps and in particular:

(1) When an English judgment would have been obtained if the Heads of Terms had contained an exclusive English jurisdiction clause.

(2) Whether and if so what pressure would have been brought to bear by the BCCI on DCSV/DCHL to pay the judgment.

(3) How DCSV/DCHL would have responded to any such pressure.

151. As to (1), it is apparent that DCSV/DCHL would have taken every step possible to defeat or delay the successful prosecution and enforcement of Mr Wright's claim, as they have done.

152. In relation to the first English proceedings DCSV/DCHL took issue not merely over jurisdiction but also in relation to service. These service issues led to the second English proceedings being issued and served. Even if DCSV/DCHL had resolved not to raise a jurisdiction challenge in the light of

the agreed exclusive jurisdiction clause, I have no doubt that they would have taken any service points open to them. The consequence is that, regardless of any jurisdiction clause, effective proceedings would not have been served at any earlier stage – i.e. not until the second English proceedings were served on 6 April 2010.

153. Thereafter DCSV/DCHL may have decided to challenge jurisdiction regardless of lack of merit in such an application because it might assist in resisting enforcement in India thereafter. However, I accept that there is a good chance that they would not have done so.

154. As to DCSV/DCHL's attitude to the defence of the claim in circumstances where it made no jurisdiction challenge there is no good reason to expect it to be any different to the approach it in fact adopted. That was to serve a defence and to participate in proceedings up to and including disclosure, but not thereafter. This lack of later participation assisted them in arguing in the Indian proceedings that the English proceedings went ahead in their absence and that there was no proper trial.

155. On this basis it is reasonable to expect that the proceedings would have proceeded to judgment in a similar timescale as between Tugendhat J's dismissal of the jurisdictional challenge (May 2011) and HHJ Seymour's judgment on the claim (July 2012) – i.e. 14 months. That would have meant judgment being obtained in June 2011.

156. As to (2), by June 2011 Mr Modi was long gone and therefore evidence of what he would have done is not directly relevant. Indeed, even if there had been no service issues in respect of the English proceedings, Mr Wright is most unlikely to have obtained judgment before sometime in April 2010, at the earliest. Even if he did obtain judgment then, the chances of him requesting Mr Modi to take action, let alone Mr Modi acting thereon, prior to Mr Modi's abrupt dismissal on 26 April 2010 are extremely remote.

157. Mr Modi's evidence was as follows:

> "I have been asked by Mr Wright to assume that he had obtained the same Judgment in 2010 and then say what, if anything, the BCCI/IPL would have done when it became aware of such a Judgment. As set out above, I was as at April 2010 the Commissioner of the IPL. Had Mr Wright obtained judgment against DCHL in early 2010, I would have told DCHL to pay Mr Wright the amount ordered under the judgment. Enforcement proceedings brought in India by a former CEO against a franchisee would have tarnished the reputation of all the teams, other key stakeholders and the league. I was responsible to the BCCI, to the broadcasters (who had agreed to pay $1.6 billion for the television rights) to DLF, the title sponsor, and to all other sponsors and licensees as well as to the other seven franchisees (who had agreed to pay $617m for the franchise rights) for the continuance of the good name and reputation of the IPL, and the inevitable negative publicity that would have followed these proceedings would have been unacceptable. I therefore would have instructed DCHL to

> fulfil its obligations to Mr Wright under the judgment in order not to bring the league into disrepute.
>
> The BCCI maintained the right under the terms of the franchise agreement to terminate the franchise in such circumstances. Further, had Mr Wright obtained his judgment at some time after I left the IPL, I would expect the BCCI to have adopted a similar stance to that described above. It is a matter of record that the BCCI did cancel the franchise owned by DCHL for reasons of owing money to various parties including those in its employ.
>
> I am satisfied that, as I explained above, given the potential value of DCHL's franchise in 2010 which would have been forfeited had the franchise been terminated, DCHL, faced with such a stark choice, would have agreed to my demand and paid Mr Wright."

158. Although Mr Modi's evidence is not directly relevant it does explain why and how commercial pressure could have been brought to bear on DCHL and Mr Modi expresses the view that it would have been, even after his departure.

159. LS criticised Mr Modi's evidence generally and submitted that his evidence as to what would have happened after his dismissal was mere speculation. LS also pointed out that Mr Modi said in oral evidence that at some stage he had a discussion with Mr Ram Reddy about Mr Wright's dismissal but that had not seemingly made any difference to DCHL/DCSV's position.

160. LS also stressed that there is no evidence from anyone in a position of responsibility within the BCCI at the material time – i.e. on my findings, mid June 2011 onwards. LS further submitted that such evidence as there is indicates that Mr Modi's successors at the BCCI would not have taken the stance he suggested. In particular, as Mr Modi explained in evidence, in his view there were serious reputational issues (notably alleged match fixing) about which his successors at the BCCI took no action. Further, MH&Co did write to Mr Modi's successor on 29 April 2010, enclosing the Particulars of Claim, highlighting reputational issues and urging him to intervene against DCSV, but there is no evidence of any response, still less action.

161. Mr Wright submitted that the situation would have been changed if the BCCI had been presented with an English court judgment. Defying an English court judgment is very different to refusing to make a payment in disputed circumstances. It raises clear reputational issues which the BCCI would have been anxious to address, as shown by the action they eventually took against DCHL over issues of non-payment. LS's response was that if, which was unlikely, BCCI had raised the issue of the judgment with DCSV/DCHL, they would have responded that the judgment was not enforceable for the multifarious reasons they have raised in the Indian enforcement proceedings and that the matter would have been taken no further.

162. The action taken by the BCCI against DCHL in 2012 centred on DCHL's failure to pay players, support staff, associations and overseas cricket boards.

These had not led to any judgments against DCHL, although the claims were not seemingly disputed. Mr Wright's Judgment appears to have been brought to the attention of the Indian court during the course of the injunctive proceedings brought by DCHL and its response is said to have been to contend that it was "ex parte" and was being challenged. The judgment of the Indian court does, however, refer to the anxiety expressed by BCCI's counsel their that "the failure on the part of DCHL to fulfil their contractual commitments may tarnish their image in International cricketing circles" and the judgment acknowledges that the court has "to keep in mind the interest of BCCI, the game and its players more particularly the image of BCCI in the International Cricketing World".

163. Having carefully considered the parties' evidence and submissions my conclusion is that there was a real or substantial chance of the BCCI requiring DCHL to fulfil its obligations under the Judgment. I so find essentially for the reasons given by Mr Wright. In particular: reputation was important to the IPL and the BCCI; the BCCI had the power to insist that a franchisee met its obligations so as to protect that reputation; the obligation in question arose under an English court judgment; it related to a claim about which there had been much publicity, and the BCCI did ultimately take action against DCHL for failing to make payments which raised reputational concerns. On the other hand, I also find that the probability of BCCI so acting is low for the reasons relied upon by LS, as outlined above, and in particular, the fact that the judgment would have been obtained after Mr Modi's departure, the fact that there is no direct evidence from those involved thereafter and the evidence of lack of action on their part.

164. As to (3), if in mid 2011 the BCCI had required DCHL to satisfy the Judgment or risk losing its franchise there would have been a very strong incentive for it to do so. The IPL Hyderabad franchise was extremely valuable. In 2010, for example, the BCCI had sold franchises for the city of Kochi for US$330 million and the city of Pune for US$370 million, both of which are smaller cities. In 2011 DCHL would appear to have been in reasonably good financial health. In 2012, when it was facing serious financial problems, it would appear from the Indian court judgment that it was nevertheless able to put in place arrangements to make the outstanding third party payments identified by BCCI when faced with the loss of its franchise. No doubt DCHL would have sought to negotiate a settlement with Mr Wright rather than pay the total judgment sum. The total judgment sum, including interest and costs, would have been over £11 million, but the headline judgment sum was the principal sum claimed in the proceedings of £10 million. In all the circumstances I consider that this is the appropriate sum against which to assess the loss of a chance.

165. Having carefully considered (1), (2) and (3) above, my conclusion is that Mr Wright did have a real or substantial chance of recovering the principal Judgment sum had there been an exclusive jurisdiction clause in the Heads of Terms, but that the value of that chance is low.

166. In the light of the findings made, including the prospects of Mr Iyer agreeing to an exclusive jurisdiction clause, I have to determine the value of Mr Wright's lost chance. Having regard to my findings, the evidence as a whole and the parties' submissions my assessment of the value of that chance is 20% of the principal judgment sum of £10 million – i.e. £2 million. That conclusion is the same whether I take an overall view of the value of the lost chance or rate the chances of success for each contingency progressively.

167. On my findings Mr Wright also had a real or substantial chance of a costs saving in the English proceedings as a result of avoiding a jurisdictional dispute. The relevant costs sum consists of the costs incurred in relation to the jurisdiction challenge, less those attributable to the service issue and those paid by DCHL. I find that the value of that lost chance to be 80% of that sum.

Conclusion

168. In summary, I conclude that Mr Wright's claim fails on Issue (1) but succeeds on Issue (2). In relation to Issue (3) I find that he is entitled to damages of £2 million in respect of the lost chance of judgment satisfaction and a sum to be determined or agreed in relation to costs saving.