Neutral Citation Number: [2020] EWHC 2934 (QB)

Case No: QB-2019-000009

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/11/2020

Before :

MRS JUSTICE COLLINS RICE

- -

Between :

(1) MR BIAGINO PALMERI **(2) GPIM Ltd** **(3) BPIM Ltd**	**Claimants**
- and -	
CHARLES STANLEY & Co Ltd	**Defendant**

- -
- -

Mr Michael Duggan QC (instructed by **Winckworth Sherwood**) for the **Claimants**
Mr Gavin Mansfield QC and **Ms Amy Rogers** (instructed by **Clyde & Co**) for the **Defendant**

Hearing dates: 5th-15th October 2020

- -

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.

.....

MRS JUSTICE COLLINS RICE

Mrs Justice Collins Rice:

Introduction

1. Charles Stanley & Co Ltd is a major financial services and investment management firm, one of the oldest on the London Stock Exchange. Mr Gino Palmeri was an associate stockbroker of the firm for twenty years, with a committed team and a thriving and successful private client portfolio. But on 21st April 2017 his contract was summarily terminated and he and his team were escorted from the premises.

2. Mr Palmeri says that as a self-employed investment manager contracted to the firm, he brought a valuable self-contained business to Charles Stanley. He worked tirelessly to build up his private client base: he was fiercely loyal to them, and they to him. He managed their interests skilfully, developed deep and knowledgeable relationships with them and earned excellent revenues in return. Charles Stanley took a contractual slice of that in return for providing office space, back-office services and the regulatory approvals he needed by law for his business. In practice, given the growth of his business and the quality of the support he was getting back, it was an increasingly uneven bargain, but things took a definitive turn for the worse in 2014. Charles Stanley decided to change its operating model to take a larger slice of the revenue its associates were bringing in and leave him substantially worse off, not only absolutely but relative to other associates. His own business was unique in the firm, and the plan was an exercise in standardisation, as well as passing down the firm's escalating costs to its revenue-earners. It was an unhappy time: other associates either reluctantly signed up to the new terms or left, but none stood to lose out as much as he did. His choice was between a 15% cut in his income or the upheaval of taking his established business elsewhere in good order. By at least 2016, the firm had privately decided to close the matter down. Its endgame was to force him out and split him off from his clients, redistributing them to other associates, effectively appropriating his lifetime's business and undermining his future livelihood. That plan, he says, was executed on and around 21st April 2017.

3. Charles Stanley's version of events starts with the financial crisis of 2008 and the industry upheavals and regulatory reforms that precipitated. These in turn created overheads and system stresses which obliged the firm to embark on a programme of organisational and culture change to remain competitive. Inevitably, some of the cost of the new model devolved onto associates, sharing short-term pain for the gain of the whole firm's longer-term prospects. The change project was managed consultatively over a long period, and associates were gradually put to their election to come on board with the new ways of working or take their prospects elsewhere. Mr Palmeri resisted the change, and the process, to a degree and in a manner such that matters could not be left unresolved. When finally put to his election, he behaved so unacceptably as to forfeit his contract there and then. After he left, a history of compliance failure was uncovered which would have justified ending his contract summarily in any event.

4. Mr Palmeri brings these proceedings against Charles Stanley for substantial damages for breach of his contract. The parties came to a large measure of agreement as to facts and events, but the implications of those events were vigorously contested over a

two-week trial. This was a trial of liability only. Mr Duggan QC, leading counsel for Mr Palmeri, proposed in his closing submissions that my task came down to finding whether Charles Stanley was contractually entitled to terminate Mr Palmeri's contract summarily on 21st April, and, if not, whether as alleged Mr Palmeri's conduct, either on the day or in relation to the subsequently unearthed compliance issues, amounted to a repudiatory breach entitling the firm to summary termination in any event.

The Contractual Terms

5. The letter of contract dated 16th October 1997 by which Mr Palmeri joined Charles Stanley runs to barely two pages. It deals briefly with the division of income from clients' business and the provision of services by the firm. Mr Palmeri's business was unusual for the firm in that he hired and paid for his own team – employed investment managers and support staff; the contract provides for the firm to contribute to staff costs in return for consultation over hiring and letting go.

6. The contract deals with 'compliance and governing conditions':

> "This contract is subject to the standard terms and conditions contained in the firm's Compliance Manual, a copy of which will be given to you on or prior to commencement of your services. You will comply at all times with the requirements set out in the Compliance Manual. It is also a term of this contract that you will be liable in certain circumstances for debts and losses, and this is set out in the Compliance Manual.
>
> You will comply at all times with the Rules of the Securities and Futures Authority, of the London Stock Exchange, and of any other regulatory body ("any regulator" as further defined in the Compliance Manual)."

7. The original compliance manual is no longer available. However, the contract expressly reserves to the firm the right to make such changes as are reasonable or required by 'any regulator' to the contract terms and the compliance manual, to be notified in writing. Changes to the compliance manual were made and notified from time to time while Mr Palmeri was at the firm. There is no dispute that the contract had ambulatory effect to incorporate the provisions of the compliance manual as they evolved over time. The current regulator is the Financial Conduct Authority (the FCA), established as part of the modern financial services regulatory regime by the Financial Services and Markets Act 2000 (FSMA) as amended by the Financial Services Act 2012.

8. The contract deals expressly with termination:

> "This agreement may be terminated by you or by us on giving the other not less than three months' written notice (the "notice period") following the commencement of your services. The Compliance Manual sets out the conditions on which you may take your clients with you."

There is no provision for termination by payment in lieu of notice ('PILON'). There are no post-termination restrictive covenants.

9. It is not disputed that Charles Stanley's staff handbook also formed part of Mr Palmeri's contract, again on an ambulatory basis. The staff handbook is cross-referenced from the compliance manual. Some of its provisions apply to all staff, some to employees only and some to self-employed associates only.

10. The parties agreed that the contract contains an implied term of mutual trust and confidence. The effects of that term were disputed, specifically in relation to termination. The focus of that dispute was an issue central to Mr Palmeri's claim: the place of the clients in his contractual relationship with Charles Stanley.

Clients: Contractual Position

11. It is not in dispute that Mr Palmeri's clients were (also) Charles Stanley's clients, in the legal sense that their own contractual relationship was with Charles Stanley, not with Mr Palmeri. Clients accessed investment services by agreeing to Charles Stanley's standard terms of business, a substantial and detailed document governing all aspects of the legal rights and duties on each side. The terms of business reflected two other legal realities.

12. First, the financial services sector is highly regulated. Under the FSMA regime, investment services of the sort undertaken by Mr Palmeri are 'controlled', must be 'authorised' and are subject to detailed regulation. Charles Stanley was the formally authorised entity; it 'approved' associates to act on its behalf. Regulatory obligations were owed to clients by Charles Stanley. It discharged them in part directly through its compliance department, and in part through the contractual liabilities imposed on associates in the compliance manual.

13. Second, private client investment management depends on the holding and processing of client personal data. That is also highly regulated. Under the statutory data protection regime, Charles Stanley was the responsible 'data controller' with legally enforceable duties to clients in respect of their information. Associates handled that information formally on Charles Stanley's behalf.

14. The commercial realities are not in dispute either. Although clients' legal entitlements lie against the firm, it can recover indemnities from associates. It is the associate who brings clients to the firm, and who nurtures the relationships, provides the advice, and makes or executes the investment decisions that raise the fee and commission revenue which is the lifeblood of the whole enterprise. The value to clients of joining a well-known and long-established firm is important. At the same time, the personal relationship with a known and trusted investment manager, built up over many years, is key. As with most client/professional relationships, even the most sophisticated client is dependent on another's expertise and judgment; it is a position of relative vulnerability. 'Know your client' ('KYC') is a professional principle for associates set out in the compliance manual. In turn, clients value being known, and knowing their investment manager, personally.

15. The compliance manual includes a short code of conduct on "how we treat our clients". This states that "*[t]he entire basis of our Retail Stockbroking business at*

Charles Stanley is the long-term relationships that we build with our clients." (emphasis original). The firm and its agents "*have a duty always to put our clients first. This is a very simple rule.*" The reputation of the firm rests on client perception, and client fairness is at the heart of the code. FCA guidance on fairness includes "*not placing barriers to clients changing services or service providers*". The code places obligations on associates in taking on clients and managing the relationship: the firm 'watches carefully for any hint' of associates not treating clients fairly, including as to client complaints and any record of breaches of the firm's rules. There is a short section on clients 'switching away from Charles Stanley' which it recognises sometimes happens and for any number of reasons. The personal nature of the client/associate relationship in practice often meant that associates not only brought clients in with them but also brought them out again on a parting of the ways.

16. There was no dispute that Mr Palmeri was a high-performing investment manager. He knew his clients and their families to a detailed and empathetic degree, building up that knowledge over decades in some cases. Many clients were or became friends; the personal investment in the relationship on both sides went deep, and strong bonds were forged. Mr Palmeri would expect to take a high proportion of his clients with him unimpeded if he left.

17. These commercial realities, reflected in the compliance manual, were so self-evident in general – and so characteristic of Mr Palmeri's practice in particular – that he asserts underlying protection for them in law. It is fair to say that that proposition was put in a number of different ways over the course of this litigation. It was at different times suggested, for example, that Mr Palmeri 'owned the goodwill' of his clients, that specific contractual terms should be implied restraining Charles Stanley's conduct towards them, and that contractually binding oral assurances were given to similar effect. I invited Mr Duggan to set out in his oral closing submissions the precise route to the legal protection of Mr Palmeri's commercial interest in his clients that he wished me to focus on. He proposed it was inherent in the implied contract term of mutual trust and confidence, specifically relating to the notice period.

18. During the currency of the contract, the commercial interests of the firm and its associates are aligned, as reflected in the contractual income-sharing model: the only tension is as to relative share of the income (and that of course was Mr Palmeri's central objection to Charles Stanley's change programme). On termination of the contract, where an associate transfers to another firm or sets up on his own account, they become competitors. The question is where that leaves the clients (whose best interests must be put first) as a matter of law.

19. There are some uncontroversial answers to that question. First, the clients themselves are ultimately the decision-makers. They can choose either to remain with the firm or remain with the associate. Second, the clients' contracts – including all the regulatory rights and duties between client and firm – remain in force unless and until the client gives notice to Charles Stanley and leaves. Third, the *express* provisions of the associate's contract, including the compliance manual, remain in force unvaried unless and until termination takes effect.

20. Mr Duggan proposes that this is not the whole story. A complete answer must in law accommodate two important realities: the commercial value of the associate's personal client relationships, and the clients' own interests in being able freely to

choose (as they often do) to stay with the associate without undue disturbance. He says this necessarily implies a mutual contractual entitlement to an 'orderly transition': meaning the fair facilitation of clients' choice; avoiding undue disruption of the associate/client relationship; and that clients should not be unduly discouraged from electing to leave with the associate, including by making it unnecessarily difficult and disruptive for them to do so. This proposition is built on the centrality of the interests of the client (affirmed in the compliance manual), on the combined effects of the mutual rights to notice and to trust and confidence, and on the express contractual link between the notice period and the client issue. On either side giving notice, the contract provides that "*[t]he Compliance Manual sets out the conditions on which you may take your clients with you*". No specific conditions do in fact appear to have been set out in any version of the compliance manual, but the general provisions set out above are relevant.

21. Mr Duggan's proposition for reading in an entitlement to an 'orderly transition' puts Mr Palmeri's case on the terms of his contract – specifically the importance of the notice period and of the absence of a PILON clause – at its highest. It has in my view some attractions in principle and on the facts, even given the high threshold for establishing implied terms. I also consider that this case is potentially distinguishable from employment law cases such as *Imam-Sadeque v BlueBay Asset Management Services Ltd [2012] EWHC 3511* which give limited significance to 'garden leave' as a period of transition to competitor status. This is not an employment case, the commercial components are different and the position of the clients in the contractual matrix is a distinguishing feature. However, the relevance of any such implied term in the present case undoubtedly depends on the entitlement to the notice period itself, and it is to that issue that I turn next.

Termination: Defendant's Conduct

22. The historical context to Mr Palmeri's departure was Charles Stanley's 'Project Oak', a major change programme initiated in 2014, including but not limited to a restructuring of the terms and conditions on which its associates were to be rewarded. The history is not materially in dispute and a few details suffice to set the scene.

23. It is not disputed that Charles Stanley was entitled to initiate this project. It was in its interests to bring the whole organisation along with it, but it was undoubtedly a difficult sell. In the short term associates would be worse off. The firm engaged them, collectively and individually, in various forms of consultation and communication: Project Oak was an omnipresent, and controversial, theme within the organisation as the months turned into years.

24. As usual with change programmes of this sort, those with the least to lose and the strongest affiliation to Charles Stanley got on board quickest. Others followed as the project crystallised into a 'take it or leave it' choice, and some gave their notice and went elsewhere. By at least the beginning of 2016 Charles Stanley had made enough progress to set a timetable on the conclusion of the programme – 1st April 2017 – and make transitional arrangements to help bring the remaining undecided associates to their election. Not much flexibility as to terms was offered; a binary choice was looming either to sign up to the new terms or leave on notice. This much, it was agreed, they were entitled to do.

25. Some more associates did sign up latterly, some more left, and a small group were given notice and terminated. It appears Mr Palmeri had been pencilled in for this treatment but was not in the event included in the group. The experience of exiting the terminated group was an unhappy one. They worked out their notice period at the firm in a tense and disaffected atmosphere and there were incidents of intolerable behaviour, up to and including putting a senior member of staff in fear for her safety.

26. By the beginning of 2017 Mr Palmeri was one of the last unresolved cases. Charles Stanley was resolute that the moment of binary choice was approaching, Mr Palmeri equally resolute in his opposition to the change of terms. April 1st came and went. Charles Stanley had decided to postpone the deadline for a few weeks to ensure that the major administrative milestone of the end of the financial year was securely behind it. But senior managers were resolved that the moment had arrived for Mr Palmeri to make his mind up. They decided to invite him to a meeting with senior staff, of which he would be given no notice, and at which he would literally be given a choice of two envelopes: one containing the Project Oak terms for him to sign, the other terminating his contract with immediate effect. He was not to be given three months' notice, but was to be offered PILON instead. If he did not accept the new terms, he and his team would be removed from Charles Stanley's premises and from access to its databases and systems straight away. The meeting was set for 21st April.

27. There was no dispute that Charles Stanley was not contractually entitled to do that. Mr Palmeri was entitled to three months' notice. Senior management had taken a 'commercial decision' that if Mr Palmeri did not sign up to the new terms they would deliberately breach that entitlement. They did not want a repeat of the previous experience of giving notice. They made careful plans in relation to his clients. They compiled a detailed list of all the relevant information they held on them and devised a provisional allocation of clients to other investment managers. They had briefed those managers to be in contact with the clients. They had prepared letters to issue to the clients. They had not told Mr Palmeri any of this. That was where matters stood on the eve of the meeting.

28. This is where Mr Palmeri's case about orderly transition comes in. He says that not only was Charles Stanley set to breach its contractual obligation to give notice – which is admitted – it was also in breach of its duties of trust and confidence, in failing to give him an opportunity to prepare for the 21st April meeting, and in its approach to his clients. Failure to give notice entailed failure to allow for an 'orderly transfer' of such of his clients as wished to follow Mr Palmeri out of the firm, or even to allow for clients to be able to make that choice before their relationship with Mr Palmeri was disrupted or their position otherwise affected. The unilateral substitution of PILON, even if viewed as liquidated damages, fell far short of recognising the purpose and value of the notice period in enabling an orderly transition.

Events of 21st April 2017 - Narrative

29. At around 10.30am, Mr Palmeri was called in to a room for an unscheduled meeting with Mr Gary Teper, head of the private client division in which Mr Palmeri worked, his immediate manager and long-time colleague and investment client; and Mr David Day, senior HR manager. Mr Day began taking a note, and a minute was compiled later, but there is no closely contemporaneous version. Having heard the evidence of all the participants, there is, however, no material dispute left as to what took place.

30. On entering the room, Mr Palmeri said something to the effect that he was being ambushed. He asked more than once if he needed a lawyer (apparently not intended to be taken literally, but an expression of his anxiety). Mr Teper indicated that discussion about Project Oak was over, it was 'crunch time' and Mr Palmeri had to decide instantly either to sign up to the new terms or have his contract terminated with immediate effect. Two envelopes lay on the table between them.

31. Mr Palmeri quickly lost his temper, raised his voice, disparaged the competence of Charles Stanley and its management using strong language, and became personally abusive to Mr Teper and especially to Mr Day. Mr Teper told Mr Palmeri that his behaviour and comments were inappropriate. Mr Palmeri pointed at Mr Day and asked him to leave the room. When he did so Mr Palmeri disparaged and abused him. Mr Teper told him that was uncalled for and unfair, and that if he were to remain he needed to treat people with more respect.

32. Now that the two of them were alone, Mr Teper sought to get the conversation back on a quieter and more even keel, but Mr Palmeri was in a state of high anger and quickly resumed shouting and swearing on the theme of the performance and competence of Charles Stanley and its management. Mr Palmeri then asked to speak privately with his immediate team and the meeting broke to allow him to do that.

33. He put to his team that he would agree to sign up to the new deal because that would give them time to set up a plan B and organise an orderly departure with their clients. The team agreed. The meeting with Mr Teper and Mr Day resumed, and was joined by Ms Kate Griffiths-Lambeth, Charles Stanley's HR Director. Mr Palmeri told them he would sign the Project Oak terms under protest, and mentioned more than once that he would not be around much longer.

34. Mr Palmeri's one-sided, angry and abusive rhetoric escalated. He referred to members of senior management by name, including the CEO and other Board members, in offensive expletive-laden terms, impugning not only their competence but their integrity. He described them as 'devious', 'deceitful' and 'dishonest'.

35. Mr Teper's evidence was that, after a period of absorbing this, he realised with some sense of shock that a line had been crossed:

> "I realised that the relationship between Mr Palmeri and Charles Stanley was damaged beyond any chance of repair…From my perspective, Mr Palmeri had gone much further in expressing hatred and contempt of the Company, which I had not previously realised he had. I was also shocked by the statement that I personally was dishonest. Unlike other rants in the past that were mostly directed at former management and the Company as a whole, this felt extremely personal. Whilst he was agreeing to sign the terms, he was doing so in such obvious bad faith that I could not see how there was any relationship left to salvage."

Mr Teper then informed Mr Palmeri that his position had become untenable and his relationship with the firm was irretrievably broken, that the option to sign the new terms was being withdrawn, and that his contract was being terminated with

immediate effect. It was the evidence of Mr Teper and Ms Griffiths-Lambeth, accepted by Mr Palmeri, that he was told in terms that he was in 'fundamental breach' of his contract.

36. Mr Teper handed Mr Palmeri the pre-prepared termination letter. Its key provisions were that his contract was immediately terminated; that he would that day be deregistered with the FCA as an 'approved person' of Charles Stanley; that his own employed 'approved persons' would also be immediately deregistered and that all his team had to vacate the premises that day. He would be paid for three months "*in exactly the same way as if you were still engaged by Charles Stanley*" on condition of continued compliance with confidentiality and data protection provisions in that period. The Palmeri team's access to Charles Stanley's systems, IT and premises was immediately withdrawn.

Termination: Claimant's Conduct

(i) 21st April 2017 - Analysis

37. That morning's immediate ultimatum was not one which Charles Stanley was entitled to impose. Had an entirely different kind of conversation ensued when Mr Palmeri realised where he had been positioned, who is to say what alternative futures might have been arrived at. My task is not to speculate about that, or about what else the parties might have chosen to do, but to look at what they did do and why.

38. The handling of Project Oak was not a 'negotiation'. Charles Stanley had made some efforts to make it less unappealing to Mr Palmeri, but it was the firm's prerogative to offer a binary choice: the new contract, or leave under the old one. However, it perhaps had this in common with a negotiation: where parties end up far apart and entrenched, the endgame is likely to be an exercise in brinkmanship. Mr Palmeri had thought he could somehow hold his ground: he and his team were exceptional, they were valuable to the firm, and perhaps an exception would be made and he could continue on his old terms. Charles Stanley management said it thought that when matters went down to the wire he might just sign up. But they were nearly sure, given his unwavering and trenchant views, that he would prefer to go. They suspected he had advanced exit plans already. Had they known how unripe his preparations for an alternative future were, they might have been more optimistic: in the event, faced with the ultimatum, Mr Palmeri preferred to sign up and stay.

39. Given two non-contractual options, Mr Palmeri's intention was *to affirm his contract* and agree to the only terms on offer consistent with keeping his notice period alive. That is important for Mr Palmeri's primary case: first, as to the significance to him of the notice period and second, as to his willingness, whatever he says about Charles Stanley's conduct up to and including the ultimatum, to endorse the continuing subsistence of the contract at that point and to accept *all* the terms of it, old and new.

40. Charles Stanley says that Mr Palmeri's purported acceptance of the Project Oak option was in such obvious bad faith as to amount to no valid acceptance at all. In so far as that conclusion rests simply on Mr Palmeri's indication that he did not intend to stay very long, I disagree. Mr Palmeri would be, as he always had been, unconditionally entitled to give his notice at any point from signing the new package. That was always Charles Stanley's risk with its ultimatum strategy. In any case it had

no *contractual* entitlement to summary termination as an alternative to 'valid' acceptance of the new terms.

41. Charles Stanley's primary submissions on Mr Palmeri's conduct on 21st April are, however, not based narrowly on (de facto) rejection of the new terms, but on its amounting to a repudiatory breach of any and all continuing contractual relations with Charles Stanley, whether on the old terms or the new – a fundamental breach of his duty of trust and confidence, which Mr Teper was entitled to, and did, accept.

42. The test I am required to apply for that is variously formulated in the authorities. It includes considering whether, objectively and from the perspective of a reasonable person in the position of Charles Stanley, Mr Palmeri had "*clearly shown an intention to abandon and altogether refuse to perform the contract*" by repudiating the relationship of trust and confidence towards Charles Stanley (*Eminence Property Developments v Heaney* [2011] 2 All ER (Comm) 223. In a case like this "*the focus is on the damage to the relationship between the parties*" (*Adesokan v Sainsbury's Supermarkets Limited* [2017] ICR 590 per Elias LJ paragraph 23). There is relevant analogy with the formulations in the employment cases: "*the question must be — if summary dismissal is claimed to be justifiable — whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service.*" (*Laws v London Chronicle* [1959] 1 WLR 698, pages 700-701) It must be of a "*grave and weighty character*" and "*seriously inconsistent – incompatible – with his duty as the manager in the business in which he was engaged*" (*Neary v Dean of Westminster* [1999] IRLR 288, paragraph 20), or "*of such a grave and weighty character as to amount to a breach of the confidential relationship between employer and employee, such as would render the employee unfit for continuance in the employer's employment*" (*Ardron v Sussex Partnership NHS Foundation Trust* [2019] IRLR 233 at paragraph 78).

43. This is a fact-specific test and all the relevant context must be taken fully into account. Mr Palmeri candidly accepted that his behaviour at the 21st April meeting was unacceptable. He was regretful and apologetic; he did not seek to excuse it. But he did seek to contextualise and explain it. Again, this was put in a number of ways.

44. The first was cultural. The world of city finance was a hard-working, vigorous one, where thrust, flair and long hours are demanded, and with behaviours and vocabulary to match. No single expression used by Mr Palmeri at the meeting was one which was not in common currency. A degree of robust exchange was the norm. I heard from Ms Griffiths-Lambeth that culture change, moving on from some of this, was a part of the Project Oak reforms. The second was personal to Mr Palmeri. He recognised others' descriptions of him as a big character – passionate about his business, protective of his team and his clients, hard-working, big-hearted and with a high and expressive emotional register quickly triggered. He and Mr Teper knew and understood each other well. I take all of this context into account. It explains some, but not all, of what took place on 21st April.

45. To explain the rest, Mr Palmeri says that his passion for his business and his known volatility were unfairly exploited by Charles Stanley; that he was indeed deliberately 'ambushed' and taken unprepared in a sudden meeting; his career and livelihood (and those of his team) were placed in jeopardy in an instant, with an unprecedented and

shocking threat of summary termination; and that he "*felt incredibly threatened and vulnerable*".

46. I accept Mr Palmeri's account of how he felt. Charles Stanley say that the ultimatum – sign up or go – had been in plain sight for a long time, as had the significance of April as the 'crunch point', and that Mr Palmeri had no justifiable cause for surprise. I disagree. Whatever the history of Project Oak, the surprise meeting and *nature* of the final choice came out of the blue. Indeed there is every sign that the ultimatum was intended as a sudden jolt to bring matters to a head. It was obvious that each alternative on offer would be unpalatable, and that the threat of summary dismissal would be received as shocking. It was entirely foreseeable that Mr Palmeri would feel his back forced against the wall – that was rather the point – and that he would react strongly.

47. Mr Palmeri goes further and says that not only was this unfair, it was a cynical move positively to provoke his anger, to give Charles Stanley some excuse or cover for what was otherwise their clear breach of contract, a course of conduct in sufficient bad faith to preclude their reliance on the outburst they had engineered. This extrapolation from his experience of the events of 21st April to a deliberate plan – a positive desire by Charles Stanley – for what happened is understandable. I do not doubt Mr Palmeri's conviction that it must have been so; he certainly thought Charles Stanley capable of it, and that in itself goes to his opinion of the firm and the state of his relations with it. I saw and heard no evidence from Charles Stanley to support a narrative of a plan to disguise or avoid the consequences of their breach of contract other than the PILON offer – on the contrary they were quite ready to make no bones about it – or of deliberate emotional provocation; indeed I saw no evidence that they had thought about Mr Palmeri's emotional response at all, for good or ill. I also bear in mind the facts that Mr Teper was agreed to have made efforts in the moment to calm the meeting and that Mr Day gave up trying to take a note, neither of which suggests the calculated execution of a pre-engineered plan.

48. There is a further piece of context to consider. Emotional outbursts and strong language were nothing new from Mr Palmeri – what Mr Teper called his 'rants' – and it may be that he has to be given the benefit of a degree of past cultural and personal endorsement of that. But there had been previous occasions where he had crossed the firm's lines, and his conduct in the workplace had been challenged before, both informally and formally.

49. In early December 2016, the manager of Charles Stanley's front of house reception staff raised a formal grievance relating to an incident on 16th November 2016, where Mr Palmeri had "sworn and ranted" at her and other facilities staff. He had been locked out of the premises the previous evening and returned at lunchtime to level public and expletive-laden angry complaints against reception staff, the gist of which was contempt for the service he was being provided with given the money he was bringing in, all against the background of his dissatisfaction with Project Oak. This was not a one-off; something similar had happened the previous May, after a client had been kept waiting in reception.

50. The firm's grievance procedure was followed through. Mr Palmeri accepted the substance of the allegations. His behaviour was found unacceptable. He was reminded of the firm's duty of care to its staff and directed to make apologies and

undertake anger management counselling. He was warned that if his conduct or behaviour were brought into question again and found to be inappropriate he risked termination. This warning was issued four months before the 21st April meeting.

51. Mr Palmeri does not dispute a pattern of intemperate and sometimes explosive expression – indeed he deploys it as a fact known to Charles Stanley. His email correspondence within the firm also suggests it. But he seeks to distinguish the conduct about which he had been warned, from the events of 21st April. He concedes that both were unacceptable and regrettable, but says that the November incident was directed towards junior staff, hence aggravated by the unequal relationship of power, while on 21st April he was the vulnerable party.

52. The Charles Stanley staff handbook has a section on bullying and harassment. Harassment is defined as workplace conduct directed towards a worker by another worker or group of workers which is regarded as unwelcome or offensive by the recipient and adversely affects that worker's dignity. Bullying is offensive, intimidating or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient. Such conduct is identified as damaging to both workers and the company; whatever form it takes it is unacceptable at work and will not be tolerated; bullying and harassment are examples of gross misconduct for which employees and contractors may be summarily dismissed. Some non-exhaustive examples are given, and this passage follows:

> "The essence of harassment is that the conduct is unwanted, unreasonable and offensive to the recipient. It is for each individual to determine what behaviour is reasonably acceptable to him/her and what he/she regards as offensive. Conduct becomes harassment if it persists once it has been made clear that it is regarded by the recipient as offensive, although a single incident may constitute harassment if it is sufficiently serious. It is the unwanted nature of the conduct which distinguishes harassment from friendly behaviour which is welcome and reciprocal. …You should also not forget that your behaviour and sense of what is proper may be affected by external factors such as pressure at work, fatigue or alcohol – you must be particularly careful about what you say and do in these circumstances."

53. I am satisfied in all the circumstances that Mr Teper was entitled to treat Mr Palmeri's conduct on 21st April as a serious breach of this policy. I accept that cultural norms and any habitual toleration of strong language in the workplace must be allowed for. I give considerable weight to the shock he felt at being suddenly confronted with an immediate choice between two options to neither of which was Charles Stanley entitled to compel him. I take into account in his favour this sudden position of vulnerability and Charles Stanley's responsibility for that; and I consider his known history of volatility as capable of increasing the vulnerability of the position into which Charles Stanley placed him. I do not however consider his history of past breach of the firm's bullying and harassment policy to be other than a seriously aggravating factor. That is not just because Mr Palmeri was subject to a recent warning about intemperate conduct, explicitly linked to a risk of termination. It is because this is not just an issue about anger management and expletives, or even just

about power and vulnerability. The *substance and content* of Mr Palmeri's history of angry conduct cannot be overlooked: what he said, not just how he said it.

54. The consistent picture from the evidence is that Mr Palmeri's relationship with Charles Stanley might at best be described from his point of view as a marriage of convenience. On his own account, he regarded himself as essentially an autonomous businessman who needed only two things from Charles Stanley – a regulatory 'umbrella' under which to conduct his business, and administrative services. Indeed, he said he thought of himself as a 'client' of Charles Stanley – essentially the firm was paid by him to provide him with a service. He had not made a secret of his low opinion of the administrative services he received and of what he saw as Charles Stanley's failure to address their quality and cost. Project Oak added insult to injury. The whole added up to an opinion of the firm which might fairly be called disaffected. He may not have been alone among his colleagues in being disaffected, but he appears to have been noticeable for his expression of his disaffection.

55. Disaffection with Charles Stanley was the consistent theme of Mr Palmeri's anger, whether expressed moderately or immoderately. Some of the recipients of his rhetoric sympathised or engaged with it, others did not, but he did not always moderate his communication to his audience. In that sense, the unfortunate receptionists were simply caught in the crossfire – Mr Palmeri's quarrel was not with the individuals in front of him so much as with Charles Stanley. That is why the disciplinary warning is relevant to his conduct on 21st April.

56. What seems to have happened under the (substantial and to a degree unfair) pressure of the April 21st meeting is that Mr Palmeri finally said exactly what he thought, not indiscriminately or within the peer culture of an organisation going through difficult change, but directed personally to the face of senior management. The attack on the competence and especially the integrity of those in charge of Charles Stanley was all-embracing in its scope: incompatible with the subsistence of a mutual relationship of trust and confidence, and a rejection that anything further was capable of being owed between them other than an 'orderly' parting of the ways.

57. Even an orderly transition would necessarily have relied on a reciprocation of trust and confidence. It is essential to the continuation of any contractual relationship, and cannot survive sustained, angry and open disaffection at a register which 'disregards the essential conditions of the contract'. In particular, disaffection of this sort is not compatible with a contract in which mutual trust and confidence is essential to the operation of *regulatory* obligations. It is to this aspect of the case, and its relationship with the events of 21st April, that it is now necessary to turn.

(ii) Regulatory Compliance Issues – Narrative and Context

58. In May 2017, shortly after Mr Palmeri's departure, one of the associates to whom Charles Stanley had allocated some of his clients came across material on file suggesting Mr Palmeri had been involved in loan activity with a client. In the same week, an email was received in Mr Palmeri's old Charles Stanley inbox from another client enquiring about the repayment of a loan. Charles Stanley does not conduct or facilitate lending to or borrowing from clients and is not licenced to do so.

59. Charles Stanley's compliance department began an investigation, under the direction of its head of compliance, Mr Steve Jones. Mr Jones had not been involved in Mr Palmeri's departure or history. The investigation did not purport to be comprehensive; it focused on the most recent five year period, putting search terms into Mr Palmeri's records and listening to phone recordings between Mr Palmeri and selected clients (recording phone calls is a regulatory requirement). There was an initial limited contact with Mr Palmeri himself, which was not further pursued.

60. Mr Jones reported to the Charles Stanley Board in August 2017 outlining compliance concerns and recommending that Mr Palmeri's former clients be alerted to their rights to pursue matters with the firm. The Board report would automatically have alerted the FCA, and Charles Stanley self-reported its findings and concerns to the regulator. The FCA undertook its own review. Mr Palmeri was by this time working as an 'approved person' at another firm. That firm suspended Mr Palmeri's 'approval' for the duration of the FCA's investigation and requested his deregistration as such. The only specific finding the FCA made relates to an issue about which Charles Stanley had neither suggested there was evidence nor raised concerns ('receiving deposits'). Nonetheless in due course Mr Palmeri's registration was restored by the FCA.

61. There is no dispute as to the facts. Mr Palmeri had, while contracted to Charles Stanley, engaged in a pattern of loan activity involving clients (and in one case a member of Charles Stanley's administrative staff). This was agreed to be 'personal' activity in the sense that it was not put through Charles Stanley's books. None of it was disclosed to Charles Stanley at the time. However it had left a significant footprint on the firm's records.

62. The compliance manual makes relevant provision. It sets out the firm's compliance department's functions in their regulatory context, and the responsibilities of individuals within the firm. Failure to comply with the firm's compliance rules, policies and expectations can amount to misconduct within the terms of the staff handbook, with the prospect of disciplinary action up to and including termination.

(iii) Regulatory Compliance Issues – Potential Conflict of Interest

63. The compliance manual records the fundamentals of the regulatory regime encapsulated in the FCA's 'Principles for Business'. Principle 8 deals with conflicts of interest: "*A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.*" A "*potential conflict of interest*" may exist where the firm or a member of its staff: is likely to make a financial gain, or avoid a loss, at the expense of a client; has a financial or other incentive to favour the interests of one client, or group of clients, over another; has an interest in the outcome of a service or transaction that is distinct from the client's interest in that outcome; receives an inducement from a third party in relation to a client service or transaction. "*The overarching requirement is to put client interests ahead of the interests of the firm and staff and, where potential conflicts exist between clients themselves, to ensure that individual clients are treated fairly and that any conflicts that carry a risk of possible material adverse risk to client interests are properly disclosed, managed and, where possible, avoided.*"

64. The manual refers to a conflicts management policy document. That sets out more detailed policies and procedures for the disclosure, reporting and management of

potential risk to client interests from conflict issues. The compliance manual and conflicts management policy require associates to disclose details of 'all external business interests' to the firm's interests register and keep that disclosure updated at all times. External business interests include "*an interest of any kind in, or relationship with, any person, interest, pension account, trust or other body which is, or which is likely to be, directly or indirectly, a client of the [Charles Stanley] Group.*"

65. Mr Jones, Charles Stanley's head of compliance, explained what this means in practice. Charles Stanley asserts its regulatory right and obligation to have sight of and to control *potential* conflicts of interest *from the outset*. It has procedures in place for that purpose and requires associates to be alert to the issue and comply with reporting requirements. Without full reporting, the firm cannot assess the potential and the risk. Without that assessment it has no opportunity to control the risk. Without that opportunity, client interests cannot be fully and securely protected in the manner required by the regulatory regime.

66. A sample of Mr Palmeri's loan activities was considered in evidence. It showed a sustained pattern of obtaining or soliciting loans from, and making loans to, clients. It showed dozens of transactions, each involving a five or six figure sum; the total amount borrowed by Mr Palmeri from his clients over time was more than £2m. Formal documents set out the loan terms: some of these were relatively complex, some loans were secured on assets invested with Charles Stanley (either clients' assets or Mr Palmeri's own assets), some appeared related to potential external business interests of Mr Palmeri; all but one were loans at interest rates which were (at least) commercial; and some of the loan agreements made reference to an arrangement fee.

67. Mr Palmeri says all of this was entirely personal business and no concern of the firm's. He was always clear with clients that he was not purporting to act for the firm. The loans were simple problem-solving liquidity arrangements between friends, set up on a free, fair and explicitly personal basis. All were discharged straightforwardly and often without enforcing the formal burdens, for example by waiving the arrangement fee. There was no question of client detriment or of *actual* conflict of interest; each was carefully judged according to the means, risk appetite and financial sophistication of the friend in question. That the friends happened also to be clients was irrelevant.

68. Mr Jones's evidence was that while much of this might be accepted, the fact that it was activity between an associate and clients was highly relevant. It appeared to fall within the extended definition in the compliance manual of external business interests, however 'personal'. It raised questions about an associate's own financial position. In addition, he was receiving benefits from, and conferring benefits on, *specific* clients. As a result, he had, objectively assessed, a personal stake in the prosperity and goodwill of those clients which he did not have in relation to other clients. Where loans were secured against investments managed by Charles Stanley he had an additional, personal, reason to maximise the value of those investments. He was undoubtedly *in a position* to favour some clients' interests over others in making investment decisions where prioritisation was inevitable – for example in allocating a limited supply of shares, timing of trades, or offering investment opportunities. If an associate has substantial incentives to favour some clients over others, and is in a position to do so, that by itself creates *potential* conflicts of interest between clients.

69. Mr Jones explained that that directly engaged the firm's regulatory interests. The contextual knowledge which Mr Palmeri relied on to conclude that there was no *actual* conflict or risk was knowledge which Charles Stanley was entitled to have had, to assess and, if it judged appropriate, to act on. The fact that both Mr Palmeri and the clients involved had benefited from and were happy with the loan arrangements was no answer – indeed it was the essence of the problem. These were not 'friends who happened to be clients' they were 'clients who happened to be friends'. Charles Stanley was obliged to check whether *other clients*, and the firm itself, were at risk of being disadvantaged and if so to mitigate that risk.

70. Mr Jones confirmed without hesitation that, having reviewed the materials, Mr Palmeri should have notified the firm's compliance department of this activity; not doing so was a substantial breach of reporting obligations. I give weight to that assessment. It is Mr Jones's professional function to make such judgments and I had the benefit of hearing his oral evidence: I found him professional, disinterested (I am satisfied that he looked at things open-mindedly, after Mr Palmeri's departure and without a perspective irrelevantly clouded by personal history) and clear and precise under cross-examination. I am in any event satisfied that *potential* conflict of interest is self-evident on the face of these materials. It is inherent in the inevitable incentivisation to prefer, for self-serving reasons, the interests of some clients over others. The fact that Mr Palmeri did not or would not succumb to such incentivisation and that no client suffered demonstrable detriment does not answer a failure to report. The point of the reporting requirement is that an associate is not permitted to be the final arbiter of the appropriate management of potential conflict. That is a function expressly, and contractually, reserved to the firm.

71. Two further observations suggest themselves. First, Mr Palmeri's explanation that he thought Charles Stanley had no legitimate interest in this activity points to a view of their relationship which is at odds with the express terms of the compliance manual and the implied term of mutual trust and confidence. The regulatory regime set out in the compliance policies and systems is a careful balance of complementary responsibilities which relies on mutual respect and transparency.

72. Second, the blurring of the difference between friends and clients apparent in Mr Palmeri's evidence and pleadings itself raises questions. The lines were certainly blurred. Correspondence about 'personal' loan activity was undertaken from Mr Palmeri's (branded) Charles Stanley email accounts. Investments managed by Mr Palmeri as an associate of Charles Stanley were deployed as security. Client information of which Charles Stanley was the data controller was used to inform decision-making. Mr Palmeri's strong, and indeed personal, relationships with his clients were of course all part of his success – he excelled at 'KYC'. But clarity and discipline about the boundaries between personal and professional relationships is fundamental in a regulated context. The distinction between 'friends who happen to be clients' and 'clients who happen to be friends' is that it is their status as clients which has legal consequences, and which must come first.

(iv) Regulatory Compliance Issues – Complaints Handling

73. Questions of boundaries and potential conflict of interest were put under a spotlight in one particular example of loan activity. This was a loan from Mr Palmeri to a client – and friend – who was a senior medical professional and evidently someone with

financial acumen of his own. It was unique among the loans made by Mr Palmeri we looked at, in being on interest-free terms. It was (put neutrally) associated with an incident in which the client believed he had instructed Mr Palmeri to sell some shares from his Charles Stanley portfolio, which he failed to do, resulting in financial loss to the client. The client was unhappy.

74. The compliance manual includes a section headed "CLIENT COMPLAINTS (and expressions of dissatisfaction)" which says this: "*Any oral or written expression of dissatisfaction, whether justified or not, about the provision of or failure to provide a financial service, which alleges that the complainant has suffered, or may suffer, financial loss, material distress or material inconvenience"* is to be regarded as 'a complaint'. All 'complaints and expressions of dissatisfaction' must be reported within three business days to the compliance department, which maintains procedures for handling and response. The associate then has three working days to resolve the complaint informally and give the client a 'summary resolution letter', cleared with the compliance department before issue and informing the client of their right to complain to the Financial Ombudsman Service. If the matter is not resolved within three working days, the compliance department will take over the handling, and detailed procedure is set out for doing so. It is emphasised that this applies to all expressions of dissatisfaction, whether or not an associate considers them justified. The department must analyse the causes of complaints, with a view to possible wider systems issues, as well as assessing the scope and severity of any client detriment and any remedial action or redress that may be due. The staff handbook, as already indicated, identifies complaints as being relevant to performance appraisal.

75. What happened with this particular unhappy client was that Mr Palmeri did not in the first place agree that the client had in fact given the clear instruction to sell which he said he had. They both listened to the recording of the relevant phone call and agreed that there had been a 'miscommunication'. Mr Palmeri sent the client an email resistant to accepting personal blame, and proposing how he would be able, by skilful management of the client's portfolio, to 'trade out' of his loss. He trusted that this was acceptable, but if not "*then I understand and you should go through the firms complaints procedure which entails more of the rubber glove treatment*" – a nod to the client's medical practice – "*I've already endured from compliance on this matter and a disciplinary after they listen to the tapes then a referral to the ombudsman*.". Mr Palmeri does not in fact appear to have reported the matter to compliance.

76. Eleven days later the client responded, challenging what he considered to be a change of Mr Palmeri's position from a previous admission of 'liability' for the loss. He did not agree that he had not given clear instructions, nor with Mr Palmeri's proposal. He remained unhappy. But he had a counter-proposal – a compromise to end the matter and move on: Mr Palmeri could either give him an interest-free loan of £10,000 for one year, or apply for an interest-only mortgage for £110,000 on the client's behalf to help him out of a temporary problem with his credit rating. "*I certainly don't want you to be hauled over the coals by compliance, and if we can work something out all is well.*" A week later, Mr Palmeri confirmed that they had since spoken and that "*in order to resolve our issue*" he agreed to give the interest free loan proposed. Mr Palmeri instructed one of his team to prepare a loan agreement to get the client 'off his back' and to 'make everything OK'.

77. In their evidence, both Mr Palmeri and the client robustly defended this transaction. They were good friends of long standing. The client had never remotely intended his dissatisfaction to be reviewed formally by Charles Stanley; the idea that he would ever have made a complaint was 'hogwash'; the references in the email exchange to compliance and the ombudsman were not serious; the proposal for the loan was a suggestion for a gesture of kindness – and 'investment in friendship' – to mend a one-off friends' misunderstanding.

78. Mr Jones said that he found the relevant exchange of emails unique in his career in compliance. He considered it a gross breach of the complaints handling procedure, as to which the intention of the client was largely immaterial in any event, and a clear example of an actual conflict of interest between Mr Palmeri and Charles Stanley.

79. The client's unhappiness related to the performance of Mr Palmeri's functions as an investment manager of Charles Stanley. This was not just a personal matter. Mr Palmeri had reporting obligations whether or not the client chose to invoke them and they arose immediately and unconditionally. The firm had interests of its own in handling client dissatisfaction, expressly including the terms on which matters were resolved informally, an interest in matters being resolved to a short timetable and an entitlement to take active management of an issue not resolved within that timetable.

80. Both Mr Palmeri and the client vigorously resisted the proposition that this loan was a direct *quid pro quo* for the client's not pursuing a formal complaint. It may be that nothing so crude was transacted in terms, although the exchanges could in my view readily bear that interpretation. What is not credible is that it bore no relationship whatever to the failure to sell the shares. It clearly did. That is enough to trigger the reporting requirements. The relevance of client unhappiness to the performance appraisal of associates means that associates have an incentive of their own not to report – a conflict of interest. That is why the reporting requirements are as detailed and unequivocal as they are.

81. Again, two features may be noted. The first is the resistance in Mr Palmeri's evidence and submissions to the legitimate interest of Charles Stanley and the necessity of mutual co-operation in the field of compliance. Complaints handling is not a matter solely between associate and client; it is not an associate's prerogative to make his own private assessment of client satisfaction. The second is the vivid further example this gives of the blurring of boundaries between professional conduct and friendship. Both Mr Palmeri and the client came close to describing their friendship as itself a tradable asset: a professional performance issue had created a deficit in their personal friendship which required a substantial financial investment to balance the books. The explanation of this matter in terms of friendship does not provide an answer, it raises further questions.

(v) Regulatory Compliance Issues – Credit Broking

82. One of the examples of loan activity in the sample before the court related to a family more than one member of which was a client. In this case, Mr Palmeri was neither the borrower nor the lender, but the proposer. The daughter of the family, (who was not a client) required a bridging loan to buy a house. Her father, a client, wished to raise the cash but was reluctant to liquidate the investments held in his Charles Stanley portfolio. Mr Palmeri knew that her grandmother, also a client, was in a

position to lend. Mr Palmeri proposed as a solution that the grandmother advance the loan, with the father personally guaranteeing it on the security of his portfolio. This solution had a number of benefits, including tax and inheritance planning advantages, for all the members of the family, which Mr Palmeri set out for them. They were all delighted. Mr Palmeri prepared the formal loan agreement for them.

83. The firm's compliance department took legal advice and concluded that this was a 'regulated credit agreement' as defined by the Consumer Credit Act 1974: although a private rather than a business arrangement so far as the family was concerned, it was a loan for the purpose of purchasing land, not secured on that land, at a rate of interest higher than 1% plus the prevailing base rate at the time (0.5%). There is no sign that Mr Palmeri advised the family of this consequence of the interest rate, or of their rights and obligations in such circumstances.

84. The firm's compliance department also concluded, on advice, that Mr Palmeri's activity constituted 'credit broking'. Credit broking is defined in article 36A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544). It includes "*presenting or offering an agreement which would (if entered into) be a regulated credit agreement*" and "*assisting an individual or relevant recipient of credit by undertaking preparatory work with a view to that person entering into a regulated credit agreement*". There is an exemption from the definition for "*activities carried on by a person for which that person does not receive a fee*". 'Fee' includes pecuniary consideration or any other form of financial consideration.

85. The firm was clear – and Mr Palmeri accepted – that he had proposed this agreement, undertaken preparatory work and offered the text. He had received no fee for the particular transaction. He maintained that he had acted in an entirely private capacity, helping the family as a personal favour, outside the scope of the services he provided in return for his annual management fee. That thought had occurred to the firm, but they did not consider it persuasive. An associate had been approached by a client for professional investment advice relating to his existing holdings. His exchanges with the family on all of this were conducted from his (branded) Charles Stanley email account and on the basis of information acquired in the course of his business and of which Charles Stanley was the data controller. The loan was drawn up with the assistance of his team.

86. The issue with credit broking is that it is a regulated activity which Charles Stanley and its associates were not authorised to conduct. This is not an issue about conflict of interest, it is an issue about regulatory permission. As Charles Stanley was not confident of being able to dissociate itself from Mr Palmeri's conduct in this case, since he had not acted in a purely private capacity but ostensibly in his capacity as the clients' investment manager, the firm was exposed to regulatory enforcement and liability to the clients. The compliance manual states that consumer credit in general and credit broking in particular are not services offered by the firm to clients; associates are contractually forbidden from undertaking this activity.

(vi) Regulatory Compliance Issues – Analysis

87. The preface to the compliance manual makes clear that all Charles Stanley staff, whether employed or contracted, are expected to comply with both the letter and the

spirit of the relevant regulatory requirements and observe the principles and requirements set out in the manual itself. It states that:

> "Any breach of the policies and procedures in this Group Compliance Manual, and any other relevant compliance and procedures manuals, may constitute gross misconduct as defined in the Staff Handbook, leading to disciplinary action up to and including summary dismissal."

The 'letter and spirit' set out in the compliance manual were express terms of Mr Palmeri's contract. The spirit is also in my view inherent in the duty of mutual trust and confidence implied into this contract.

88. Charles Stanley relies on the regulatory conduct issues discovered after Mr Palmeri's departure as justifying summary termination in their own right. It relies on the compliance manual and staff handbook to show the seriousness of the conduct, the reservation of the right to summary termination, and the breaches themselves as fundamental and repudiatory of the contract. It is not in dispute that as a matter of law summary termination may be justified not only by reference to facts known at the relevant time (in this case 21st April 2017) but also to facts discovered subsequently: *Boston Deep Sea Fishing v Ansell (1888)(39)ChD 339 at 364* and *Cavenagh v William Evans Ltd [2013] 1 WLR 238, paragraph 5*.

89. I am satisfied on the evidence, and for the reasons set out above, that Mr Jones was justified in regarding this sample of loan activity as a serious breach of contract. The giving and receiving of personal loans amounted to a sustained course of conduct in failure to report potential conflict of interest or even, it appears, to understand and recognise the concept. Charles Stanley's compliance documents now explicitly require the authorisation of any loan above £500 between associates and clients or staff, however 'personal', and Mr Palmeri, wisely in my view, does not seek to cite this subsequent amendment to his advantage. The breach of complaints handling procedure was also serious; the requirements are clear, and I am satisfied of a link between the client's unhappiness with Mr Palmeri's professional performance and the loan. I also agree with Mr Jones that the better view is probably that the elements of credit broking ostensibly in the course of professional conduct were made out on the facts of the case we looked at.

90. I accept that Mr Palmeri was motivated by the happiness of his clients and by helping his friends. That does not make these matters private. They were not matters where he was entitled to substitute his own decisions for the firm's and not tell them. The manual prioritises the firm's obligations to manage compliance. Charles Stanley was contractually entitled – and required by the regulatory regime - to oversee the management of potential conflicts of interest, all expressions of client dissatisfaction, and the boundaries of its regulatory permissions. It was entitled to the support and co-operation of its staff in doing so.

91. If the warmth of a client relationship were the determining factor, regulation would be set at naught. Mr Palmeri's viewpoint implies, as against the firm, not just the primacy but the exclusivity of the client/associate relationship: where friends are concerned it is not only personal but private. That is not supported by the contractual terms. Those terms demand mutuality. Mr Palmeri argued that they also demand

common-sense flexibility. No-one can dispute that working in a regulated sector is burdensome, and Mr Palmeri's evidence expressed the usual sorts of frustrations with process and 'box ticking'. He put his clients before bureaucracy. For the system to work, however, it needs associates not just to master regulatory requirements as a body of professional knowledge, but to internalise the 'spirit' of the rules and take a partnership approach to the careful balance of rights and responsibilities between the associate and the firm. Associates are not the regulatory 'clients' of Charles Stanley but regulatory partners with the firm in a relationship demanding mutuality. That is what the contract Mr Palmeri relies on in these proceedings requires.

(vii) Fundamental Breach of Contract

92. I have considered Mr Palmeri's conduct on the 21st April in as full a context as possible. That includes Charles Stanley's own conduct in placing him in an especially stressful predicament without a contractual basis for doing so. It also includes Mr Palmeri's open disaffection with Charles Stanley's policies and business model, service provision and culture. Disaffection is corrosive of trust and confidence if not resolved. Mr Palmeri's admittedly unacceptable behaviour on the 21st April left no resolution possible. His grievances, however understandably and strongly felt, cannot in the end absolve him of all responsibility for denouncing the 'essential conditions' of his contract. It was repudiatory in manner: the staff handbook recognises that no member of staff however junior, or senior, can reasonably be expected to accept such treatment in the workplace for any reason. It was in disregard of a relevant formal disciplinary warning (itself giving rise to a contractual entitlement to summary dismissal). As to content, it was a fundamental and personalised disavowal of *confidence* in the competence of senior management of Charles Stanley and of *trust* in their integrity. Even if Charles Stanley had not had a sound basis for summary termination of contract going into that meeting, Mr Palmeri thereby provided one.

93. I have also considered the regulatory questions subsequently raised. I consider the evidence to disclose a sustained and significant pattern of unreported potential conflicts of interest, a serious breach of complaint handling procedure, and evidence of unauthorised credit broking (individually and collectively engaging contractual rights to summary dismissal). I consider this repudiatory because, in its wider context, it cannot be reconciled with the place in compliance of the relationship of mutual trust and confidence between the parties. The conduct itself, and Mr Palmeri's explanation of it, assert an entitlement to private dealings with clients, and to the primacy of his own decision-making over that of the firm, which is inconsistent with the letter and the spirit of the compliance manual, including the mutual support, trust and confidence necessary for the fulfilment of the parties' complementary obligations.

94. Viewed objectively, as I am required to do, I am satisfied that Mr Palmeri's conduct taken as a whole and in context was of a nature and gravity amounting to serious misconduct within the terms of the contract capable of justifying summary termination, and to a fundamental breach of the implied duty of mutual trust and confidence sufficient to have broken the relationship. In all the circumstances, and for the reasons set out above, I am satisfied that it was of such 'grave and weighty character' as to amount to a breach of the confidential relationship between himself and Charles Stanley, 'seriously inconsistent or incompatible' with its continuation.

95. The fact that Charles Stanley had been poised in any event to deny Mr Palmeri his notice period does not affect its entitlement to rely on the conduct that ensued, or was later discovered, as giving it a right to summary dismissal that it would not otherwise have had. I adopt the analysis of the court in *Williams v Leeds United Football Club [2015] IRLR 383* at paragraph 83 (an employment case but in my view apposite):

> "…if, viewed objectively, the conduct does amount to a repudiatory breach by the employee, then the employer is entitled to rely upon that repudiatory breach as justifying the dismissal irrespective of the employer's motives or reasons for wishing to do so. … the employer is not prevented from relying on that breach as justifying summary dismissal because it had itself decided to breach its contractual obligations or was looking for a reason to justify dismissal or was motivated by its own financial interests.."

96. For all of these reasons, I am satisfied that Charles Stanley was entitled to, and did, accept a repudiatory breach of contract by Mr Palmeri and that he thereby lost his entitlement to notice and whatever contractual benefits of a notice period he might have been able to argue for. The contract was discharged on 21st April 2017 and no contractual obligations survived capable of giving rise to a liability for Charles Stanley to compensate Mr Palmeri for any losses he may have suffered as a result.

Conclusion

97. On 21st April 2017, Charles Stanley delivered an ultimatum to Mr Palmeri for which it had no contractual authority. Mr Palmeri's response was to seek to affirm the contract at the time, and to pursue compensation now for the rejection of that affirmation and for breach of his contractual entitlement to notice of termination and associated terms. For the reasons given, I have concluded that Mr Palmeri's conduct, including on that occasion, entitled Charles Stanley to consider him in repudiatory breach of his contract, to accept his repudiation and reject his attempted affirmation, and to terminate his contract summarily. Charles Stanley is not liable in damages to Mr Palmeri for terminating his contract without notice in circumstances in which it was entitled to do so.