

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11161-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

KENNETH RICHARD HARRIS

Respondent

Before:

Mr D. Potts (in the chair)

Mr A. Ghosh

Lady Bonham Carter

Date of Hearing: 5 December 2013

Appearances

Geoffrey Williams QC of Geoffrey Williams & Christopher Green, The Mews, 38 Cathedral Road, Cardiff, CF11 9LL, for the Applicant

The Respondent appeared and was represented by Jeremy Barnett of Counsel.

JUDGMENT

Allegations

1. The allegations against the Respondent were:
 - 1.1 Contrary to Rule 7 of the Solicitors Accounts Rules 1998 (in the period up to 5 October 2011) and Rule 7.1 of the SRA Accounts Rules 2011 (from 6 October 2011) the Respondent failed to remedy breaches and failed to protect client money and assets pursuant to SRA Principle 10;
 - 1.2 Contrary to Rule 19 of the Solicitors Accounts Rules 1998 (in the period up to 5 October 2011) and Rule 17.2 of the SRA Accounts Rules 2011 (from 6 October 2011) the Respondent did not send to clients a bill of costs or other written notification of the interim costs. It was alleged the Respondent had acted dishonestly;
 - 1.3 Contrary to Rule 22 of the Solicitors Accounts Rules 1998 (in the period up to 5 October 2011) and Rule 20 of the SRA Accounts Rules 2011 (from 6 October 2011) the Respondent improperly withdrew monies from client account. It was alleged the Respondent had acted dishonestly;
 - 1.4 Contrary to Rules 1.02, 1.04, 1.05, 1.06 and 2.03 of the Solicitors Code of Conduct 2007 (in the period up to 5 October 2011) and in breach of Principles 2, 4, 5, 6 and 10 of the SRA Code of Conduct 2011 (from 6 October 2011) the Respondent utilised clients' funds for his own purposes. In so doing, the Respondent also failed to achieve Outcome 1.13 of the SRA Code of Conduct 2011. It was alleged the Respondent had acted dishonestly.

The Respondent admitted all the allegations save the allegations of dishonesty.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 20 June 2013 together with attached Rule 5 Statement and all exhibits
- Schedules of Compensation Fund Claims dated from 31 January 2013 to 9 October 2013
- Statement of Costs dated 2 December 2013

Respondent:

- Witness Statement of Respondent, Kenneth Richard Harris, dated 23 September 2013
- Response to Rule 5(2) Statement dated 24 September 2013

- Respondent's Bundle of Documents which included extract from Intervention Bundle, letter from Respondent to the SRA dated 18 October 2012 and an Accountant's Report Form dated 26 October 2010
- Bundle of References for the Respondent

Factual Background

3. The Respondent, born on 31 August 1952, was admitted as a solicitor on 2 July 1979.
4. At the material time the Respondent practised as a sole principal at Harris & Co, 6 Brighton Road, Crawley, West Sussex, RH10 6AA ("the firm"). The firm was intervened on 9 January 2013 as a consequence of which the Respondent's practising certificate was and remained suspended.
5. On 31 January 2012 an Officer of the SRA commenced an inspection of the firm's books of account and other documents. A Forensic Investigation Report was produced dated 18 June 2012 ("the First Report"). On 6 November 2012 the same Officer commenced a second investigation as part of the continuing monitoring of the firm, and produced a second report dated 9 November 2012 ("the Second Report"). On 17 December 2012 the same Officer commenced a third investigation and produced a third report dated 18 December 2012 ("the Third Report").

The First Report

6. At the first investigation, a list of liabilities to clients as at 31 December 2011 produced to the Officer showed that liabilities totalled £206,154.40. However, the first investigation revealed the existence of a client account shortage of £454,011.02 calculated as at 31 December 2011. The cause of the cash shortage was improper transfers from client to office bank account in respect of interim invoices not delivered on six probate files.
7. On 2 February 2012 the Respondent had given the Officer a note detailing his interpretation of Rule 17.2 SRA Accounts Rules 2011. On 14 March 2012 the Respondent said he would not be rectifying the cash shortage as he did not believe there was a shortage based on his interpretation of Rule 17 of the Solicitors Accounts Rules 2011. He advised that if his assessment was wrong, he would be able to rectify the shortage as he had substantial means of his own.

The Second Report

8. By the time of the second investigation, the cash shortage as at 30 September 2012 was £396,329. The Respondent agreed that there was a cash shortage caused by transfers from client to office bank account in respect of interim invoices not delivered. There were improper transfers from client to office account on four probate files.
9. The Respondent advised the Officer that he now accepted that:

"this method of billing I have been using is entirely wrong".

On 6 November 2012 he also advised that he expected to have funds available to replace the cash shortage within fourteen days.

The Third Report

10. When the Officer visited the firm on 17 December 2012, he identified the same cash shortage of £396,329 remained outstanding. This was still outstanding as at the date of the intervention.

Estate of GGW

11. On 17 November 2010 the Respondent was instructed by W, who was the Executor and son of the deceased. On 29 November 2010 the Respondent wrote to W confirming the basis of his charging, which was on an hourly rate of £140 per hour plus 1% of the gross value of the estate. W was the sole beneficiary. The Respondent estimated the gross assets of the estate were £300,744.78 which included a property estimated at £295,000.
12. The property was subsequently sold and sale proceeds of £265,140 were received on 27 May 2011. During the period 6 January 2011 to 14 October 2011 the Respondent issued 29 interim bills totalling £116,313. The funds were transferred from client to office bank account on the same day as the date of the interim bills, and in some cases a few days earlier. However, the interim bills were not delivered.
13. On 17 June 2011, W emailed the Respondent advising he was having to borrow money from friends and asked whether a small sum of money could be released to him. W stated he did not have:

“much idea of the legalities of the situation”.

The Respondent made an interim distribution to W of £6,000 on the same date. During the period 22 June to 3 August 2011, the Respondent issued 6 invoices totalling £41,994.

14. On 10 November 2011 the Respondent made a further interim distribution of £120,000 to W and on 27 January 2012, he made a further interim distribution to him of £25,000. The balance of the estate was not distributed. At the date of intervention, the Respondent had not replaced the cash shortage in respect of this client in the sum of £116,313.

The Estate of JC

15. On 21 March 2011 the Respondent was instructed by the son of the deceased. In a file note dated 22 March 2011, the Respondent recorded he had explained the basis of his charging, which was on an hourly rate of £140 per hour plus 1% of the total value of the estate. Between 26 April and 14 October 2011 the Respondent issued 19 interim bills totalling £104,319. On 18 occasions the funds were transferred on the same day as the interim bill, and on one occasion three days prior to the date of the interim bill.

16. The estate was finalised on 17 May 2012 and the final bills of costs were delivered in the sum of £24,144. The difference between this sum and the total sum of the interim accounts not delivered was £80,205. This sum was reversed in the client account ledger on 17 May 2012.

Other Client Matters

17. On the same day, 17 May 2012, interim bills of costs not delivered were raised in respect of other unrelated matters D (deceased) in the sum of £29,864 and S (deceased) in the sum of £54,240. These interim bills totalled £84,104 leaving a net transfer from client to office bank account of £4,033.48 after the inclusion of a further proper transfer of £134.48.
18. In the two matters of the Estate of GGW and the Estate of JC, invoices were raised on the same dates and in identical amounts on 13 occasions between 7 July and 7 October 2011.
19. The Officer discussed the Estate of MNG with the Respondent. The Respondent advised that, having invoiced the total amount of £82,067.89, he instructed a cost draughtsman and on the cost draughtsman's advice, the Respondent reduced the costs to £9,752.50. Although 17 interim bills of costs were reversed in the client ledger, on the same day, interim bills of costs not delivered were raised on other client matters which meant that the net transfer from client to office was £29.37.
20. The Officer noted in the First Report that on 2 June 2010, at the time the Respondent was raising various interim invoices to cover reversals of previously rendered invoices on other matters, the overdraft of the firm's office account was £14,980.62. The overdraft limit was £15,000.
21. As at 31 December 2011 the firm's office account was overdrawn in the sum of £4,060.79 and an office loan, commenced in December 2011, was £20,143.01. By the time of the second inspection, as at 30 September 2012, the office account was overdrawn in the sum of £645 and the office loan balance was in debit in the sum of £17,662.65. By the time of the third inspection, the office account was overdrawn in the sum of £5,240.38 and the office loan balance was in debit in the sum of £16,972.57.
22. In the Second Report the Officer also identified 5 finalised client estate files on which transfers from client to office account in respect of interim bills of costs not delivered exceeded the final bill of costs. Details of these were given in the Second Report. On finalisation of these Estates no monies were actually transferred from office to client account as, on the same date, interim bills of costs not delivered on other unrelated matters were used to offset amounts due to the client account from the office account.

The Estate of D (Deceased)

23. The Respondent was instructed by the Executor who was the son of the deceased. The Respondent estimated the gross assets of the estate to be £621,284.06. Between 9 March 2012 and 2 July 2012 the Respondent issued 12 interim bills of costs totalling £118,634. Transfers from client to office account were made on the same

date as the interim bills. The largest interim bill in the sum of £29,864 was dated 17 May 2012.

24. The Respondent agreed that the interim bills were not delivered and, at the date of the third inspection and at the intervention, represented a cash shortage of £118,634.
25. By 17 December 2012, at the third inspection, the Respondent had not replaced the cash shortage of £396,329. He informed the Officer that he had verbally advised the Executor of each of the three Estates concerned where a shortage existed of the costs to date. The total costs for three clients were £290,610. If the Respondent had provided each client with a written notification, this would have reduced the client shortage to £105,719.
26. The Respondent further advised the Officer that he had a loan facility available for drawdown in the sum of £136,100, that he had funds made available by his wife in the sum of £46,784.54 and funds in his office bank account of £12,739.08. However, none of these monies had been paid into the client account as at 17 December 2012.
27. In a letter dated 17 December 2012 to the SRA, the Respondent advised of his proposals to fund the client account shortfall. However this did not occur prior to the intervention and the shortfall remained outstanding.

Witnesses

28. The following witnesses gave evidence:
 - The Respondent, Kenneth Richard Harris

Findings of Fact and Law

29. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of both parties. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
30. **Allegation 1.1: Contrary to Rule 7 of the Solicitors Accounts Rules 1998 (in the period up to 5 October 2011) and Rule 7.1 of the SRA Accounts Rules 2011 (from 6 October 2011) the Respondent failed to remedy breaches and failed to protect client money and assets pursuant to SRA Principle 10.**
- 30.1 The Respondent had admitted allegation 1.1 and accordingly, the Tribunal found allegation 1.1 proved.
31. **Allegation 1.2: Contrary to Rule 19 of the Solicitors Accounts Rules 1998 (in the period up to 5 October 2011) and Rule 17.2 of the SRA Accounts Rules 2011 (from 6 October 2011) the Respondent did not send to clients a bill of costs or other written notification of the interim costs. It was alleged the Respondent had acted dishonestly;**

Allegation 1.3: Contrary to Rule 22 of the Solicitors Accounts Rules 1998 (in the period up to 5 October 2011) and Rule 20 of the SRA Accounts Rules 2011 (from 6 October 2011) the Respondent improperly withdrew monies from client account. It was alleged the Respondent had acted dishonestly;

Allegation 1.4: Contrary to Rules 1.02, 1.04, 1.05, 1.06 and 2.03 of the Solicitors Code of Conduct 2007 (in the period up to 5 October 2011) and in breach of Principles 2, 4, 5, 6 and 10 of the SRA Code of Conduct 2011 (from 6 October 2011) the Respondent utilised clients' funds for his own purposes. In so doing, the Respondent also failed to achieve Outcome 1.13 of the SRA Code of Conduct 2011. It was alleged the Respondent had acted dishonestly.

- 31.1 The Respondent admitted Allegations 1.2 to 1.4 but did not admit that he had acted dishonestly. The Tribunal had been referred to a number of character references and, pursuant to the case of Donkin v The Law Society [2007] EWHC 414 (Admin), the Tribunal took these into account in view of the fact that dishonesty had been alleged. However, there was no evidence, save for one reference, that the referees were aware of the details of these proceedings. During cross examination the Respondent stated he had told the referees that the allegations against him had been published on the SRA website and that there were allegations of dishonesty. One particular reference, from HJEL, did indicate an awareness of these proceedings, but stated he had no personal knowledge of the reasons for the intervention and had not asked for, or been given details of those matters. None of the references referred to the Respondent's admission of a shortfall on his client account. Because the referees had such little or no knowledge of the facts, the Tribunal attached little or no weight to the references.
- 31.2 The Tribunal had been referred to a number of cases including Weston v The Law Society (1998) and Bolton v The Law Society [1994] 1 WLR 512. The Tribunal was also referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest.
- 31.3 Mr Williams QC, on behalf of the Applicant, confirmed he sought to prove dishonesty by an irresistible inference. He submitted the Respondent's office account had been supported by a transfer of client funds to the office account, and the sums transferred were excessive and unjustified. Furthermore, when certain clients' estates were concluded and final bills prepared, the actual bills were dramatically lower than the sums already transferred. Mr Williams submitted that instead of transferring the funds back to client account, the Respondent had created further improper bills so as to give the impression that the apparent shortfall was reduced. Mr Williams submitted this conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people.
- 31.4 Mr Williams further submitted the Respondent knew that he was breaching the rules and he continued to do so for his own benefit. The Respondent had created "dummy" bills which were not sent to clients and on the same day had made round sum transfers from client to office account knowing the bills were excessive and unjustified.

Mr Williams submitted that by failing to send clients these bills and making these transfers without the clients' knowledge, the Respondent knew his conduct was dishonest by the ordinary standards of reasonable and honest people.

- 31.5 Mr Barnett, on behalf of the Respondent, conceded that the Respondent did not object to dishonesty being found on the first objective part of the test in Twinsectra, in that the Respondent's conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people. However, he did not accept the Respondent himself realised this. Mr Barnett submitted the Respondent had not applied his own standards of dishonesty but simply that he had got it completely wrong. That had been his understanding of the rules at the time. The Respondent had been a solicitor for a long time with a clean record, he was doing things his own way believing he was right, but now he conceded he had got his system of interim billing wrong.
- 31.6 The Tribunal heard evidence from the Respondent. In his evidence the Respondent stated that he had interpreted Rule 17 of the Solicitors Accounts Rules wrongly and erroneously and that he had discussed the issue with his accountants who had confirmed it was acceptable for him to act as he had done. The Respondent had thought the rules allowed him to provide notification of the costs to the client at the end of the case. His accountants, when preparing his 2010 accounts, had indicated there were no irregularities. However, the following year they had raised this issue and filed a qualified accountants' report. They informed the Respondent that what he had been doing was not in accordance with the Solicitors Accounts Rules. The Respondent stated he had taken his accountants' advice and attempted to introduce a new billing system which would comply with the Rules. The Respondent stated his knowledge of the Solicitors Accounts Rules was not the best. He also accepted that the advice from his accountants did not excuse him and that he should have known the rules himself.
- 31.7 The Respondent stated his billing system had been incorrect and erroneous on four particular probate matters. On those matters, the Respondent accepted the interim bills produced bore no relation to the final actual bills. However, he submitted that the bills produced were in the amounts the Respondent had expected the total bills to be. His time recording had been up to date although he accepted he had not been as diligent as he should have been in recording all his work.
- 31.8 In the matter of the Estate of GGW, where the Respondent was acting for W, the Respondent had not only acted in the administration of the estate, he had also organised the deceased's funeral and in addition, he had been managing the estate. The deceased's son had an interest in a commune in Wales and the Respondent had managed that property, as well as the estate, for over six months. The Respondent had attended the property at unsocial hours to deal with matters including break-ins. The Respondent believed he had carried out a lot of work on this matter.
- 31.9 On another matter of the Estate of MJD, there were two Executors who were brothers. One brother had refused to sign off the accounts due to an unrelated dispute. The Respondent stated after the Third Report dated 17 December 2012, the Respondent had transferred £42,000 from office account to client account to bridge the deficit on that estate. He had borrowed some money to repay the amount in the hope that he could trade on and keep the practice going.

- 31.10 The Respondent stated four of his employees had lost their jobs and had issued proceedings in the Employment Tribunal against him. They had obtained orders against the Respondent for redundancy payments, holiday payments and payments for other disputes.
- 31.11 The Respondent stated he had not realised the way that he was billing was dishonest in any way, although he appreciated “it doesn’t look particularly good”.
- 31.12 On cross-examination the Respondent accepted he was experienced and probate was his specialist area. He agreed that taking money for work not yet carried out was dishonest, and while on reflection it appeared that is what he had done, he said that he had never felt he was dishonest to clients and he had tried to give them the best service. He had been concerned about projected costs. The Respondent accepted his firm could not survive without his projected billing.
- 31.13 The Respondent had been referred to the matter of the Estate of GGW which indicated he had billed 807 hours, which equated to 20 weeks of work at 40 hours per week. The Respondent accepted this was an excessive number of hours but stated that he honestly believed the work he had done was demanding. He said he should have kept a proper time record. He had been managing everything on the estate over a period of six months as if he had been the deceased’s son. He maintained he could justify the costs and stated he had explained the position to W on the telephone.
- 31.14 On the matter of the estate of JC, the Respondent maintained he could justify the actual amount billed at the time it was done on the basis of work he had carried out. There had been an enormous amount of work involved where he had been required to persuade the Probate Registry that the Will was valid, and there were number of accounts in different names which need sorting out. The Respondent stated he had been unable to do any other work in his practice due to the matters of the Estates of GGW and JC. He had reduced the costs later having considered the actual values of the estates.
- 31.15 In relation to the Estate of F (deceased), the Respondent was asked to explain charging fees of £104,000 when the actual costs on that matter came to £52,000. The Respondent stated there were two Executors involved who were brothers, one of whom was an Attorney. Whilst the deceased mother had been alive, the Executors had taken money to buy a property. A wife of one brother suffered from illness and that brother needed to buy a bungalow for her. The Respondent stated that a lot of unravelling was needed whilst that brother was the Attorney of the mother without involving the Court of Protection. The Respondent stated an enormous amount of work was needed, the Estate had been “a bit of a nightmare” and that he could justify the charges.
- 31.16 In relation to the Estate of MNG, when it was drawn to the Respondent’s attention that he had billed £82,000 on the probate of an estate worth £150,000, the Respondent stated that during the administration of the Estate one of the Executors had been made bankrupt and had not informed the Respondent. The Respondent had made distributions to that Executor and had then subsequently become involved in a dispute with the Executor’s Trustee in Bankruptcy concerning the issue of whether interim distributions should have been made. The Respondent had received advice from his

cost draughtsman who informed him that the charges were all out of proportion, so the Respondent had reduced them.

- 31.17 When the Respondent was asked why he continued the interim billing in the same manner after the Officer from the SRA had informed him that these were improper transfers, the Respondent replied:

“To be blunt, I did need to finance the practice and I believed I could justify the charges.”

- 31.18 The Tribunal carefully considered Rule 17.2 of the Solicitors Accounts Rules 2011 which states as follows:

“If you properly require payment of your fees from money held for a client or trust in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party.”

- 31.19 The Respondent, in a note to the SRA dated 2 February 2012, had provided his interpretation of this Rule. He stated as follows:

“The comma after the words “bill of costs” signifies (in accordance with the definition of a “comma” in the Oxford English dictionary) a definite interval or difference of pitch. The comma is then followed by the words “or other”.

The Oxford English Dictionary definition of “other” is:-

not the same as one or more already mentioned or implied, separate in identity, distinct in kind, alternative.

There is no reason whatsoever why the words you must first give or send a bill of costs and thereafter the words or other written notification of the costs incurred should not be read disjunctively and therefore be regarded as alternatives.

The solicitor therefore has the choice as to when the written notification of the costs is given to the client and it would accordingly appear in probate matters that even where he is not operating a controlled trust and instead representing lay personal representatives he is able to serve interim bills of costs upon the estate and earmarking the costs as becoming office money and at the end of the administration of the estate providing his client personal representatives with a set of Final Estate and Distribution Accounts incorporating solicitors notification of the costs incurred in the form of a Bill of Costs.

Rule 17.2 refers to properly require payment of your fees. Rule 17.9(vii) defines “Properly” as implying that the work has actually been done, whether at the end of the matter or at an interim stage and that you are entitled to appropriate the money for costs. The word “whether” simply sets an alternative and does not prevent the solicitor from choosing the moment in

time when to supply the client with the written notification of the costs incurred.”

- 31.20 The Tribunal found the Respondent’s interpretation of Rule 17 to be quite incredible. The Rule was clear on its face and the Respondent’s claim that the use of a comma meant the second part of the sentence was not related, so he believed, to the first part, was not credible, particularly from a professional solicitor with many years of qualification. The Tribunal rejected the Respondent’s interpretation entirely. It was simply irrational and made a nonsense of the Rule.

Allegation 1.2

- 31.21 The Tribunal considered dishonesty in relation to Allegation 1.2. The Respondent had admitted he had not sent bills of costs or other written notification to clients of interim costs. The Tribunal particularly considered the bills rendered on the Estate of GGW. On 17 January 2011 a bill was prepared in the sum of £960 and this amount was transferred from client to office account on the same day. Four days later, on 21 January 2011, a further bill was prepared for £810 and again this amount was transferred from client to office account on the same day. Further bills were rendered in February 2011, March 2011 and April 2011 all of which led to transfers from client to office account on the same day. Having produced a bill on 18 May 2011 for £264, a further bill was produced on 27 May 2011 for £7,200 and this amount transferred from client to office account on the same day. A few days later on 2 June 2011 a bill was produced for £6,300 but that amount had been transferred from client to office account a day earlier on 1 June 2011. A second interim bill was produced on the same day, 2 June 2011, in the sum of £600, which amount was transferred from client to office account on the same day. A few days later on 6 June 2012 another interim bill was produced in the sum of £5,400 and this amount was transferred on the same day from client to office account.
- 31.22 The pattern of billing in this manner on the Estate of GGW continued up to 14 October 2011 and resulted in 29 interim bills being created in the total sum of £116,313 on an estate valued at £300,744.78. Many of the bills were dated close together and none of these bills was delivered to W, who as the sole beneficiary had received only £6,000 as an interim distribution over the same period and then only after making a request for funds. The Tribunal found it quite incredible that all these transfers of funds from client to office account so quickly one after the other, without the client’s knowledge, could be justified. As had been pointed out in cross examination, the bills amounted to 807 hours of work on a relatively uncomplicated probate matter, which was a breath taking figure.
- 31.23 The Tribunal also considered a number of other client matters which exhibited a similar pattern to the bills prepared on the Estate of GGW. Frequent bills of costs had been prepared, not sent to clients, yet transfers had been made from client to office account, sometimes on dates prior to the date of the bill. This was evident on the matters of the Estate of JC (deceased), the Estate of MNG (deceased), and the Estate of F (deceased) among others. On the matter of G (deceased), bills were produced and funds transferred from client to office account in the total sum of £82,067.89 but the final bill of costs was only £9,752.50. The interim bills on this file, which had not

been delivered to the client, clearly bore no relation at all to the actual work done on the matter.

31.24 It was particularly pertinent that there were a number of days when the Respondent had prepared identical bills for the same round sum figures on two different files. The Tribunal reviewed the bills produced on the matter of the Estate of GGW (deceased) and on the matter of the Estate of JC (deceased). On each of these estates identical bills were produced in identical amounts on exactly the same days and, without sending those bills to clients, funds were transferred from client to office account without the clients' knowledge also on the same day on each of the following occasions:

- On 7 July 2011 a bill was produced and money transferred from client to office in the sum of £3,000 on each file
- On 13 July 2011 a bill was produced and money transferred from client to office in the sum of £3,060 on each file
- On 15 July 2011 a bill was produced and money transferred from client to office in the sum of £264 on each file
- On 25 July 2011 a bill was produced and money transferred from client to office in the sum of £20,370 on each file
- On 29 July 2011 a bill was produced and money transferred from client to office in the sum of £2,100 on each file
- On 1 August 2011 a bill was produced and money transferred from client to office in the sum of £3,900 on each file
- On 3 August 2011 another bill was produced and money transferred from client to office in the sum of £3,900 on each file
- On 12 August 2011 a bill was produced and money transferred from client to office in the sum of £1,500 on each file
- On 1 September 2011 a bill was produced and money transferred from client to office in the sum of £5,520 on each file
- On 5 September 2011 a bill was produced and money transferred from client to office in the sum of £780 on each file
- On 7 September 2011 another bill was produced and money transferred from client to office in the sum of £34,890 on each file
- On 30 September 2011 a bill was produced and money transferred from client to office in the sum of £2,040 on each file
- On 7 October 2011 a bill was produced and money transferred from client to office in the sum of £2,445 on each file

- 31.25 The Tribunal concluded it would be virtually impossible to justify these identical round sum transfers on two separate files on identical dates where neither client had been notified of the bills in advance of the transfers being made. The transfers were made on dates close to each other and on both Estates the Respondent admitted to the SRA Officer that neither client had any idea of the charges made.
- 31.26 The Tribunal did not accept the Respondent's explanations for these transfers. The Tribunal considered the Respondent's evidence simply lacked any credibility in important respects and the explanations he gave for his long standing billing practises were completely implausible. His pattern of behaviour had taken place over many years where there had been repeated interim billing, often daily, which included an element of projected costs without informing clients of those bills. The Tribunal found it quite incredible that the Respondent's projections could vary so hugely on an almost daily basis, particularly taking into account the erratic nature and frequency of the bills in round sums, transferred on the same day as bills were created, and the identical bills on two separate files. On a number of matters, the total of the interim bills was completely disproportionate and grossly excessive when compared to the actual amount of work carried out. The Tribunal found the Respondent's explanations of the work undertaken over and above the actual work recorded to be vague and grossly lacking in any proper and credible explanation of the huge discrepancy between the interim amounts he had billed and the actual final figures. There was little particularisation of the actual work he had carried out and indeed, on the advice of his costs draftsman, a number of bills had been reduced due to the excessive amounts over billed. The Tribunal did not believe the Respondent's evidence in terms of the volume of work he had done on each of the estates.
- 31.27 The Tribunal particularly also noted that there was no independent evidence from the Respondent's accountants to verify his assertion that the accountants had endorsed his system of billing.
- 31.28 On the files considered by the Tribunal, the projected bills changed dramatically in amount and were produced frequently within very short periods of time. None of the bills was sent to the client and even on the Respondent's own evidence, he indicated he had not kept proper records so as to be able to justify the bills. By 31 December 2011, the cash shortage was £454,011.02. The Tribunal was satisfied that transferring the amounts claimed in interim bills, without notifying clients, particularly taking into account the frequency of those bills and the amounts involved would be regarded as dishonest by the ordinary standards of reasonable and honest people.
- 31.29 The Respondent accepted in evidence that his practice was supported by the transfers of interim costs. He had transferred large amounts of money from client account to office account, on some occasions on a date prior to the date of the bill produced, without notifying the client. The Respondent had also accepted that he did not have a full and proper record of the work carried out. When the Respondent realised the bills he had prepared were excessive, instead of remedying the shortfall created, he produced further improper bills on other client matters in the same manner, so as to give the illusion that he had reduced the shortage. The Tribunal was satisfied that the Respondent, in failing to provide his clients with prior notification of the costs to be transferred, was deliberately concealing from them the true extent of the amount being taken from their funds and as such there was an irresistible inference that he

knew his conduct was dishonest by the standards of ordinary and reasonable people. He had deliberately and systematically misused clients' money and had knowingly and intentionally concealed this from them. The Tribunal was satisfied the Respondent had acted dishonestly and therefore found Allegation 1.2 proved in its entirety.

Allegation 1.3

- 31.30 The Tribunal then considered dishonesty in relation to Allegation 1.3. The Respondent had admitted he had improperly withdrawn money from client account. The Tribunal had already found that the transfers made by the Respondent for bills of costs which had not first been sent to clients were unjustified and excessive. The Tribunal was satisfied that withdrawing these funds from client account without proper justification and authorisation would be regarded as dishonest by the ordinary standards of honest and reasonable people.
- 31.31 In 5 of the files reviewed by the Officer, after the estates were finalised, it became apparent from the final bill of costs delivered that the interim bills previously produced were excessive. On these 5 files, the Respondent reversed the interim bills of costs in the client ledger to reduce the total of the interim bills to the amount of the final bill, however, there was no physical transfer of funds from office back to client account to replace the shortage. Instead, on the same date the Respondent issued further interim bills of costs on other probate files which again were not delivered to clients but they had the effect of cancelling the shortage created by the reversal of the earlier interim bills which had been too high.
- 31.32 The Respondent had deliberately transferred funds from his client account to his office account when he knew that he could not justify the amounts concerned. The Respondent had not informed his clients of the transfers and had thereby concealed the extent and nature of the improper withdrawals he had made. When it was made clear to him that he had produced improper bills that were excessive on a number of files, instead of replacing the client monies he had already taken from those files, he simply created further improper bills on other files to effectively cancel the shortage in his books. By failing to inform clients of any of the interim bills he had produced and by simply taking the money from their funds, the Respondent had deliberately concealed his behaviour from his clients. Yet again the Respondent's conduct could only be described as deliberate and systematic acts of misusing clients' money and of knowingly and intentionally concealing from them what he was doing. The explanations tendered by the Respondent were simply unbelievable. The Tribunal found that there was an irresistible inference that the Respondent knew his conduct was dishonest by the ordinary standards of reasonable and honest people because he had failed to inform his clients of any of the interim bills he produced and then he had simply taken the money without their knowledge thereby concealing his behaviour from them. The Tribunal was satisfied the Respondent had acted dishonestly and therefore found Allegation 1.3 proved in its entirety.

Allegation 1.4

- 31.33 Finally, the Tribunal considered dishonesty in relation to Allegation 1.4. The Respondent had admitted he had utilised client funds for his own purposes. The

Tribunal had already found the transfers made by the Respondent for bills of costs not notified to clients were improper, indeed the Respondent himself admitted this. The Tribunal noted that at the time the withdrawals were made the Respondent's overdraft was near or close to its limit. On 7 September 2011, when the firm's overdraft limit was £15,000, the Tribunal noted the firm's office bank account was overdrawn in the sum of £14,720.70 and a payment for VAT was made in the sum of £7,438.74 on that day. This was also the same day that the Estate of N (deceased) was completed and ten of the interim bills of costs totalling £61,873.75 were reversed in the client ledger. This coincided with two bills being raised and funds transferred from client to office on exactly the same day on each of the Estates of GGW (deceased) and JC (deceased) in the sum of £34,890 respectively. The total of the two bills raised and funds transferred on the Estates of GGW (deceased) and JC (deceased) came to £69,780. After deduction of the VAT payment of £7,438.74, the effect was that an actual transfer of only £467.51 was required from office back to client account.

- 31.34 The Respondent was asked in cross examination why he had continued to transfer funds after the date of the SRA's first investigation when he had been advised by the SRA Officer that his firm was operating an improper system of interim billing in probate matters. The Respondent's reply was that he needed to finance the practice and he believed he could justify the charges. Throughout the period of the three SRA investigations, the firm was utilising its overdraft. The firm also had an office loan which was £20,143.01 as at 31 December 2011, £17,662.75 as at 30 September 2012 and £16,972.57 as at 30 November 2012. It was clear to the Tribunal that the Respondent did not have the funds to repay the improper transfers of costs back to client account, particularly as he was already trading with the benefit of an office loan. Furthermore, the lack of funds was evidenced by the shortfall on client account in the sum of £396,329 when the firm was intervened on 9 January 2013.
- 31.35 The Tribunal was satisfied that the Respondent had been raiding his client account, without his clients' knowledge or consent to support his office account and his business, and that this would be regarded as dishonest by the ordinary standards of reasonable and honest people.
- 31.36 The Respondent accepted on cross examination that his firm could not survive without his system of projected billing. He stated he thought:

“.... the practice would keep going and I could trade through”.

The Tribunal found the Respondent had deliberately utilised client funds to support his firm's office account, making a large number of transfers without his clients' knowledge or consent at a time when his firm had a large loan and overdraft. The Tribunal further found there was an irresistible inference that in doing so the Respondent had deliberately concealed from his clients the use of their funds for his own purposes because he knew this conduct would be regarded as dishonest by the standards of reasonable and ordinary people. The Tribunal found Allegation 1.4 proved in its entirety.

Previous Disciplinary Matters

32. None.

Mitigation

33. The Tribunal had heard some mitigation during the course of the Respondent's evidence. The Respondent had been a solicitor for 30 years but had not worked as a solicitor since the date of the intervention. He had hoped to continue practising as an employed solicitor under supervision. He had done some work as the Sole Executor of a number of estates with the consent of the intervener and clients, simply to wind up those estates. This work had been done at no charge as the Respondent felt he should not charge as a matter of duty, morally and professionally.
34. The Respondent had been declared bankrupt on 2 October 2013. He had sold his matrimonial home in which he had a half share to contribute towards the deficit. He had also transferred some funds from his office account. He was currently living with his wife's parents. The bankruptcy and intervention had devastated his life and he now had no significant income. He had to rely on support from his wife and relatives. The Respondent wanted to rebuild his life again if possible.

Sanction

35. The Tribunal had considered carefully the Respondent's submissions and statement. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
36. This was a case where the Respondent had dishonestly misused client funds on a vast scale over a long period of time. Excessive and unjustified transfers from client to office account had been made from probate estates without the clients' knowledge or consent, the effect of which had been and was plainly intended to support the Respondent's practice. On the conclusion of cases, the final bills produced were dramatically lower than the sums that had already been transferred. This was shocking and disgraceful behaviour. The Tribunal had been provided with details of claims made to The Compensation Fund, which so far had paid out £521,856.32. The Respondent had abused the trust placed in him by clients at the highest level, he was clearly a risk to the public and was not fit to be a member of the solicitors' profession.
37. The Tribunal took into account the case of the SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

“Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll”

The Tribunal was satisfied that there were no exceptional circumstances in this case and that accordingly the appropriate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

38. The Applicant requested an Order for his costs in the total sum of £33,797.10 and provided the Tribunal with a breakdown of those costs. Mr Barnett, on behalf of the Respondent, reminded the Tribunal that the Respondent was bankrupt and had no means to meet any order for costs.

39. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £33,797.10.
40. In relation to enforcement of those costs, the only submission before the Tribunal was that the Respondent was bankrupt. Although no evidence of this was provided, this had not been challenged by the Applicant. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay the costs ordered. The Respondent was now 61 years old, he was bankrupt and as a result of the Tribunal's order he would lose his livelihood. In the circumstances, as the Respondent did not currently have the means to meet the order for costs and was unlikely to be able to earn an income in the immediate future, the Tribunal ordered the Order for costs was not to be enforced without leave of the Tribunal.

Statement of Full Order

41. The Tribunal ORDERED that the Respondent, Kenneth Richard Harris, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £33,797.10, not to be enforced without leave of the Tribunal.

Dated this 20th day of February 2014
On behalf of the Tribunal

D. Potts
Chairman