SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11335-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PHILIP CROWE Respondent

Before:

Mr L. N. Gilford (in the chair)
Mrs J. Martineau
Mrs L. Barnett

Date of Hearing: 2 and 3 September 2015

Appearances

Mr Jonathan Goodwin, solicitor advocate, of Jonathan Goodwin Solicitor Advocate Ltd, 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT, for the Applicant.

The Respondent, Mr Philip Crowe, attended and represented himself, with the assistance of Mr David Plummer as a “McKenzie Friend”.

JUDGMENT

Allegations

1. The allegations against the Respondent, Mr Philip Crowe, made in a Rule 5 Statement dated 22 January 2015, were that:

1.1 He failed to ensure compliance with the Accounts Rules, contrary to Rule 6 of the Solicitors Accounts Rules 1998 ("SAR 1998") in the period up to 5 October 2011 and/or, from 6 October 2011, Rule 6 of the SRA Accounts Rules 2011 ("AR 2011");

1.2 He failed to remedy the accounts rule breaches promptly upon discovery, contrary to Rule 7 of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011, Rule 7.1 of the AR 2011;

1.3 He withdrew and/or transferred money from client bank account, contrary to Rule 19(2) of the SAR 1998;

1.4 He withdrew and/or transferred monies from client bank account, other than as permitted by Rule 22 of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011, Rule 20.01 of the AR 2011;

1.5 Contrary to Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC 2007"), he took advantage of a client by making a claim for costs which he knew he could not justify;

1.6 Contrary to Rule 1.02, 1.03, 1.04, 1.05 and 1.06 of the SCC 2007 and/or Rule 22 of the SAR 1998 he withdrew funds from client bank account belonging to a Trust of which he was Co-Trustee and utilised the funds for his own benefit;

1.7 He acted in a conflict situation contrary to Rule 3.01(1) and (2)(b) of the SCC 2007 in the period up to 5 October 2011 and/or contrary to all, alternatively any, of Principles 2, 4 and 6 of the SRA Principles 2011 and thereby failed to achieve outcome O(3.4).

2. It was alleged that with respect to allegations 1.3, 1.4, 1.5 and 1.6, the Respondent had acted dishonestly according to the combined test laid down in Twinsectra v Yardley [2002] UKHL 12 ("Twinsectra"), under which it was which required that the person (the Respondent) acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he was acting dishonestly.

Documents

3. The Tribunal reviewed all of the documents submitted by the parties, which included:

Applicant:-

- Application dated 22 January 2015
- Rule 5 Statement, with exhibit "JRG1", dated 22 January 2015
- Statement of costs served on 21 August 2015

Respondent:-

- Answer to the allegations dated 20 February 2015, with letter from Mrs LW dated 12 February 2015.

Preliminary Matter – "McKenzie Friend"

4. The Chair introduced the members of the Tribunal and outlined to those present the expected format of the hearing. It was noted that the Respondent had indicated that he would like to have assistance during the hearing from Mr Plummer, a Chartered Accountant, and the Tribunal indicated that it would be appropriate to consider Mr Plummer's role.

5. The Respondent told the Tribunal that he would like Mr Plummer to address the Tribunal particularly in relation to the accounts issues raised in the case. Mr Plummer confirmed that he would not expect to be giving expert evidence for the Respondent; it was noted that there was no witness statement from Mr Plummer.

6. Mr Goodwin for the Applicant told the Tribunal that he had no objection to Mr Plummer assisting the Respondent. However, there may be a difficulty if Mr Plummer's comments on accounts or any other issues strayed, accidentally, into giving evidence. Mr Goodwin told the Tribunal that he was keen to ensure that the Respondent felt that he had had the opportunity to put forward all relevant points within the hearing.

7. The Tribunal was mindful that the Respondent was acting in person and did not have legal representation. The Tribunal wanted to ensure that there was a fair and full hearing. Although the role of McKenzie Friend did not usually encompass making any representations on behalf of a party, on this occasion the Tribunal would hear from Mr Plummer, where appropriate, with his representations based on the evidence in the case. The Tribunal reminded Mr Plummer that he could not stray into giving evidence on behalf of the Respondent, and if he did so the Tribunal would need to draw that to his attention.

8. The Respondent and Mr Plummer indicated that that they accepted this was a fair way to proceed.

Factual Background

9. The Respondent was born in 1936 and was admitted to the Roll of Solicitors in 1977.

10. At all material times, the Respondent carried on practice on his own account, under the style of Philip Crowe, from offices at 25, Boroughbridge Road, York YO26 5RT ("the Firm").

11. The Forensic Investigation Department of the SRA carried out an inspection of the books of account and other documents of the Firm which commenced on 14 March 2012 and led to the production of a Forensic Investigation Report dated 3 July 2012 ("the first FI Report").

12. A further inspection commenced on 4 December 2012 and a further report was produced dated 23 January 2013 ("the second FI Report").

13. On 14 July 2014 an Adjudication Panel of the Applicant resolved to intervene into the Respondent's Firm.

14. The first FI Report particularised the Respondent's involvement in the administration of the estate of Mr HHL and the subsequent HHL Memorial Trust ("the Trust"), in respect of which the Respondent was appointed as executor and trustee, together with a Mr GG.

15. The first FI Report reported that the Firm's books of account were not in compliance with the SAR 1998 and/or AR 2011.

The estate of Mr HHL

16. Mr HHL instructed the Respondent to prepare a Will. That Will was executed on 27 March 2000. It appointed the Respondent and Mr GG as his executors and trustees, gave instructions regarding Mr HHL's burial and made charitable gifts of £3,000 each to eleven charities. The Will provided that the residue should be held on trust by the trustees; the copy of the Will within the case papers stated:

> "I give, devise and bequeath the residue of my estate whatsoever and wheresoever to the above Charitable Trust with directions to my Trustees to conserve the capital so far as is possible and to use the interest for such Charitable purposes as my Trustees in their absolute discretion shall from time to time (illegible) with the exception that any person who is related to me in any (illegible) disqualified from receiving benefit.
> I have not provided for any of my relatives and I do not want them to (illegible)… or the Charitable Trust…
> I hereby declare that any Executor or Trustee of this my Will being (illegible)… other person engaged in any profession or business shall be (illegible)… and be paid for any work done by him or his firm in connection (illegible)… my Will the winding up of my estate and the establishment (illegible)… administration of the Trust including acts which a person not being a (illegible)… or other person engaged as aforesaid could have (illegible)…"

17. Mr HHL died on 7 March 2009 and his Will was proved on 5 May 2010. The net value of the estate was not stated on the papers in this case.

<u>Cash Shortage</u>

18. The first FI Report identified a cash shortage of £154,146.18 as at 29 February 2012, caused as a consequence of the failure on the part of the Respondent to deliver bills of costs or any written notification of costs to his co-executor and co-trustee, Mr GG, and inappropriate payments made to himself and/or to Mr GG.

Non-delivery of bills

19. The bills which were not delivered to Mr GG amounted to £71,646.18; there were 16 bills in the period May 2010 to September 2011 and the FIO saw no evidence on the client matter file that any of these bills had been delivered to Mr GG.

Withdrawals from client account

20. There were three withdrawals from client bank account totalling £82,500 which the Applicant alleged were inappropriate. The three payments were:

- £12,500 on 8 June 2010
- £35,000 on 8 June 2010; and
- £35,000 on 25 June 2010.

21. The relevant client ledger relating to the payment of £12,500 stated in its narrative, "GPG – Memorial Trust Fund – Advice", whilst the narrative to the payment of £35,000 on 8 June 2010 stated "GPG – Expenses and fees". "GPG" was Mr GG.

22. The Forensic Investigation Officer ("FIO"), Mr Baker, obtained copies of the relevant cheque stubs and copies of the cheques in question were requested from the Respondent's bank. There was no invoice or other document found on the client matter file to support the narrative on the client ledger that these two payments were for advice, expenses and fees relating to work undertaken by Mr GG for the Trust.

23. The cheque in the sum of £12,500 was found to have been made payable to the Respondent and not to Mr GG. During interview with the FIO on 17 May 2012, the Respondent indicated that he could not recall to what the payments related.

24. Following the sale of the late Mr HHL's property in York in May 2010, the sum of £55,370.21 was credited to the client ledger for Mr HHL on 22 November 2011, with the supporting narrative being, "Transfer balance on sale to L40.3".

25. The FIO identified from the Firm's cash book that a payment of £35,000 was made out of the client bank account on 25 June 2010, by way of a cheque which cleared on 1 July 2010. A copy of the client ledger for this matter was provided by the Respondent on 2 July 2012. The cheque dated 25 June 2010 was made out to "[MrGG]" and was obtained from the Respondent's bank on 3 July 2012.

26. During the interview on 17 May 2012, the Respondent was asked about the two payments of £35,000 to Mr GG and said, amongst other things,

> "I've only had the one letter from him and that was the one I was talking about that we can't find, which will be on those, that one, I don't know why he's got that £35,000. It could be that on the basis that (was) what [Mr HHL] wanted to happen, wanted him and I to share it in two and it may well have been that I sent him a second cheque in a similar figure as a, if you like, a what word could I look for, contribution, out of [Mr HHL's] wishes that he wanted it to go half to him, half to me, that could be an explanation for that".

The FIO was then recorded as saying, “So you just decided yourself, I’ll give [Mr GG] another £35,000, because that’s what…” to which the Respondent replied, “That is probably right, yes”.

Respondent’s Bills

27. The first FI Report further identified concerns regarding the level of fees charged by the Respondent, which were in the sum of £71,646.18 on the HHL matter (including both the administration of the estate and the subsequent administration of the Trust). The Applicant instructed an independent costs lawyer to report on the level of charges incurred. That costs lawyer, Mr Banyard, reported that in his opinion, the Respondent had overcharged by £51,136.91.

28. The amount charged to the estate and Trust in profit costs totalled £71,646.18, which costs were set out in 16 bills in the period May 2010 to September 2011.

29. The costs report indicated that the Respondent had charged his time at a rate of £250 per hour, to which rate an uplift had been applied such that the effective hourly rate was £750 per hour. Mr Banyard stated in his report:

> “Given that the guideline hourly rate promulgated by the Senior Courts Costs Office for a solicitor of [the Respondent’s] seniority in his locale presently stands at £201, I would say that the rate claimed already contains a care and conduct mark-up, in the region of 86%. Secondly, a care and conduct uplift of 200% (as claimed here), even on direct costs alone, is significantly in excess of any uplift I am aware of in any reported judgment of even the most complex of matters.
>
> I would state that the net hourly rate of £750 which [the Respondent] is essentially charging on his calculations is unconscionable and dwarfs the rate that even the senior partner of a City firm could conceivably charge in the most complex of matters. Indeed, even the rate of £250 seems unreasonably high for a matter of this nature given that the same exceeds the guideline rate by a considerable margin.”

30. Mr Banyard analysed and commented in his report on each of the Respondent’s bills. His conclusion included the following:

> “It has been extremely difficult for me to arrive at accurate figures for work actually undertaken in this matter given the extreme paucity of recorded time on the file. Nevertheless, I consider the amount which has been charged cannot conceivably represent work actually undertaken given the enormous discrepancy between the sums charged and the figures I have reached.
>
> It is quite clear that the charges raised represent an over charge. Some £71,646.18 has been charged to this estate in total in respect of profit costs whereas the maximum figure I have come to is £20,509.27. There would appear to be an overcharge of at least £51,136.91.
>
> I am not convinced that the bills which have been raised (with the exception of invoice number 4206) have been raised with reference to time actually expended at all and there is certainly the appearance of arbitrariness to the same”.

31. During interview on 17 May 2012, it was suggested to the Respondent that he had inflated his costs. The Respondent denied this but said, amongst other points,

> "… very difficult to find another word. In other words, to put into effect [Mr HHL's] view that he wanted [Mr GG] and I to have something out of it, originally the lot, which was totally out of the question… yeah, I would, I'm not going to deny it".

32. The FIO contacted Mr GG, the co-trustee and co-executor, by letter dated 4 April 2012. Mr GG replied by letter dated 17 April 2012 (which incorrectly bore the date 1 April 2010), in which he said:

> "I can confirm [the Respondent] never updated me with his costs in acting for [Mr HHL]. He did ask me as Co-Executor to counter sign the contract notes for the sale of some shares through Brewin Dolphin and I did comment that their account seemed excessive, but I never saw any copies of his costs in the transactions of either himself or the Trust. In fairness, not having been an Executor before, I did not expect to receive any notes of [the Respondent's] expenses until everything had been completed".

Loan from the Trust

33. The first FI Report also identified concerns regarding a loan of £121,950 taken from the Trust and which was utilised by the Respondent to pay off a personal loan, secured by a charge on the Firm's business premises, which premises were owned by the Respondent's wife.

34. The client ledger for Mr HHL recorded a payment out of client account of £121,950 on 19 August 2011. The supporting narrative for this transfer stated "PC – HHL investment trust re property"; "PC" was understood to refer to the Respondent. That sum was transferred from the Respondent's client account relating to Mr HHL to the Firm's office account and then to the Firm's business loan account.

35. As a result of this transfer, a business loan account opened for the Respondent on 30 June 2010 in the sum of £120,000 (plus £1,950 lending fee charge) was paid off. In interview with the FIO on 17 May 2012 the Respondent stated that the loan was secured by way of a charge recorded against the Firm's business premises and that the registered proprietor of those premises was the Respondent's wife. The Respondent told the FIO that the effect of making the transfer was to release the charge registered against the property. The Respondent had subsequently registered a restriction against the property.

36. A Deed of Trust, which was purportedly made on 19 August 2011 and stated to be between the executors of the Trust, stated the following:

> "By clause 2 of the Will, the executors are charged "to conserve the capital" and to use "the interest for such charitable purposes as my trustees in their absolute discretion shall from time to time decide, with the exception that any person who is related to me in any way shall be disqualified from receiving benefit".

> Due to the persistently poor bank interest rates the trustees have been unable to produce any worthwhile interest to the date of this deed and have therefore decided to attempt to produce a gain to the estate by taking a charge on the property at 25, Boroughbridge Road, York to the value of £121,950 and in the process repaying the mortgage to Barclays Bank plc – using the trust funds to do so. The trust will then register this charge at the land registry and the monies will be repaid to [the Trust] as and when the aforementioned property is sold.
>
> The capital monies advanced will be repaid in the same proportion as to the capital monies – the monies lent being one third value of the property at the date of this deed.
>
> [The Trust] will receive an income at the rate of 3.5% over the current Bank of England base rate, payable in arrears on a monthly basis on the 30th day of each month.
>
> In the considered view of the trustees, this arrangement safeguards the capital of the trust and produces an income for eventual distribution".

37. The Deed was signed by the Respondent and Mr GG, but it was accepted by the Respondent that it was signed after the transfer had taken place. The Respondent was recorded as having told the FIO,

> "I'll freely accept that with hindsight it's injudicious. I've said all along and I wished in many ways I hadn't done it, but that is really as far as perhaps I ought to go on that".

38. The Respondent accepted that he had instigated and effected the transfer.

The Investigation

39. The Respondent was interviewed by the FIO, Mr Baker, on 17 May 2012 concerning the matters set out above.

40. The second FI Report identified that the matters particularised in the first FI Report remained unrectified as at the date of the visit in December 2012. The FIO identified a continuing shortage on client account in the sum of £154,146.18. The FIO also noted that in relation to the loan of £121,950 the Respondent had not paid interest to the HHL Memorial Trust on the 30th day of each month, as required by the Deed of Trust dated 19 August 2011; it was, however, accepted that payments of interest had been made.

41. By letter dated 31 January 2013 the Applicant wrote to the Respondent enclosing a copy of each of the FI Reports, and seeking his explanation. The Applicant wrote a further letter to the Respondent seeking his explanation on 20 March 2014.

42. The Respondent replied by emails dated 24 March, 25 March and 27 June 2014 and a letter dated 1 July 2014. The Respondent made it clear in his responses that he denied any allegations of dishonesty and stated,

> "I have attempted to appease the desires of a charming, very determined old man and fought off his desire to give everything to [Mr GG] and myself and then to reflect what he asked me to do in these unusual circumstances… The circumstances are certainly unusual – they are not dishonest".

Witnesses

Mr Oliver Baker

43. Mr Baker, a FI Officer with the Applicant, gave evidence. He confirmed that he believed the contents of his two reports, dated 3 July 2012 and 23 January 2013 to be true. Mr Baker also told the Tribunal that he believed that the transcript of an interview with the Respondent, which took place on 17 May 2012, reflected the discussion which took place on that date.

44. Mr Baker was then cross examined by the Respondent, with assistance from Mr Plummer.

45. Mr Baker was asked about his conversations with Mr GG, which occurred in the course of the investigation. The Tribunal noted that Mr Baker's dealings with Mr GG began with a letter dated 4 April 2012, which read:

> "Philip Crowe Solicitors/[HHL] Memorial Trust
>
> In carrying out its statutory function the [SRA] has visited [the Respondent]. One of the matters reviewed was that of Mr [HHL] (deceased) and the [HHL] Memorial Trust. [The Respondent] is aware that I would be writing to you in relation to the same.
>
> I note that you, along with [the Respondent] are Co-Trustees of the aforementioned trust. In this context, I would be grateful if you could confirm whether or not [the Respondent] updated you as to his costs for acting for [Mr HHL], in either the administration of [Mr HHL's] estate and/or the memorial trust for [Mr HHL], and in what format any update(s) took. For example, did [the Respondent] provide to you copies of the bills of costs he generated (as a solicitor) for work undertaken and relating to either the administration of [Mr HHL's] estate and/or the memorial trust for [Mr HHL]?
>
> When responding, I would be grateful if you could provide me with appropriate documentary evidence (where applicable) to support your recollection(s).
>
> It would be appreciated if you could please reply to this letter at your earliest opportunity. If you wish to discuss the contents of this letter over the telephone then I have included my contact details below".

46. The Tribunal noted that thereafter there were telephone conversations between Mr Baker and Mr GG on various dates, recorded in handwritten attendance notes produced within the Rule 5 bundle. In chronological order:

46.1 Telephone conversation 12 April 2012, in which Mr GG told Mr Baker he had been ill for the previous 10 years or so and had mobility difficulties. The note recorded that Mr GG said he had had limited input into the Trust. Mr GG stated that he had not seen any bills of costs. He was recorded as telling Mr Baker that the last time he had had any dealings with the Trust was over a year before, when he had signed papers for the sale of shares. Mrs G had then taken the phone. The note recorded:

> "[Mrs G] confirmed that [Mr GG] is not lucid every day due to medication. [Mr Baker] enquired as to whether or not [Mr/Mrs G] knew why they had signed these papers. [Mr GG] stated that he understood that [the Respondent] had borrowed money from the trust for the purpose of discharging a personal mortgage but was paying back interest at a higher rate than the bank was paying the trust.
>
> [Mrs G] confirmed that they were asked to sign these documents after the transaction had taken place and that [the Respondent] had stated to them that he had made a mistake by undertaking the transaction in the order in which he did. [Mrs G] stated that the firm's auditors were present when they attended at the office to sign the papers and they had stated to [Mr and Mrs G] that the transaction in question was legitimate…"

46.2 There was a further telephone conversation on 13 April 2012. The note of that conversation read:

> "[Mr Baker] called [Mr GG] in relation to the payments out of [client account] dated 8/6/2010. Without mentioning either the date or the amount of the payments [Mr Baker] asked whether [Mr GG] had ever received any payment from the Trust. [Mr GG] stated that [Mr HHL] had left him some money in his Will and had been paid these monies by cheque. [Mr GG] did not state how much he had been paid. [Mr Baker] enquired as to whether or not [Mr GG] had ever submitted any invoices/bills to [the Respondent] for work undertaken for [Mr HHL]. [Mr GG] rejected this possibility and re-affirmed that he had been left money in the Will…"

46.3 Mr GG wrote to Mr Baker on 17 April 2012 – the letter was incorrectly dated 17 April 2010. The letter read:

> "Dear Mr Baker,
>
> In reply to your letter of 4th April, I can confirm [the Respondent] never updated me with his costs in acting for [Mr HHL]. He did ask me as Co-Executor to countersign the contract notes for the sale of some shares through Brewin Dolphin and I did comment that their account seemed excessive but I never saw any copies of his costs in the transactions of either himself or the Trust.
>
> In fairness, not having been an Executor before, I did not expect to receive any notes of [the Respondent's] expenses until everything had been completed."

46.4 There was a further telephone conversation on 4 May 2012. At the beginning of that conversation, it was recorded that Mrs G put the phone onto speaker-phone as Mr GG had not yet got out of bed. Mr Baker's note of the conversation read:

> "[Mr Baker] confirmed that he was auditing [Mr HHL's] matter and wanted to confirm the amounts that [Mr GG] had received as a "beneficiary" in this matter. [Mrs G] stated that they had received two cheques, both in the sum of £35,000. [Mr GG] confirmed this to be his recollection of events…"

47. Mr Baker was asked if when he had telephoned Mr GG, it was Mrs G who answered and that she did not want Mr GG to be troubled. Mr Baker told the Tribunal that he recollected that he had spoken to both on the telephone at various times, but he would need to check the file and notes for the details. Mr Baker confirmed that he was aware that Mr GG was ill.

48. In the course of re-examination, Mr Baker confirmed that the letter quoted at paragraph 45 above was a letter that he wrote and the letter quoted at paragraph 46.3 above was the reply from Mr GG. Mr Baker also confirmed that he had prepared the handwritten attendance notes referred to at paragraphs 46.1, 46.2 and 46.4 above. After reading those notes, Mr Baker told the Tribunal that they showed he had spoken to Mr GG and Mrs G, including an occasion when Mr GG had answered the phone and then passed it to Mrs G. Mr Baker confirmed that there was mention that Mr GG was ill, but Mr GG had not come across as confused, to the best of his recollection. Mr Baker told the Tribunal that if Mr GG had appeared to feel unwell or be distressed, he would have taken that into account.

49. The Respondent asked Mr Baker if Mrs G had told him that they had been advised to take independent legal advice. Mr Baker told the Tribunal that he did not recall this, but his note (of the conversation on 12 April 2012) was accurate.

50. The Respondent referred to an extract of the AR 2011 (specifically, Rule 20.1 (b), which he suggested gave him authority for the transaction (whereby £121,950 was used to discharge a business loan) and asked Mr Baker if he agreed that the Respondent was entitled to withdraw the money under that Rule. It was confirmed that the money in issue was the £121,950, which the Respondent suggested was a reinvestment on behalf of the trust. Mr Baker referred to the terms of the Will and told the Tribunal that it was clear that the Will provided that the capital in the estate would be retained and the interest used for charitable purposes.

51. It was put to Mr Baker (by Mr Plummer) that the capital of the Trust had been invested, in a way which was compliant with the Accounts Rules and as a result of which the Trust received interest. Mr Baker told the Tribunal that his understanding was that the capital was to be retained. It was put to Mr Baker that the Trust would receive the capital when the property was sold by the Respondent's wife. Mr Baker told the Tribunal that he understood that interest was to accrue to the Trust at a higher rate than was being received from the bank, on a regular basis; his recollection was that the interest had not always been paid on time. Mr Baker told the Tribunal that in his view, the transaction in question was in breach of the relevant accounts rules. The provision in the Will was clear: the capital should be conserved so far as possible and

there was a discretion as to the charitable use of the interest. The sum of £121,950 was capital, not interest.

Mr Marc Banyard

52. Mr Banyard, a costs lawyer from The John M Hayes Partnership Ltd, gave evidence on behalf of the Applicant. Mr Banyard confirmed that he had prepared the costs report which was included in the Rule 5 bundle and that it was true to the best of his knowledge and belief. Mr Banyard confirmed that the bills included in the bundle were the bills to which he had referred in his report. Mr Banyard told the Tribunal that he did not know the value of Mr HHL's estate; it would be necessary to check the IHT forms to see that.

53. Neither the Respondent nor Mr Plummer had any questions for Mr Banyard.

54. Mr Banyard was asked by the Tribunal how he had come to the view that the effective charging rate on the Mr HHL matter was £750 per hour. Mr Banyard told the Tribunal that there had been a handwritten note, towards the top of the file, which appeared to relate to costing and stated "£250" and "uplift x 3", such that it appeared that the figure calculated for costs was then tripled. Mr Banyard told the Tribunal that he did not know if the note was prepared before or after the bills were prepared by the Respondent.

55. Mr Banyard was referred to a bill dated 18 May 2010 in the sum of £1,250 plus VAT, the narrative to which included the statement, "A total of five hours on that alone". It was put to Mr Banyard that this appeared to suggest the hourly rate charged was £250. Mr Banyard confirmed that this appeared to be the case on that invoice. However, the document on the file indicated an effective rate of £750 but it was not clear if this was the rate at the outset or was calculated afterwards. Mr Banyard told the Tribunal that the work evidenced by the files would not justify a charge of more than about £20,500 (in profit costs); his report recorded that the Respondent had charged £71,646.18 in profit costs, which Mr Banyard considered represented an overcharge of over £51,000.

The Respondent

56. The Respondent made opening submissions, which he later confirmed as true when he was sworn and gave his evidence. The matters covered in the submissions are therefore set out as if in evidence.

57. The Respondent told the Tribunal that in the light of his discussions with Mr Baker during the investigation it was not a surprise that he had been brought to the Tribunal but the problems had arisen as he was incompetent with paperwork.

58. With regard to the transfer of £121,950, the Respondent told the Tribunal that the money in the Trust was not earning much in interest and the idea had occurred to him that he could pay interest to the Trust instead of to the bank by paying off the business loan and securing the Trust's money with a charge on the business premises (which his wife owned). The Respondent told the Tribunal that he was elated when he realised that he could transfer the money and provide an income for charitable use.

The Respondent told the Tribunal that he was often asked for small sums by local organisations e.g. primary schools and football clubs. The Respondent told the Tribunal that his actions in transferring the money may have been injudicious but it was a way to create wealth for the Trust. The Respondent also told the Tribunal that it had never entered his mind that the transaction might be for his own benefit. Mr Baker had pointed this out to the Respondent. The Respondent told the Tribunal that the copy of the Accounts Rules he had produced during the hearing – which had originally been sent to him by the Applicant – confirmed that the withdrawal to make an investment was proper. The Respondent told the Tribunal that his Firm's auditors had told him they would have to report this transaction; he had believed it to be done honestly, although the accompanying paperwork was not in order.

59. The Respondent told the Tribunal that he was fighting the dishonesty allegations.

60. With regard to the allegation of overcharging, the Respondent told the Tribunal that time-recording had been anathema to him. The document referring to £250 and "uplift x 3" was one he had prepared after sorting out the file. The Respondent told the Tribunal that he felt the charge was justified. The fact that his approach was unusual did not mean it was dishonest. The Respondent told the Tribunal that he agreed that the amount of charges appeared high, but it was not high if one knew all the facts.

61. The Respondent told the Tribunal that the current Trustees of the Trust had raised no queries concerning payment of interest. It was later clarified that the Applicant did not allege that the Respondent had failed to make payments of interest, simply that some did not arrive on the due date. The Respondent then told the Tribunal that some payments had been made early.

62. The Respondent told the Tribunal that he knew he had transgressed the various rules, and submitted that most solicitors would, as one had to get the work done. The Respondent did not have evidence of the value of the estate/Trust as the IHT forms were not available but the documents presented to the Tribunal showed the various figures which had come into the estate.

63. The Respondent told the Tribunal that with regard to the cheque for £12,500 which had been made payable to him (having been written and signed by him) he had no idea what that payment was for. The Respondent told the Tribunal that it had not gone into any account in his name. He accepted that the cheque had been processed through the banking system.

64. With regard to the payments to Mr GG, the Respondent told the Tribunal that there had been a letter from Mr GG setting out various expenses he had incurred during Mr HHL's lifetime, in looking after Mr HHL. The Respondent told the Tribunal that the letter was about 3 or 4 pages long and set out the expenses, which would be a debt payable by the estate. The Respondent told the Tribunal that he had rounded up the sum set out in the letter to £35,000; this involved rounding up by a few hundreds of pounds to make a round sum. The (first) cheque for £35,000 was sent out on 8 June 2010. The Respondent told the Tribunal that a few weeks later, he looked at an accounts printout produced by his secretary, Mrs LW. That printout showed that the cheque to Mr GG had not gone through, so after checking with the staff that the

accounts were up to date, the Respondent had prepared a further cheque to Mr GG for £35,000. The Respondent told the Tribunal that he had intended to cancel the first cheque, but did not do so. The Respondent told the Tribunal that this had been a mistake, but he had not told Mr GG of this mistake.

65. The Respondent told the Tribunal that the letter from Mrs LW dated 12 February 2015 supported his contention with regard to Mr HHL's wishes. That letter, addressed to the Respondent, read:

> "I have been thinking about our last conversation and whilst I do not recall [Mr HHL] saying in my presence he wanted to leave you and [Mr GG] his estate, I do remember him saying that as you would not take his estate you must make sure you are very well paid indeed for dealing with his affairs and that he was so grateful to both you and [Mr GG] for all that you did for him and your friendship."

66. The Respondent told the Tribunal that Mr HHL used to come into the office and would say that he wanted him (the Respondent) and Mr GG to be properly rewarded. The Tribunal noted that the Respondent's written Answer asserted that both he and Mr GG were convinced that Mr HHL wanted them both to be very well paid for dealing with his affairs and had elsewhere suggested that Mr HHL had wanted to leave his estate to the Respondent and Mr GG, but the Respondent had advised this was not possible without taking independent legal advice, which Mr HHL had not done.

67. When on oath, the Respondent confirmed that his submissions were adopted as true, as was his Answer to the allegations dated 20 February 2015. The Respondent noted that he would be able to make closing submissions, and would be cross examined and so did not need to expand on his Answer or earlier submissions. The Respondent was then cross examined by Mr Goodwin. The evidence will be recorded by reference to the various transactions and issues, rather than necessarily in the order in which the evidence was given.

Transfer of £121,950

68. The Respondent confirmed that the extract from the AR 2011 on which he relied to support his view that the transfer was in accordance with the Rules had been sent to him after the transaction, indeed, after the intervention into his Firm which was in July 2014. The Respondent told the Tribunal that he was relieved to receive it as it confirmed to him that what he had done was proper. The Respondent accepted that the letter enclosing the extract from the AR 2011 had been written in the context of dealing with residual balances on client account after the intervention. The Rule to which he referred read:

> "Rule 20: Withdrawals from a client account
>
> *Client money* may only be withdrawn from a *client account* when it is:
>
> **(a)** properly required for a payment to or on behalf of the *client* (or other person on whose behalf the money is being held);

(b) properly required for a payment in the execution of a particular *trust*, including the purchase of an investment (other than money) in accordance with the *trustee's* powers;

(c) - (h) ….

69. The Respondent told the Tribunal that trustees had always had the power of investment, provided certain matters were considered. The Respondent confirmed that neither he nor Mr GG were beneficiaries under the Will, but they were executors and trustees. It was put to the Respondent that the wording of the Will was clear as to conservation of the capital and that there was a discretion to use the interest to make gifts to charity. The Respondent told the Tribunal that it was not so clear. The Respondent accepted that the £121,950 was capital, not interest. It was put to the Respondent that he had taken that money, which was capital within the Trust. The Respondent told the Tribunal that he did not agree because the trustees had general investment powers, provided the investment was protected.

70. The Respondent was asked why he had not discussed this proposed transaction with Mr GG. The Respondent told the Tribunal this was because Mr GG was very ill. It was put to the Respondent that this answer did not make sense, as he had discussed the transaction with him after the event. The Respondent told the Tribunal that either or both of he and Mr GG could deal with Trust matters. Mr GG had wanted nothing to do with the Trust as he was too ill.

71. The Respondent was asked why he had got Mr GG to sign the Deed of Trust (set out at paragraph 36 above) if Mr GG so ill that it had prevented a discussion. The Respondent told the Tribunal that it had been pointed out to him by the SRA that there was a problem with the transaction. It was put to the Respondent that this could not be the case. The Respondent confirmed that the Deed was prepared and signed after the transfer of funds and it may have been his accountant who told him there was a problem. The Respondent told the Tribunal that it may have been a senior accountant from the Firm's accountants who told him that a Trust Deed was needed to put things right. The Respondent told the Tribunal that there was nothing in the rules (conduct or accounts) which specified the order in which things had to be done. Mr GG had not wanted separate legal advice but had discussed it with the auditors. The Respondent also told the Tribunal that his Firm's bookkeeper told him that she would have to report the matter after she returned to the office after a period of absence.

72. The Respondent told the Tribunal that it was a considered decision to make the transfer. It was put to the Respondent that it was surprising he had not discussed the matter with Mr GG before the transfer. The Respondent told the Tribunal that Mr GG was too ill. Mr GG had not taken independent advice, but the auditors had told him that the Deed was in order.

73. The Respondent was asked if he accepted that there was an inherent conflict of interest when a solicitor made a loan to a client or received a loan from a client. The Respondent accepted that there could be a conflict. It was put to the Respondent that the lender would want to receive the best return and a borrower would want to pay the lowest rate possible. The Respondent accepted that this was generally true, in a commercial situation, but it was not necessarily the case.

74. It was put to the Respondent that his use of the £121,950 to pay off his business loan was a situation in which there was a conflict of interest. The Respondent told the Tribunal that he did not see that at the time, or now. The Respondent was asked if he accepted that he had an obligation to comply with the terms of the Will. The Respondent accepted that compliance with the Will was part of what he could do and that he had set up the Trust fund after Mr HHL's death. The Respondent told the Tribunal that he had opened a bank account for the trust shortly after Mr HHL's death, when he began to receive the estate money. The capital had been conserved in the Firm's client account, in accordance with the Will.

75. It was put to the Respondent that he had used the Trust money to clear a loan taken out months before; it was then clarified that the loan in question began in 2010 and the Respondent told the Tribunal that this was, in turn, the replacement of an earlier bank loan. The Respondent confirmed that he had been paying interest at 5% on the bank loan. The Respondent told the Tribunal that he had then had the obligation to pay interest on the money received from the Trust, but was not sure at what rate; although he had been relieved of the obligation to pay interest to the bank, he had been obliged to pay interest to the Trust fund. The Respondent told the Tribunal that all of the interest due had been paid.

76. It was put to the Respondent that the breach related to taking the money, as he was not entitled to do this. The Respondent told the Tribunal that according to the Accounts Rules there may be a breach, but what he was doing with it was to generate wealth for the Trust. The Respondent told the Tribunal that he now admitted allegation 1.6, but had not thought at the time he was doing anything wrong and had not discussed it with Mr GG.

77. It was put to the Respondent that he would want to be satisfied that he was acting in compliance with the Will. The Respondent accepted that the position was not ideal but it had occurred to him that he could use the Trust money to create wealth for the Trust. The Respondent confirmed that the Firm's business premises were owned by his wife and that the bank had had a charge on the property to secure the bank loan. It was put to the Respondent that the effect of using the £121,950 was that the charge was cleared. The Respondent told the Tribunal that it was part of a scheme to create wealth and give money to charity. The Respondent told the Tribunal that he had been stopped from making any distributions, but had paid out some monies from the office account. The Respondent told the Tribunal that there did not appear to be any benefit to him from discharging the bank loan and the charge on the property, as he had created wealth for the Trust. He had still had to pay interest, albeit to a different body.

78. The Respondent was referred to the transcript of the interview with Mr Baker, in which he had described the transfer of the £121,950 as "injudicious". The Respondent told the Tribunal that he accepted that he should have thought the matter through more carefully. The Charity Commission had indicated that they were not interested in the matter, as the Trust was not earning any money before the transfer. The Respondent told the Tribunal that the Trust's interest (in the property) had been registered.

79. The Respondent accepted that with about 40 years in practice, and with his previous business experience, he knew that taking the money was in breach of the Accounts Rules. It was put to the Respondent that taking the Trust money was inappropriate and dishonest. The Respondent told the Tribunal that he did not have the money; it was used to pay a loan and any benefit to him had not crossed his mind. It was put to the Respondent that it was inconceivable that he did not realise there was a benefit to him and he was asked on what basis he believed he was entitled to take and use the Trust money. The Respondent told the Tribunal that it was used to generate income for the Trust. The Respondent was asked how he could think that he could use the Trust's money to pay off his loan. The Respondent told the Tribunal that Mr GG was not interested in the Trust, but he (the Respondent) had been elated as he had found a way to create wealth for the Trust; he had never considered that to be improper. The Respondent denied that he had known at the time that he had had a benefit from the transaction.

80. The Respondent told the Tribunal that one of the Firm's auditors had spoken to Mr and Mrs G and they had been satisfied it was a proper transaction. The Respondent accepted that the transaction had not been carried out in the proper order, but the auditor had confirmed it was legitimate. The Respondent told the Tribunal that in future he would be more careful with the paperwork. The Respondent was asked if he would do the same again; he replied that it was difficult to say, as his aim had been to create wealth for the Trust.

81. The Respondent was referred to the Deed of Trust (set out at paragraph 36 above), which included the statements that, "… decided to attempt to produce a gain to the estate by taking a charge on the property…" and "The trust will then register this charge at the land registry". The Respondent was asked if this was done. The Respondent told the Tribunal that the property could not be disposed of; there was a restriction to protect the Trust money.

82. The Tribunal noted that there was no charge on the property, according to the Land Registry entry as at May 2012, but there was a restriction on the property, which read:

> "No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court".

The Respondent was asked what this meant and why there was a reference to a transaction needing authorisation by a court. The Respondent told the Tribunal that he did not draft the restriction and he did not know if this was standard wording or not. The Respondent told the Tribunal that there was no mortgage, as such, and so it was not necessary to register a charge. The Respondent was asked why there was no legal charge made between the Trust and the Respondent's wife, setting out that there was indebtedness secured on the property. The Respondent told the Tribunal that there was protection in the Deed of Trust, and the property could not be sold without paying off the debt. The Respondent told the Tribunal that he had been told by his conveyancer that this was the way to deal with the matter. It was put to the Respondent that if there was a registered legal charge, a restriction would not be necessary. After some discussion, the Respondent accepted that the bank had had a charge on his wife's property. The Respondent told the Tribunal that he did not

know, from the Land Registry entry, how a prospective purchaser would know who to contact with regard to the releasing the restriction. The Respondent told the Tribunal that he believed the property could not be sold without paying part of the sale proceeds to the Trust.

83. It was put to the Respondent that the Trust money had gone and the Trust was not protected as it did not even have the legal charge referred to in the Deed of Trust. The Respondent told the Tribunal that he thought the restriction produced the result envisaged by the Deed. It was noted that the ledger showed interest payments to the Trust and that there had not been any distribution. The Respondent told the Tribunal that he was no longer a trustee.

Compliance with Accounts Rules

84. The Respondent confirmed that he was an experienced solicitor in some areas, of about 38 years' experience, and that he had been in practice on his own account since the 1990s. The Respondent agreed that being a solicitor was a privilege and an honour, of which he was proud. The Respondent told the Tribunal that he had done little probate in practice; his practice had mostly been in criminal and matrimonial work, and he rarely had money on client account in those areas.

85. The Respondent accepted his responsibilities which included compliance with the accounts rules and safekeeping client funds. The Respondent confirmed that he admitted allegation 1.1. It was put to the Respondent that his failure to ensure compliance with the accounts rules was serious. The Respondent told the Tribunal that he left the accounts to the accountants, and that he was not competent with accounts. Overall he agreed that failure to comply was serious. The Respondent confirmed that he admitted allegation 1.2.

Transfers of Costs

86. It was put to the Respondent that client money, for example on account of costs, could only be transferred to office account after delivery of the bill or written notification of costs. The Respondent told the Tribunal that that would be the perfect state of affairs, but it did not always work in practice. The Respondent told the Tribunal that he accepted that he was aware that since the SAR 1998 came into effect, the rule was that there should be a bill or written notification of costs before costs were transferred (from client account).

87. With regard to the 16 bills in relation to the Mr HHL matter in the period May 2010 to September 2011, the Respondent told the Tribunal that he had not delivered those bills to Mr GG for the reason already given, namely that Mr GG as co-executor did not want to know about the estate/Trust; that had prevented him from sending the bills. The Respondent also told the Tribunal that he had delivered the bills to himself, as one of the executors/trustees and queried why he should waste the postage when Mr GG did not want the bills. The Respondent told the Tribunal that he accepted that it was his responsibility to comply with the relevant Rules and he accepted, in hindsight, that he should have sent the bills to Mr GG. In the light of that concession, the Respondent admitted allegation 1.3, but denied that he had acted dishonestly.

88. It was put to the Respondent that he knew the Rules (as he had admitted) and had decided not to send the bills to Mr GG, so that decision would be seen as dishonest by the ordinary standards of reasonable and honest people. The Respondent denied this, and told the Tribunal that a reasonable person who knew why the bills were not sent would not see this as dishonest. It was put to the Respondent that he did not send the bills to Mr GG as he knew that they were "inflated". The Respondent denied this, and told the Tribunal that Mr HHL had wanted him and Mr GG to divide the estate down the middle.

Mr HHL's wishes

89. It was put to the Respondent that there was no evidence that Mr HHL wished to divide the estate between the Respondent and Mr GG. The Respondent told the Tribunal that the letter from Mrs LW, quoted at paragraph 65 above, supported his evidence about Mr HHL's wishes. He accepted that the fees were inflated, to take into account Mr HHL's wishes. The Respondent accepted that one of his difficulties was that there was nothing from Mr HHL concerning his wishes. It was put to the Respondent that if Mr HHL had wanted the Respondent (and/or Mr GG) to benefit from his estate, he could have taken independent legal advice. The Respondent told the Tribunal that Mr HHL had refused to do so. The Respondent told the Tribunal that it was not appropriate for him or Mr GG to be named as beneficiaries at all in the Will and it had not occurred to the Respondent that a small legacy might have been possible.

90. It was put to the Respondent that on the basis of what the Respondent said about Mr HHL's wishes about the Respondent and Mr GG having half of the estate each, he had gone behind the Will and divided up the estate. The Respondent stated that there was a lot of money in the estate, and it had to be protected. The Respondent was asked if Mr HHL had "given the nod" to the Respondent to inflate his fees. The Respondent told the Tribunal that Mr HHL had said he was to be paid well out of the estate, and he had indeed been well paid from the estate.

91. It was put to the Respondent that the Will was at odds with what the Respondent said were Mr HHL's wishes and that the Respondent had sought to effect these unevidenced wishes by inflating his costs. The Respondent accepted that that was one way of seeing matters. The Respondent told the Tribunal that the letter from Mrs LW reflected what she had been told by Mr HHL. It was put to the Respondent that Mr HHL could have changed the terms of his Will if he had wanted to do so. The Respondent told the Tribunal that Mr HHL was happy with the Will as drafted.

92. It was later put to the Respondent that there was no evidence of Mr HHL's wishes. The Respondent told the Tribunal that Mrs LW, his former secretary, had been asked if she knew anything about Mr HHL wanting the Respondent and Mr GG to share the estate. The Respondent accepted that this letter was written well after the event, in February 2015, when Mr HHL had died in (he thought) 2010. The Respondent confirmed that all of the bills in issue dated from after Mr HHL's death.

93. It was noted that Mrs LW's letter began, "I have been thinking about our last conversation…" The Respondent told the Tribunal that by the time the letter was written, his Firm did not exist. His conversation with Mrs LW was after these

proceedings began. Mrs LW knew what Mr HHL had said to her, and she typed up the letter and delivered it to the Respondent's house.

94. The Respondent denied that the only explanation for the inflated bills was the Respondent's contention that Mr HHL wanted him and Mr GG to share the estate. It was put to the Respondent that Mr HHL could have chosen to leave his residual estate to Mr GG and the Respondent. The Respondent told the Tribunal that he had told Mr HHL to take independent advice but he had not taken such advice and the Respondent was not able to draft a Will leaving the residuary estate to himself. The Respondent was asked if there was anything on his files concerning his advice to Mr HHL to take independent legal advice about the Will. The Respondent told the Tribunal that all of his files had gone to the Applicant (on the intervention). It was put to the Respondent that before then he could have found a note, if one existed. The Respondent told the Tribunal that he doubted this and that Mrs LW's letter confirmed the position about Mr HHL's wishes.

95. It was put to the Respondent that he had not challenged the accuracy of Mr Baker's notes concerning his conversations with Mr GG, having had the bundle of papers since January 2015 and having been served with Civil Evidence Act Notices in relation to the evidence. The Respondent told the Tribunal that he had challenged the evidence, by asking Mr Baker questions during the hearing.

96. The Respondent was asked how Mr GG had formed the view, recorded in Mr Baker's notes, that he had been left money in Mr HHL's Will. The Respondent told the Tribunal that Mr GG saw the Will. It was not discussed, but Mr GG had a copy of the Will.

97. It was noted that in the interview with Mr Baker, the Respondent had referred to telling Mr HHL to obtain independent advice, in a passage in which he was recorded as saying:

> "[Mr HHL] lived just over the road from me and I got to know him very well indeed. The summary of it is that in the end he became very poorly indeed. [Mr GG] and his wife devoted a lot of their time and life to looking after him and making his life as comfortable as he could. I became involved with [Mr GG] and I spoke to [Mr HHL] on a number of occasions and his view was his will should contain, was simply that he wished to leave his money to [Mr GG] and myself and I told him that was not on. Not on at all and I advised him that if he wanted to do that he would have to have another solicitor, which I haven't mentioned to you before, and I couldn't do it and he said there was no question of it at all. So in my view, and I ran this through with [Mr GG], was that he should form a form of charitable trust, charitable perhaps but certainly a trust to use his money as far as was possible for the benefit of the sort of people who he felt had been disadvantaged as a child. He made one exclusion, that anybody connected with him was not to have anything from the will and that the mere challenge of it would produce a nil payout. Now that was my idea but it was what he (was) putting to me; I put it into those words. He still insisted that he (would) much prefer it to go to [Mr GG] and myself, and I said it's just not on, you have to go somewhere else, so he made these, I think you said eleven, charitable bequests…"

98. The Respondent told the Tribunal that he believed that what he was doing with regard to the estate was right.

99. It was put to the Respondent that he had said Mr HHL had refused to take independent advice, but in effect Mr HHL's money had gone to Mr GG and to the Respondent in costs; this was not was set out in the Will. The Respondent told the Tribunal that he was clear about what Mr HHL's wishes were. It was put to the Respondent that he had taken a deliberate and conscious decision to go behind the Will. The Respondent acknowledged that, put in that way, the position appeared to be bad but there was nothing to contradict Mr HHL's wishes (as expressed to the Respondent). The Respondent told the Tribunal that he thought what he was doing was acceptable and told the Tribunal that, perhaps, he would not do the same again.

100. The Respondent was asked why, if Mr HHL could not leave his money to the Respondent, he had not prepared a Will leaving the money to Mr GG. The Respondent told the Tribunal that this had not occurred to either him or Mr GG. The Respondent told the Tribunal that it had not occurred to them at the time that Mr GG could have stepped aside as a possible executor/trustee. The Respondent told the Tribunal that he was aware that at the time gifts to solicitors in a will were prohibited. The Respondent accepted that the Will could have been drafted differently, but it was not.

101. It was put to the Respondent that he and Mr GG were under an obligation to put into effect the terms of the Will, but instead the Respondent had made a decision to go behind the terms of the Will. The Respondent accepted that this was possible, but he believed he was putting into effect Mr HHL's wishes. The Respondent told the Tribunal that Mrs LW was independent, and that he had not known what Mr HHL had said to her.

102. It was noted that earlier in the hearing the Respondent had said that Mr HHL was not a friend. The Respondent told the Tribunal that Mr HHL would pop into the office to talk to him and he would go to Mr HHL's house to visit him. There had been no friendship before they were introduced by Mr GG.

103. The Respondent later told the Tribunal that Mr HHL was determined that the interest on his money would be used for small charities, who would apply to the Respondent for those sums. The Respondent was asked if, apart from the specific legacies in the Will, any monies had been paid out to charities. The Respondent told the Tribunal that none had been paid out and that the funds had not accumulated interest. The Respondent told the Tribunal that he had not been able to make any distribution as he had not been able to meet Mr GG to deal with that. The Respondent told the Tribunal that the Trust had not had an income/interest until he began paying interest after the transfer of £121,950, and thereafter there was no chance to distribute it as the trust had only just started to accumulate interest. The Respondent told the Tribunal that he was paying interest to the Trust at 3.5% per annum. It was put to the Respondent that nothing had been distributed in the period 2011 to 2014, when the intervention occurred. The Respondent told the Tribunal that he had been unable to meet Mr GG, then Mr Baker's visit had taken place. It was put to the Respondent that interest was accumulated from 2011 but there had been no payments from the Trust save for bills and commissions. The Respondent agreed this was the case and told the Tribunal that

Mr GG had thought the stockbrokers' fees were too high. The Respondent told the Tribunal that he had wanted to do a distribution with Mr GG, as he considered that Mr GG ought to have input into that.

104. The Respondent told the Tribunal that it had been his idea to include a charitable trust in Mr HHL's Will and that Mr HHL would have died intestate if he, the Respondent, had not drafted the Will. It was put to the Respondent that the Trust was a scheme used to facilitate the distribution of the estate to the Respondent and Mr GG. The Respondent denied this and told the Tribunal that it was to enable the funds to be dealt with properly, as Mr HHL wished. The Respondent told the Tribunal that he had told Mr HHL to take separate legal advice but he had refused. The idea was to put the money into a charitable trust which could be used to benefit disadvantaged young people, with the capital to be preserved, but matters had not worked out like that. It was put to the Respondent that this was because he had taken the Trust money. The Respondent told the Tribunal that that was an offensive suggestion. The Respondent accepted that the Trust money was to be used for charitable purposes and that neither he nor Mr GG were charities.

105. In response to a question from the Tribunal, the Respondent confirmed that he had drafted Mr HHL's Will. He told the Tribunal that he had considered it wrong for either himself or Mr GG, who was a financial person, to receive anything under the Will. The Respondent told the Tribunal that Mr GG was too ill to do anything to administer the estate or Trust. The Respondent accepted that it would have been wrong to receive anything under the Will, but Mr HHL had instructed that he should be very well paid for dealing with matters. It was noted that the Respondent had told the Tribunal that he had not involved Mr GG as Mr GG was too ill and that either of the trustees had the sole power to act. The Respondent told the Tribunal that he and Mr GG had complete trust in each other. It was noted that the Respondent had stated that he had not made any payments out of the Trust because he had not been able to meet Mr GG. The Respondent told the Tribunal that as he and Mr GG had become older, they had agreed to pass the matter to new, independent trustees. It had taken a few months to deal with this and the intervention into the Firm took place the day before he was due to meet Mr GG to deal with the formalities; the Respondent told the Tribunal that the decision to pass the matter to other trustees was taken about 3 or 4 months before the intervention. The Respondent was asked if there was any reason, other than the difficulty in meeting Mr GG, which meant there had not been a distribution. The Respondent told the Tribunal that this was the only reason; Mr GG had wanted to be involved in the distribution of funds.

Level of Costs

106. It was put to the Respondent that Mr Banyard had suggested that the Respondent had overcharged by about £50,000. The Respondent told the Tribunal that Mr Banyard's report was factual, and he did not argue with it. Mr Banyard had not been able to find all of the records of the work done. The Respondent told the Tribunal that his costs reflected the wishes of Mr HHL. The Respondent accepted that he had not read the relevant (costs) rules recently.

107. The Respondent accepted that the bills in this matter were inflated; that was probably the best word for what he had done, but one could have referred to "uplift" instead. The Respondent, when asked, accepted that there was a distinction between "inflation" and an "uplift". The Respondent was asked if the figures in the bills exceeded the work he had done. The Respondent replied that it depended what was shown on the file.

108. The Respondent accepted that in his interview with Mr Baker, he had been given the opportunity to give an explanation for the bills or find a word other than "inflated". The Respondent told the Tribunal that it was difficult to find a word other than "inflated". The Respondent accepted that, in some way, the 16 bills were inflated.

109. It was put to the Respondent that inflating the bills as he had took unfair advantage of the estate. The Respondent denied this. He accepted that if he felt he was overcharged for a service he would not be happy, but told the Tribunal that he thought he was putting Mr HHL's wishes into practice. The Respondent stated that whilst this was an unusual position, it was not dishonest, and he thought Mr HHL would have approved. It was put to the Respondent that if fees were inflated above the amount properly due, that was improper. The Respondent told the Tribunal that he had had in mind what Mr HHL wanted, which was for the Respondent and Mr GG to pay themselves very well.

110. The Respondent was later referred to the three bills dated 18 May 2010, the first of which was for £9,500 (plus VAT). It was put to the Respondent that this was not a small sum, but the bill did not include a time breakdown. The Respondent referred to the narrative appended to the bill, which set out work done in relation to arranging Mr HHL's funeral and burial. The Respondent confirmed that, as a professional person, he had charged for attending Mr HHL's funeral, and this charge was included within the £9,500. The Respondent told the Tribunal that he did not know Mr HHL until Mr GG approached him and asked him to deal with Mr HHL's affairs. It was put to the Respondent that the work done and set out in the narrative to the bill would not justify a charge of £9,500.

111. The Respondent told the Tribunal that he had worked on this matter for days, including liaising with the funeral directors and the cemetery concerning the location of the graves of Mr HHL's parents. It was put to the Respondent that if he had done such work, it would be evidenced on the file, for example by attendance notes or letters. The Respondent told the Tribunal that he did not keep notes and used his memory; the Respondent accepted that his memory was not especially good. The Respondent was asked how he could remember information, such as the location of Mr HHL's parents' graves if he did not make a note. The Respondent told the Tribunal that the narrative did not record everything he had done. The Respondent told the Tribunal that he was satisfied that the figure was right for the work he had done, including work done in liaising with Mr HHL during his lifetime.

112. The Respondent was asked why he had issued three invoices on the same day (18 May 2010). The Respondent told the Tribunal that he could not give a straightforward answer. It was put to the Respondent that normally all of the work done in a period would be included on one invoice. The Respondent told the Tribunal that there had been three different Trust accounts, and the bills related to those three

accounts. It was noted that all of the bills had the same matter reference, with only the invoice number differing. The Respondent told the Tribunal that the whole thing was a muddle.

113. The Respondent was referred to the second bill dated 18 May 2010, for £6,500 plus VAT. The Respondent referred the Tribunal to the narrative to that bill. It was put to the Respondent that the work described was in the nature of liaising with people and he was asked why he had not simply prepared one bill. The Respondent repeated that there were three accounts and an accountant had advised him to do three bills. It was put to the Respondent that as he was aware that it was alleged that the bills were inflated, he should have disclosed that he had been given this advice and by whom. The Respondent told the Tribunal that the advice from an accountant was the only light he could throw on why there had been three bills on the same day.

114. It was put to the Respondent that the first of the three bills included a charge for attending Mr HHL's funeral. The Respondent told the Tribunal that he thought this was right at the time, and he still did not see there was anything wrong in charging for attending the funeral. It was put to the Respondent that a reasonable person would think that the bill had been inflated. The Respondent told the Tribunal that this would not be the case if one knew the background. The Respondent confirmed that, for want of a better word, he had accepted that his bills were inflated, but because of Mr HHL's firm view about the estate, the Respondent had thought the bills were proportionate and in accordance with the deceased's wishes.

115. It was later put to the Respondent that he had not had a conversation about costs with Mr GG. The Respondent told the Tribunal that he and Mr GG trusted each other implicitly. The Respondent told the Tribunal about his long personal, business and professional relationship with Mr GG; they had known each other in excess of 60 years.

116. The Respondent was asked whether "very well paid" (the expression used by Mrs LW), related to the Respondent's proper professional costs or whether he was able to deal with costs as he saw fit. The Respondent told the Tribunal that his costs were subject to the proper rules.

117. In response to a question from the Tribunal, the Respondent confirmed that he accepted that the costs were inflated beyond the level of the work done. It was noted that the Respondent had also stated that the work recorded on the file did not reflect all of the work that he had done, and he was asked how he reconciled those points. The Respondent told the Tribunal that he felt the amounts he charged were proper in the circumstances, given Mr HHL's wishes, and that he had believed he was doing things properly. The Respondent accepted that the bills had been inflated, in order to put into effect Mr HHL's wishes. It was suggested to the Respondent that he appeared to be saying that he had done some extra work, not shown on the file, and that in addition he had added an amount to the bills. The Respondent accepted that this was about right and he referred to a practice, in the 1980s, of "weighing" the file to determine the costs, which he accepted was an old-fashioned approach. The Respondent accepted that his costs had been above the level of his proper fee for the work done.

Payments to Mr GG and the Respondent

118. It was noted that in the course of his opening submissions, the Respondent had told the Tribunal that the second cheque to Mr GG was a duplicate payment – see paragraph 64 above. The Respondent told the Tribunal that the first cheque was with regard to Mr GG's expenses incurred on behalf of Mr HHL, during Mr HHL's lifetime, which had been set out in a letter running to several pages. It was put to the Respondent that there was no evidence of this. The Respondent told the Tribunal that he could not find the letter. The expenses, which were a debt of the estate, were incurred over a period of more than 5 years.

119. It was noted that on the ledger, the payment of £35,000 was recorded as for "expenses and fees". The Respondent was asked what the "fees" for Mr GG were. The Respondent told the Tribunal that it was a reimbursement of what Mr GG had paid out for Mr HHL, together with a small amount of rounding up. The Respondent was asked what sort of expenses had been incurred. The Respondent told the Tribunal that the expenses were for food, clothing and the like. It was put to the Respondent that before paying out £35,000 for expenses, one should scrutinise the claimed expenses carefully. The Respondent told the Tribunal that he recalled it was for food and clothing, e.g. on one occasion six pairs of underpants for Mr HHL. The Respondent told the Tribunal that Mr HHL lived on his own, with only Mr GG looking after him. Mr HHL had not been able to look after himself or his house properly and had eventually moved to a home.

120. It was noted that the ledger entry in relation to the transfer of £12,500 was stated to be to Mr GG for "advice". The Respondent was asked what advice had been given to justify this payment. The Respondent told the Tribunal that he did not recall this payment in any way. He accepted that he had written the cheque, which was made payable to himself, but he did not know what it was for or why it was written. The Respondent told the Tribunal that this payment was not part of dividing up the estate. The Respondent told the Tribunal that the cheque was not paid into an account of his. It was put to the Respondent that the cheque could only have been paid into an account in his name. The Respondent told the Tribunal that the cheque had been cashed, but not by him.

121. Later in the cross examination it was put to the Respondent that he had said the second cheque for £35,000 to Mr GG was a duplicate. The Respondent told the Tribunal that one payment had been due to Mr GG for expenses he had incurred on behalf of Mr GG. The actual figure was slightly less than £35,000 but the Respondent had rounded it up and it had been paid out to Mr GG. The Respondent told the Tribunal that he had obtained an accounts printout and saw that the cheque had not gone through. As the accountant said that the accounts were up to date and there was no record of the £35,000 being cashed, a fresh cheque was sent out. The second cheque may have been sent on the day the first was cashed. The Respondent told the Tribunal that he had agreed that the first cheque could be stopped. Mr GG had then phoned him about the second cheque and the Respondent had told him that if he had sent the cheque, then it was in order. It was noted that the interview with Mr Baker recorded the Respondent as saying:

> "I do remember him ringing me up and saying he's got a second cheque for £35,000, was it alright, and I said, "Well I wouldn't have sent it, [Mr GG], unless I thought it was alright", and that's basically what did happen".

122. The Respondent told the Tribunal that the first payment was for Mr GG's expenses and it was possible Mr GG was not due the second payment of £35,000 sent in the "replacement" cheque. It was noted that in the reported telephone conversation between the Respondent and Mr GG, Mr GG had referred to a second cheque, which suggested that the first had not been lost. The Respondent told the Tribunal that the payment was a mistake on his part and he should have asked for the second cheque to be returned.

123. The Respondent was referred to the explanation he had given to Mr Baker in interview, which recorded the following exchange, where "NRI" is a second investigation officer, Mr Ireland, and "PC" is the Respondent, after reference to the two cheques for £35,000:

> "PC: No, it's two different figures, same figure, two different instances.
>
> NRI: Yes, has it been overpaid by £35,000 or did his letter say "I'm due £70,000"?
>
> PC: I've only had the one letter from him and that was the one I was talking about, that we can't find… I don't know why he's got that £35,000. It could be on the basis that what [Mr HHL] wanted to happen, wanted him and I to share it in two and it may well have been that I sent him a second cheque in a similar figure as a, if you like, a what word could I look for, a contribution, out of {Mr HHL's} wishes that he wanted it to go have to him, half to me, that could be an explanation for that…"

This exchange was shortly before that recorded at paragraph 121 above.

124. It was put to the Respondent that the explanation recorded above was different to that he was giving now, in relation to the second payment of £35,000, and that there was no suggestion that the (supposed) letter from Mr GG had been lost on the intervention. The Respondent told the Tribunal that he accepted he probably would have had access to the files and documents at the time of the interview with Mr Baker and Mr Ireland, but told the Tribunal that Mr Baker had taken away the files on the Mr HHL matter. The Respondent told the Tribunal that the letter from Mr GG had existed, but he could not find it as of May 2012 although he had the files at that point.

125. In the light of the comments recorded at paragraph 123 above it was put to the Respondent that he had decided to pay Mr GG an extra £35,000. The Respondent told the Tribunal that it did not occur to him that the first £35,000 was for expenses and the second £35,000 was a gift to Mr GG. It was put to the Respondent that there was no provision in Mr HHL's Will for such a payment to Mr GG. The Respondent told the Tribunal that as he had the costs, Mr GG was entitled to something. It was put to the Respondent that he was dividing up the estate 50/50 between himself and Mr GG. The Respondent denied this and told the Tribunal that Mr HHL had wanted

him and Mr GG to be very well paid. It was put to the Respondent that this payment was inappropriate. The Respondent told the Tribunal that he did not disagree, but he thought he was doing things properly. It was put to the Respondent that he was going behind the Will and that paying out this money to Mr GG was wrong. The Respondent told the Tribunal that he did not know it was wrong, and he did not see why it should not be paid out; the Respondent relied on what Mrs LW said in her letter. The Respondent told the Tribunal that when he went through the papers in the case he rang Mrs LW. The Respondent was asked from where Mrs LW had had the idea "… [Mr L] wanted to leave you and [Mr GG] his estate", which was mentioned in her letter. The Respondent told the Tribunal that he did not sow the seed of that idea.

126. The Respondent was asked why, if Mr GG was not entitled to the second £35,000, the Respondent had not asked for it back. The Respondent told the Tribunal that that had not occurred to him, and that Mr GG knew what was going on.

127. It was later put to the Respondent that he appeared to have accepted that the letter from Mr GG to which he had referred must have gone missing. The Respondent told the Tribunal that he had probably put it in a safe place and then forgotten where it was.

128. The Respondent was referred to Mr Baker's note of a telephone conversation with Mr GG on 13 April 2014, set out at paragraph 46.2 above. It was put to the Respondent that Mr GG had rejected the idea that he had made a claim for costs and instead believed that he had been left money in the Will. The Respondent told the Tribunal that it was maddening that he was not able to find Mr GG's letter and that he did not understand why Mr GG appeared to believe he had been left money under the Will. The Respondent told the Tribunal that he had received the letter shortly after Mr HHL's death and it related to expenses incurred during Mr HHL's lifetime, and that he should have kept copies. It was put to the Respondent that it was not true that Mr GG had submitted a letter claiming costs and that the Respondent had conceded that he had made the payment to Mr GG to reflect the money which he, the Respondent, was receiving in costs. The Respondent told the Tribunal that he was adamant he had seen the letter. It was put to the Respondent that the sum sent to Mr GG was similar to the amount the Respondent had received. The Respondent accepted the amounts were similar but did not accept that he had been dividing up the estate equally. The Respondent told the Tribunal that the first amount of £35,000 was due from the estate for expenses and it did not occur to him at any point (including during the investigation) that the amounts were similar.

129. In response to a question from the Tribunal concerning the payment of £12,500, the Respondent stated that he accepted he had written and signed the cheque, which was payable to him and could only be paid into an account in his name. The Respondent told the Tribunal that he did not know where that money had gone; the cheque had not been endorsed to anyone else. It was put to the Respondent that the only conclusion which could be reached was that the money went into an account in his name. The Respondent told the Tribunal that it did not go into the only account he had in his name; he accepted the money had gone out of client account but it had not gone into an account of his own.

General

130. The Respondent told the Tribunal that so far as he was aware, Mr GG was still alive; he had spoken to him only twice since these proceedings began.

131. In his closing submissions, the Respondent told the Tribunal that he admitted his paperwork had been poor or non-existent but at the forefront of his mind had been creating wealth for Mr HHL's Will Trust; the intervention had occurred before there had been any distribution.

132. The Respondent told the Tribunal that he could understand why Mr Baker and Mr Goodwin had approached matters as they had. The Respondent told the Tribunal that he had left matters of rule compliance to his accountant.

133. Mr Plummer was allowed to make additional submissions.

134. Mr Plummer told the Tribunal that Mr GG's statements to Mr Baker had not been helpful, in that it appeared he thought he was a beneficiary under the Will. Mr Plummer submitted that Mr Baker had asked Mr GG how much he had received as a beneficiary. (It was noted that the note of the telephone conversation of 13 April 2012 recorded that Mr Baker had asked, "Whether [Mr GG] had every received any payment from the Trust" and went on to record that Mr GG had said he had been left some money by Mr L, whereas the note of the conversation on 4 May 2012 referred to the amounts Mr GG had received "as a "beneficiary"").

135. Mr Plummer told the Tribunal that he had tried to make enquiries about the £12,500 cheque; the endorsement on the rear of the cheque looked like part of a sort code but the position was not clear.

136. Mr Plummer submitted that the duty under the Will to conserve the capital did not mean that the trustees should receive only a nominal amount of interest and that the Respondent had done a good job of investing the Trust money (i.e. the £121,950). Mr Plummer submitted that the Respondent had not had any benefit from the payment of the bank loan and the Trust was now earning interest. Mr Plummer submitted that if the Respondent had got the paperwork right, the transaction would be proper. Mr Plummer accepted that a proper legal charge should have been obtained so that when the property was sold part of the proceeds would go to the Trust. Mr Plummer told the Tribunal that the £121,950 was still an asset of the Trust and that the Respondent's wife could rectify the problem that the restriction on the title was no adequate.

Findings of Fact and Law

137. 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.

138. The Tribunal noted that the Respondent did not dispute the factual matters set out in the FI Reports or the report of Mr Banyard. Appropriate Notices been served by the Applicant with regard to those documents and there had been no counter-notices in response. Further, the Respondent confirmed during the course of the hearing that he did not challenge the facts in those reports although he maintained that the interpretation of some factual matters should not be as set out by the Applicant. In these circumstances, the Tribunal was satisfied that the contents of the two FI Reports and Mr Banyard's report had been proved. The Tribunal noted that Mr Baker and Mr Banyard had given evidence in a measured and careful way, and it was satisfied that their oral evidence was reliable. The Tribunal also noted that the Respondent specifically referred during the hearing to the courtesy which had been shown to him by Mr Baker during the course of the investigation and subsequently by Mr Goodwin.

139. The Tribunal had regard to the case of Weston v Law Society [CO/0225/98] ("Weston") in considering the allegations concerning use of client money. That case made it very clear that an onerous obligation was imposed on solicitors to ensure that client money was safeguarded. Further, the Tribunal noted that the primary purpose of the accounts rules, as varied from time to time, was the protection of client money.

140. The Tribunal noted that the Respondent had had the courtesy to attend the hearing to explain his actions and that he (and Mr Plummer) had conducted the hearing with good grace.

141. The Tribunal had not heard from Mr GG, but a record of his discussions with Mr Baker was included within the case papers. The Tribunal had not heard from Mrs LW, but read and took into account her letter dated 15 February 2015.

142. The Tribunal made a number of findings of fact, which were then applied to the allegations.

Mr HHL's Will and his intentions

143. The Will, which was drafted by the Respondent, and executed in 2000, was clear in its terms as to the distribution of certain legacies and the establishment of a Trust, the capital of which was to be preserved so far as possible, with the interest to be used for charitable purposes. The Will contained no gifts to the Respondent, or to Mr GG. It provided that those undertaking professional duties in relation to the estate could be paid for that work. Mr HHL had died in 2009 and the Respondent and Mr GG were the executors and trustees appointed by the Will.

144. The Respondent had given differing accounts of Mr HHL's intentions. It was noted that the Respondent had not told the Tribunal when Mr HHL had stated those intentions and he had not asserted that there was ever a record of what the Respondent said were Mr HHL's instructions. The Respondent had told the Tribunal that Mr HHL wanted to leave the residuary estate to be divided between the Respondent and Mr GG. He had also told the Tribunal that Mr HHL wanted his estate to be used for charitable purposes, particularly to benefit disadvantaged children. The Respondent had further told the Tribunal that Mr L wanted the Respondent to be "very well paid" for the work he did.

145. The Respondent had told the Tribunal that Mr HHL refused to take independent legal advice and, of course, the Respondent could not draft a Will in which he was left part of the residuary estate. The Respondent had not been able to give any proper explanation of why the estate was not left to Mr GG who could have been a beneficiary under a Will drafted by the Respondent. The Will did not contain any indication that Mr HHL wanted the Respondent and/or Mr GG to benefit from the estate, save that they were entitled to be paid for their work. Further, as executors and trustees appointed by the Will, the Respondent and Mr GG were obliged to put into effect the terms of the Will and not some alternative version of Mr HHL's wishes, for which in any event there was no evidence other than that given by the Respondent.

146. The Respondent's evidence that Mr HHL had wanted his estate to be used to benefit disadvantaged children, particularly by making small donations to local causes e.g. schools and football clubs, was at odds with the Respondent's contention that Mr HHL wanted the estate to be divided equally between the Respondent and Mr GG. Whilst there was no express statement in the Will about the types of charities or organisations to which gifts could be given, the Will was explicit about the residue being used for charitable purposes.

147. The Respondent relied heavily on Mrs LW's letter, in which she recorded that whilst she had no recollection of Mr HHL ever saying he wanted to leave his estate to the Respondent and Mr GG, she recalled that Mr HHL wanted the Respondent to be "very well paid indeed" for dealing with Mr HHL's affairs. Although there had not been the opportunity to test this evidence, the Tribunal could accept that Mr HHL expected the Respondent to be fully and properly paid for the work he did. However, Mrs LW's letter could only reasonably be interpreted as meaning that the Respondent could charge his full rate, and charge for all of the work he did; this was not the same as suggesting that it was proper to "inflate" the costs above the level justified by the work actually done.

148. The Tribunal took note of the Respondent's repeated statements that he was acting in accordance with a version of Mr HHL's intentions. However, the Tribunal determined that the Respondent was bound by the terms of the Will and the only proper way to act was to put into effect the terms of the Will, with regard to the establishment of the Trust and making charitable donations from the Trust income. The Tribunal could not accept that Mr HHL's unevidenced wish that the Respondent should benefit from his estate could override the express provisions of the Will. The Respondent had, correctly, realised that he could not draft a Will for Mr HHL in which he would be a substantial beneficiary. However, his conduct with regard to billing, the use of the £121,950 loan and the payments to himself and Mr GG showed that he was prepared in practice to go behind the Will and receive money which he knew he could not have accepted under the deceased's Will.

149. The Tribunal noted that the Respondent had been consistent in his assertion that he believed he had acted in accordance with Mr HHL's wishes, and therefore that he had acted properly. What was not consistent was his account of what those wishes were. In any event, even if a solicitor believed that Mr HHL had given particular instructions, the Will was the binding document. Any deliberate disregard of the terms of that Will must be improper.

150. The Tribunal noted that the Respondent (and Mr Plummer) had suggested that Mr GG must have been confused when he spoke to Mr Baker and indicated that he had been left money in Mr HHL's Will. The Tribunal was aware from Mr Baker's note that Mr GG was unwell; this was a consistent theme of the Respondent's evidence. What was not clear was whether Mr GG was confused in any way; Mr Baker had told the Tribunal that he had not noted any signs of distress, for example, during their several telephone conversations. Mr GG's letter, set out at paragraph 46.3 above, did not refer to any difficulties in recalling or understanding any issues. The Respondent had told the Tribunal that Mr GG had seen the Will, and indeed had a copy of it, but this was not supported by other evidence.

Payments to the Respondent and Mr GG

151. The Tribunal was satisfied on the evidence that on 8 June 2010 the Respondent issued a cheque to Mr GG for £35,000 and issued a further such cheque on 25 June 2010. The first such payment was noted on the client ledger as being for "expenses and fees".

152. The Respondent sought to justify the first payment by telling the Tribunal that it had been by way of reimbursement of expenses incurred by Mr GG on behalf of Mr HHL during Mr HHL's lifetime and that those various expenses had been set out in a letter, running to several pages, which Mr GG had given to the Respondent shortly after Mr HHL's death. The Tribunal was conscious that it was for the Applicant to prove the case and not for the Respondent to disprove it. Nevertheless, it was significant that: a) the Respondent did not have a copy of the letter at the time of the inspection by Mr Baker in 2012; b) the payment was described on the ledger as for "expenses and fees" when there was no question of there being any "fees" due to Mr GG; and c) Mr GG denied, in his telephone conversation with Mr Baker on 13 April 2012, that he had submitted any invoices or bills to the Respondent for work undertaken for Mr HHL.

153. A payment of £35,000 was a significant payment from the estate. In order to make such a payment, a solicitor/executor would have to be satisfied that it was justified. The Tribunal did not accept the Respondent's evidence that there had been a letter from Mr GG claiming this sum, or any sum; rather, Mr GG had told Mr Baker on the telephone that the payments he had received were due to him under Mr HHL's Will. The Tribunal noted that the Respondent had given evidence that Mr GG had bought food and clothing for Mr HHL, particularly in the last five years or so of his life. To incur expenses at the rate of around £7,000 per annum for someone who was not a family member would be unusual; it was surprising, therefore, that Mr GG appeared to be unaware that he had claimed reimbursement of any such sums. Incurring expenses of up to £35,000 for the deceased was inherently unlikely; cogent evidence of such expenses would be required in order to satisfy the Tribunal that any such payment was properly due. There was no such evidence.

154. The Tribunal found the Respondent's evidence concerning the payments to Mr GG, and other points, to be unreliable for reasons which will be set out further below. However, the Tribunal noted in particular that the Respondent's present explanation of the payment did not accord with what had been recorded on the ledger with regard

to the first payment of £35,000. It further noted that he had asserted in evidence that the letter from Mr GG had been lost by the SRA or in the course of the intervention but had then accepted that he had access to his files at the time of Mr Baker's inspection and had not been able to locate the letter then. He had gone on to tell the Tribunal that he must have put the letter somewhere safe and then forgotten where. It was unusual not to have at least a copy on the relevant file, even if the original were stored elsewhere.

155. Even if there had been a letter from Mr GG setting out expenses he had incurred for Mr HHL, the Tribunal would expect that any such expenses would be scrutinised to ensure that they were truly payable from the estate (rather than, for example, in the nature of gifts to Mr HHL). None of the bill narratives prior to 8 June 2010 referred to any such letter or work done in establishing the liabilities of the estate. The Respondent had not even suggested that there had been receipts or invoices from Mr GG to support the sums in the (supposed) letter. The Tribunal was satisfied that there had been no proper reason for making the first payment of £35,000 to Mr GG; there was no provision for such a payment in the Will and no credible evidence that this amount was a reimbursement to Mr GG.

156. Further, the Respondent had told the Tribunal that he had "rounded up" the payment to Mr GG by a few hundred pounds, above the total set out in the (purported) letter. In this situation, even if there had been actual expenses which could properly be repaid, there was no justification for paying out more than the figure "claimed" by Mr GG.

157. With regard to the second payment of £35,000, the Respondent had offered different explanations. He told the Tribunal that he had sent the second cheque to Mr GG as there had been no record that the first had been cashed; the second was meant to replace the first, which the Respondent thought may have gone astray in the post.

158. However, the Tribunal noted that the Respondent, in the interview with Mr Baker, was recorded as saying:

> "I do remember him (Mr GG) ringing me up and saying he's got a second cheque for £35,000, was it alright, and I said, "Well, I wouldn't have sent it, [Mr GG], unless I thought it was alright", and that's basically what did happen".

It was therefore clear that the Respondent knew that Mr GG had received the first cheque, as well as the second. The Respondent told the Tribunal that he had thought of cancelling the first cheque, but he did not do this or ask Mr GG to return or destroy the second cheque.

159. The Tribunal further noted that in the interview with Mr Baker, the Respondent had agreed that it was possible he had decided to pay the second £35,000 because that was what he thought Mr HHL would have wanted. In his evidence to the Tribunal, the Respondent stated that it did not occur to him that the second £35,000 was "a gift" to Mr GG, or could be seen as part of "divvying up" the estate between himself and Mr GG. The Tribunal found that the Respondent had decided to allow £70,000 to be

paid to Mr GG, at least in part because of what he stated were the deceased's wishes. The Tribunal found that the description of the first payment as for "expenses and fees", even on the Respondent's own evidence, was not accurate. There was no possible justification for the second payment of £35,000; it was not provided for in the Will and on the Respondent's own evidence it was not a reimbursement to Mr GG. Even if the second cheque had been a duplicate, to replace the first, the Respondent had failed to cancel one of the cheques, thereby allowing Mr GG £35,000 more than the amount the Respondent contended could be paid in reimbursement of expenses.

160. The Tribunal noted the Applicant's contention that the total payment to Mr GG was roughly similar to the amount received by the Respondent in "excess" costs and by way of the payment of £12,500 (considered further below) but was not able to determine to the required standard that the payments to Mr GG were a "mirror" of the sums the Respondent had or would receive. The Tribunal noted in particular that the bills prepared before the payments to Mr GG totalled £17,250, with the total received by the Respondent to that point being less than £30,000.

161. The Tribunal noted that the cheque for £12,500, which the Respondent accepted he had written and signed on 8 June 2010, was made payable to the Respondent. However, it was noted in the client ledger as being a payment to Mr GG for "advice". This was clearly an inaccurate description and, until the cheque itself was retrieved through the banking system, it appeared that the payment had been made to Mr GG.

162. The Respondent had been able to offer no explanation at all for this payment. He told the Tribunal that it was not paid into an account in his name, but it was clear on the evidence that the cheque had been processed through the banking system and paid. It was a crossed cheque, which could only have been paid into an account in the name of the Respondent. The cheque was not in settlement of costs – those were taken directly by transferring money from client to office account – and there was nothing in the Will which provided for any such payment to the Respondent. This payment from client account was unjustified and improper.

The Respondent's bills

163. The Tribunal noted that Mr Banyard's report had concluded that the Respondent had overcharged the estate by about £50,000. That report had not been challenged formally by the Respondent, but he had asserted in his evidence that there was work he had done on the estate/Trust matters which had not been recorded, for which he could properly charge. The Tribunal accepted that there may be an element of this, but the absence of proper file records made it impossible to ascertain the extent to which the apparent overcharging was due to under-recording the steps taken on the file. The Tribunal was satisfied that, as reported by Mr Banyard, the narratives to the 16 bills in issue did not provide a proper justification for the costs on the bills. In any event, the Respondent had clearly accepted that part of his charges were in excess of anything which could be justified by the work he had done; he had told the Tribunal, in terms, that his costs had been "inflated". The explanation he had given for this clear overcharging was that he believed it was in accordance with the wishes of the late Mr L. As set out above, the Tribunal did not accept that Mr HHL's wishes were as asserted by the Respondent.

164. Further, as noted above, being paid "very well indeed" did not imply that one could inflate costs above a proper level; rather, if what Mrs LW had written was correct, Mr HHL expected the Respondent to charge his full rate for all of the work done and not to undercharge. Mr HHL had not given express instructions to allow the Respondent to charge whatever he wished and the Respondent had accepted under cross examination that his charges should be in accordance with the usual rules applying to costs. The effective rate for much of the work which had been billed appeared to be £750 per hour; this was well in excess of anything which could properly justified for work on an estate which, so far as could be seen from the papers, was uncomplicated. The Respondent himself had indicated on the file that his charging rate was £250 per hour, and that there was an "uplift" to bring the effective rate to £750 per hour. Even the rate of £250 per hour was quite high for a solicitor carrying out probate/trust work in Yorkshire and a rate of £750 per hour was extraordinary. In the absence of specific agreement by a well-informed client to such a rate being used, it was an excessive rate. There was no evidence of the rate which Mr HHL expected to be applied to work done on his estate and it was reasonable to conclude, therefore, that Mr HHL would expect to be charged within the normal range of hourly rates for the type of work to be done. Further, the Will did not provide for any "excess" costs to be paid. Indeed, the Will provided that the capital in the Trust should be preserved; the Respondent's inflated deductions for costs depleted the capital by around £50,000.

Trust Assets

165. As noted, the Respondent's excess charges reduced the capital available to the Trust. The Tribunal accepted that at the relevant time the interest rates which could be obtained on deposits were low, and so limited income was being generated for the Trust. The Tribunal accepted that the generation of a greater income for the Trust was a legitimate aim, provided that this was done in accordance with the terms of the Will and in particular that the capital was conserved so far as possible.

166. The Tribunal found that in transferring £121,950 from his Firm's client account, the Respondent had paid away part of the capital of the Trust. Whilst the Respondent had argued that he had invested this money on behalf of the Trust, in order to generate an income, and that he had been entitled to do this as a trustee, the Tribunal could not accept this. Instead of investing the money, it had been used to pay off the Respondent's business loan. Moreover, the Respondent did not discuss the proposed use of the Trust money with his co-trustee, Mr GG, until it was drawn to his attention by either his Firm's bookkeeper or the auditors that there was a problem with the transaction. The Respondent had failed to keep the Trust money secure. Although he had argued that the money was safe, it clearly was not. At the time of the transfer, there was nothing in place to protect the £121,950, not even a Deed of Trust. There was still no legal charge in place to confirm the Respondent's wife's obligation to repay the £121,950 on the sale of the property, and there was no mechanism for the Trust to require repayment of the funds into the Trust.

167. The purported Deed of Trust was of no real effect in protecting the Trust's assets and, of course, did not even exist at the time of the transfer. Whilst the Tribunal did not hear clear evidence on the point, it appeared that the Firm's auditors had visited the Firm on or about 6 October 2011 and the date of the Land Registry restriction on the

office premises was 24 October 2011. Whilst the Deed of Trust appeared to be dated 19 August 2011, the Tribunal was satisfied that it was not in fact created until October 2011. There was a period, therefore, of up to two months when the Respondent's co-trustee knew nothing of the payment out of the Trust's capital and there was no documentation to even attempt to regularise the position.

168. Even if the Deed had been created on the date of the transfer, the Tribunal concluded that it was meaningless. It was a document signed by the co-trustees and did not bind the Respondent's wife in any way to secure the Trust's money. It expressed an intention to take a charge on the property, which would be registered at the Land Registry, but this was not done. The wording of the restriction appeared rather odd and, in particular, did not indicate on its face that any money would have to be paid to the Trust on the sale of the property. There was no mechanism whereby the Trust could force a sale of the property in order to release its funds. Further, there was nothing to indicate the actual value of the property. Whilst the Trust Deed referred to the capital used by the Respondent as being "one third value of the property at the date of this Deed", there was no valuation evidence available. The most that could be said was that the bank which had previously held a charge on the property had been content that the charge protected its interests.

169. The Tribunal concluded that the creation of the Deed of Trust, after it was drawn to the Respondent's attention that the transaction was improper, was an attempt to justify the use to which he had put the Trust's money. The Respondent argued that the £121,950 remained a Trust asset. However, the Tribunal concluded that it was not as a) the money was not properly secured and b) it was not available to the Trust unless and until the Respondent's wife chose to sell the property.

170. **Allegation 1.1 - He failed to ensure compliance with the Accounts Rules, contrary to Rule 6 of the Solicitors Accounts Rules 1998 ("SAR 1998") in the period up to 5 October 2011 and/or, from 6 October 2011, Rule 6 of the SRA Accounts Rules 2011 ("AR 2011")**

170.1 The factual background to this allegation is set out in particular at paragraphs 18 to 32 above.

170.2 This allegation was admitted by the Respondent.

170.3 The Applicant's position was that the Respondent was under an obligation to ensure compliance with the Accounts Rules. As a consequence of the breaches identified in the first and second FI Reports, the Respondent had failed to comply with the relevant Accounts Rules.

170.4 The Tribunal was satisfied to the required standard that the breaches of the Accounts Rules set out in the FI Reports had been proved. This included: the transfer of £121,950 from client account in relation to the HHL Memorial Trust in August 2011 (when the SAR 1998 were in force) and the existence of a cash shortage of £154,146.18 as at 29 February 2012 (caused by a failure to deliver bills of costs to the value of £71,646.18 and the transfers from client to office account to the Respondent and Mr GG in the sum of £82,500).

170.5 The Tribunal was satisfied that there had been breaches of the relevant Accounts Rules (both before and after the AR 2011 came into force) and that the Respondent, as the sole principal of the Firm, had failed to ensure compliance. The Tribunal was therefore satisfied to the required standard, on the admission and on the evidence, that this allegation had been proved.

171. **Allegation 1.2 - He failed to remedy the accounts rule breaches promptly upon discovery, contrary to Rule 7 of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011, Rule 7.1 of the AR 2011**

171.1 The factual background to this allegation is set out in particular at paragraphs 18 to 32 above.

171.2 This allegation was admitted by the Respondent.

171.3 The Applicant's position was that the Respondent was under a duty to remedy any breach of the Accounts Rules promptly upon discovery, including replacing any money improperly withdrawn from client account, and he had failed to do so. The second FI Report noted continuing breaches and that the cash shortage identified in the first FI Report had not been replaced, some 7 months after the shortage was discovered. Indeed, the Tribunal noted that the shortage had not been repaid by the time of the intervention into the Respondent's Firm, in July 2014.

171.4 The Tribunal was satisfied to the required standard on the facts and on the admission that this allegation had been proved.

172. **Allegation 1.3 - He withdrew and/or transferred money from client bank account, contrary to Rule 19(2) of the SAR 1998**

172.1 The factual background to this allegation is set out at paragraph 19 above.

172.2 The Respondent denied this allegation formally, although in his evidence he made some concessions.

172.3 The Applicant's position was that the Respondent had transferred monies in respect of costs from client to office bank account without delivering a bill of costs or written intimation of costs to his co-executor/co-trustee, Mr GG. During the period May 2010 to September 2011, the Respondent raised 16 bills totalling £71,646.18. The FIO saw no evidence on the client matter file that any of the bills of costs had been delivered to Mr GG.

172.4 The Tribunal noted that the Respondent had contended that as he was a co-executor and trustee, and he was aware of the bills, it was not necessary to send the bills to his co-executor/trustee, Mr GG. The Tribunal rejected this contention. The co-trustee should have been sent the bills, whether or not he wished to receive them. Where a solicitor was a trustee/executor of an estate, it was important that the solicitor should act with openness and complete transparency, particularly where (as in this instance) there were no residuary beneficiaries who would be able to check or challenge the level of costs.

172.5 In the course of his evidence, the Respondent admitted that he was aware of the Accounts Rules which provided that money for costs could only be transferred after delivery of a bill or written notification of the costs. The Respondent told the Tribunal that he accepted it was his responsibility to comply with the Rules and that he accepted, in hindsight, that he should have sent the bills to Mr GG. The Respondent also admitted that he had acted in breach of Rule 19(2) SAR 1998, but denied dishonesty.

172.6 The Tribunal was satisfied to the required standard that this allegation had been proved. There could be no doubt that the Respondent had transferred money for his costs from client account to office account without delivering the bills to his co-trustee/executor.

173. **Allegation 1.4 - He withdrew and/or transferred monies from client bank account, other than as permitted by Rule 22 of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011, Rule 20.01 of the AR 2011**

173.1 The factual background to this allegation is set out in particular at paragraphs 20 to 26 above.

173.2 The Respondent admitted this allegation.

173.3 The Applicant's position was that the Respondent made inappropriate withdrawals from client bank account, in breach of the SAR 1998 and in so doing misappropriated and utilised client's funds for his own benefit and/or the benefit of another; the Respondent knew that to do so was wrong, but proceeded regardless.

173.4 The Tribunal noted that, despite his formal admission of the allegation, the Respondent in his evidence sought to justify the two payments of £35,000 to Mr GG. He was not able to offer any explanation at all for the payment to himself of £12,500.

173.5 As noted above, at paragraphs 151 to 162, the Tribunal was satisfied that there was no justification for either payment to Mr GG or the payment of £12,500 to the Respondent. Accordingly, the transfers were in breach of the Accounts Rules and this allegation had been proved on the evidence and on the admission.

174. **Allegation 1.5 - Contrary to Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC 2007"), he took advantage of a client by making a claim for costs which he knew he could not justify**

174.1 The factual background to this allegation is set out at paragraphs 27 to 32 above.

174.2 The Respondent denied this allegation, on the basis that he believed he acted in accordance with the wishes of Mr HHL deceased. The Applicant's position was that the Respondent had made a claim for costs which he knew he could not justify and that in so doing he misappropriated client funds and used the same for his own benefit.

174.3 The Tribunal found, so that it was sure, that the Respondent had overcharged by something in the region of £50,000, as noted above, at paragraphs 163 to 165.

174.4 The Respondent had asserted that his charges were in accordance with the wishes of Mr HHL deceased but the Tribunal rejected this. There was no verifiable evidence of Mr HHL's wishes, save as set out in the Will. The letter from Mrs LW, at best, suggested that the Respondent was entitled to be paid, "very well indeed" for his work but the Tribunal found that this could only mean that the Respondent could be paid at his proper, full rate for the work he actually and reasonably did in relation to the estate; it did not mean he could "inflate" his costs to an unjustified level.

174.5 The Respondent had offered inconsistent explanations for the overcharging. On the one hand, he had suggested that he had done more work than was recorded on the file; on the other, he had suggested he was entitled to costs at the level he had charged because of Mr HHL's wishes. In the interview with Mr Baker, the Respondent had accepted that he had had in mind Mr HHL's wish that the Respondent and Mr GG should "cut it down the middle and have half each". The Respondent had accepted the Tribunal's suggestion to him that he appeared to be asserting that some costs above £21,000 or thereabouts would have been justified by the work done but that he had added some costs to those which could properly be charged. The Respondent had maintained that he felt the charges were about right for the work he had done, whilst accepting that his charges went beyond a proper fee. The level of costs could not be justified, and the Respondent knew that his claim for costs could not be justified.

174.6 The Tribunal considered whether the overcharging amounted to taking advantage of a client. In this case, the client was the estate of Mr HHL and the Trust, of which the Respondent and Mr GG were trustees and executors; their duty was to put into effect the wishes of Mr HHL, as set out in his Will. The Will provided that the capital of the estate should be conserved, so far as possible, and the income used for charitable purposes. Overcharging the estate depleted the capital of the Trust, in breach of Mr HHL's expressed wishes. As Mr GG was unaware of the costs being charged, he was not in a position to challenge those costs. The Tribunal was satisfied that in depleting the capital in the Trust in breach of Mr HHL's expressed wishes, where there was no effective check on his actions, the Respondent had taken unfair advantage of the client.

174.7 The Respondent had acted without integrity in choosing to inflate his costs. He had allowed his independence to be compromised, as he had put his own interests ahead of those of the Trust. Clearly, the Respondent had not acted in the best interests of Mr HHL's estate and the Trust. Further, deliberate overcharging was conduct which would diminish the trust the public would place in the Respondent and in the provision of legal services. The Tribunal was satisfied to the required standard that this allegation had been proved.

175. **Allegation 1.6 - Contrary to Rule 1.02, 1.03, 1.04, 1.05 and 1.06 of the SCC 2007 and/or Rule 22 of the SAR 1998 he withdrew funds from client bank account belonging to a Trust of which he was Co-Trustee and utilised the funds for his own benefit**

175.1 The factual background to this allegation is set out at paragraphs 33 to 38 above.

175.2 The allegation was denied by the Respondent on the basis that the funds were used in accordance with Mr HHL deceased's wishes. The allegation was based on the Respondent's transfer of £121,950 in August 2011 from the Trust account on the Firm's client account, which sum was then used to repay the Respondent's business loan.

175.3 The Applicant's position was that in withdrawing the sum of £121,950 from client bank account, the Respondent acted in breach of the Accounts Rules and took unfair advantage of the Trust, particularly having regard to his status as co-executor and co-trustee. Further, in utilising the funds for his personal benefit, the Respondent acted when his own interests conflicted with those of the Trust. The Respondent conceded that he did not advise or discuss this matter with Mr GG until after the transfer had taken place. In any event, it was argued, the transfer of £121,950 and use of that money by the Respondent did not comply with the terms of the Will. The Trust provided that the capital amount should be conserved, so far as possible, and the interest used for charitable purposes. It was alleged that the Respondent misappropriated and utilised client funds for his own benefit and where a conflict existed between his own interests and those of the Trust.

175.4 The Respondent's evidence was that he believed he was acting in accordance with Mr HHL's wishes, and in particular that he was able to generate more income for the Trust by repaying the loan to the bank and then paying interest to the Trust. However, the Will provisions did not expressly permit him to take loans from the Trust.

175.5 The Tribunal considered the Respondent's contention that the withdrawal of the funds was to purchase an investment and so was permitted by the relevant Accounts Rules. However, the money was not used for an investment; it was used to pay the Respondent's debt to his bank. There was no mechanism in place at the time of the transfer to secure the Trust's money in any way, and – as noted above – the "Deed of Trust" and restriction which appeared to have been procured later were wholly inadequate in protecting the Trust's capital.

175.6 The Tribunal noted the Respondent's evidence that he had not considered that there was a benefit to him and that he had simply wanted to generate income for the Trust. Whatever the Respondent had thought about the transaction, he had received a personal benefit. The interest he paid to the Trust was less than the interest he had been paying to the bank. Further, the bank's charge on the property was lifted and was not replaced by a charge in favour of the Trust; as commented above, the restriction appeared to be inadequate as a means to ensure the Trust's capital was properly protected or could be released back to the Trust fund when required.

175.7 The Tribunal was satisfied that the Respondent withdrew the funds and used them for his own benefit. The Respondent had accepted in his letter to the SRA on 1 July 2014 that there may have been a breach of the Accounts Rules but the problem was one of timing rather than anything else. The Tribunal did not accept this. At the time of the transfer, the Respondent was aware that he could only use Trust monies for the purposes of the Trust but he chose to withdraw the money in breach of the Accounts Rules and without consulting his co-trustee. In making the withdrawal, which was for his own benefit, in breach of the Accounts Rules, the Respondent had displayed a lack of integrity. His independence had been compromised as he had allowed his own

interests to take precedence over the Trust. In doing so, whilst the Respondent may have had in mind the need to generate more income for the Trust, he had in practice failed to act in the best interests of the estate/Trust and had failed to provide a proper standard of service to the Trust. In addition, withdrawing money from the Trust and using it for his own benefit was conduct which would tend to diminish the trust the public would place in the Respondent and the provision of legal services. The Tribunal found this allegation proved to the required standard.

176. **Allegation 1.7 - He acted in a conflict situation contrary to Rule 3.01(1) and (2)(b) of the SCC 2007 in the period up to 5 October 2011 and/or contrary to all, alternatively any, of Principles 2, 4 and 6 of the SRA Principles 2011 and thereby failed to achieve outcome O(3.4)**

176.1 The factual background to this allegation is set out in particular at paragraphs 33 to 38 above and related to the use of £121.950 by the Respondent.

176.2 The allegation was denied by the Respondent.

176.3 The Respondent denied that there was a conflict of interest; indeed, in the course of giving evidence he did not accept that there was always an inherent conflict of interest when a solicitor loaned money to a client or a client loaned money to a solicitor. It was troubling that the Respondent could not recognise that taking a loan from a client would create a conflict of interest and that great care would have to be used before proceeding with the loan.

176.4 The Tribunal had no doubt that there was a conflict between the interests of the Respondent and the Trust. The Respondent had used the Trust's money for his own benefit and without safeguarding the interests of the Trust in any way at all until October 2011; even when he prepared some documentation to deal with the matter it was wholly inadequate. The Respondent had not even consulted his co-trustee about the transaction and only did so when the irregularity of the loan was pointed out to him.

176.5 There was no doubt that the Respondent had acted in breach of Rules 3.01(1) and (2)(b) of the SCC 2007 in the period in which the loan was taken. After 6 October 2011, the Respondent did not recognise there was a conflict of interest and continued to fail to protect the Trust's interests. The Tribunal was satisfied that by October 2011, the impropriety of the loan had been pointed out to him; rather than repaying the money, he prepared a Deed of Trust and then failed to register a charge, as envisaged within the Deed. The Respondent knew that he was acting improperly by October 2011, if not before, and in continuing to act as he did he displayed a lack of integrity, failed to act in the best interests of the Trust and acted in a way which would diminish the trust the public would place in him and the provision of legal service. The Tribunal was satisfied to the required standard that this allegation had been proved.

177. **Allegation 2 - It was alleged that with respect to allegations 1.3, 1.4, 1.5 and 1.6, the Respondent had acted dishonestly according to the combined test laid down in <u>Twinsectra v Yardley</u> [2002] UKHL 12 ("<u>Twinsectra</u>"), under which it was required that the person (the Respondent) acted dishonestly by the ordinary**

standards of reasonable and honest people and realised that by those standards he was acting dishonestly.

177.1 The Tribunal noted and accepted that in considering the allegations of dishonesty, the test to be applied was that set out in Twinsectra v Yardley [2002] UKHL 12 ("Twinsectra"), as applied to disciplinary proceedings by Bultitude v Law Society [2004] EWCA Civ 1853("Bultitude"). The latter case in particular made it clear that in order to prove dishonesty in relation to misuse of client money it was not necessary to show that there was any intention permanently to deprive the client(s) of their money. What was important was whether the solicitor took the money knowing that it was wrong to do so, whether or not there was an intention to repay it.

177.2 The Twinsectra test required that before there could be a finding of dishonesty against a solicitor, the Tribunal had to be satisfied that the solicitor had acted dishonestly by the ordinary standards of reasonable and honest people and that the solicitor realised that by those standards he was acting dishonestly.

177.3 The Tribunal had found proved each of the basic allegations to which the allegation of dishonesty was applied, and went on to consider whether the facts and matters proved were sufficient to make a finding of dishonesty. In considering whether the Applicant had discharged the burden of proof, the Tribunal considered carefully whether the Respondent's explanations and evidence were credible, and it assessed his overall reliability as a witness.

177.4 The Tribunal found that in his evidence, and the explanations he had given to Mr Baker during the investigation, the Respondent had been implausible and hugely inconsistent. The Respondent stated that he was acting in accordance with the late Mr HHL's wishes, but he had no proper basis for either that belief or that any such belief could override the express provisions of Mr HHL's Will.

177.5 The Tribunal noted that the Respondent's approach to Mr GG's role was inconsistent. On the one hand, he had suggested that Mr GG was too ill to be involved and that he did not want to be involved; he had suggested this in the context of his explanation for not sending bills to Mr GG and not discussing with him the loan of £121,950. On the other hand, the Respondent had relied on Mr GG's desire to be involved in distributions from the Trust as a reason for not making any payments out from the Trust, even from August 2011 when the Trust was receiving income of around £400 per month. The Trust had not made any distributions by the time of the intervention, in July 2014. The Tribunal noted that whilst the Respondent had not discussed the loan of £121,950 with Mr GG before the transaction took place, ostensibly because Mr GG was too ill, the Respondent had been able to contact him and secure his attendance at the office to sign the Trust Deed some time later. It seemed that it had not occurred to the Respondent that Mr GG could be replaced as a trustee if he was unable or unwilling to fulfil his duties.

177.6 The Respondent had not been able to give any explanation of the payment of £12,500 in a cheque payable to himself; this was hard to accept, as a trustee should be aware of what payments have been made and for what reason and should keep appropriate records. The Respondent had given differing accounts of why Mr GG had been paid two cheques of £35,000 each. He had been unable to produce anything to support his

assertion that Mr GG had incurred significant expenses on behalf of Mr HHL and/or had claimed any reimbursement; Mr GG himself had denied making any claim on the estate for expenses and had instead referred to being left money under the Will. The Tribunal proceeded with care with regard to Mr GG's position, as nothing had been heard from him directly either on behalf of the Applicant or the Respondent. The Tribunal accepted that Mr GG's conversations with Mr Baker had been accurately recorded in the notes made by Mr Baker and what Mr GG had said was not consistent with the Respondent's evidence.

177.7 The Respondent had been inconsistent with regard to what had happened to the supposed letter from Mr GG concerning expenses. His explanation that it had been lost by the SRA was incredible, and he had subsequently accepted that he had had possession and control of his files at the time of the investigation. Whilst the Respondent had referred to one specific example of the expenses incurred by Mr GG – for six pairs of underpants for Mr HHL – he had been unable to give any details of the items which could have lifted that claim to almost £35,000. The Respondent had not asserted that there had been receipts or invoices on the file at any time; this would be expected for any large items of expenditure.

177.8 When giving evidence, the Respondent had adopted his written Answer in which he explained the payments to himself and Mr GG as,

> "In line with [Mr HHL's] wishes, both myself and [Mr GG] were convinced that [Mr HHL's] intention was that we should both be very well paid for dealing with his affairs."

The explanation offered in oral evidence, that the second payment was made because he was told by an accountant that the first payment had not been cashed, had not previously been advanced. In any event, if it was a duplicate payment, it was improper of the Respondent not to cancel one or other of the cheques. The Respondent's reported telephone conversation with Mr GG confirmed that Mr GG had received both cheques; there could be no doubt that the Respondent knew Mr GG had been sent £70,000 in total and that he sanctioned that payment.

177.9 The Respondent had also been inconsistent with regard to how he had calculated his costs. He had accepted that he had inflated his costs, even if he had undertaken some work which was not recorded on the file. The Respondent had not challenged Mr Banyard's report, and yet tried to maintain that he believed the costs figures charged were about right, in the light of Mr HHL's wishes.

177.10 With regard to those wishes, the Respondent had told the Tribunal that he was aware he could not draft a Will in his own favour, and that Mr HHL would have to take independent legal advice. He told the Tribunal that Mr HHL refused to do so. The Respondent had drafted the Will and so was well aware of its terms. Nevertheless, he appeared in his evidence to suggest that he was able to go behind the terms of the Will and act on what he asserted were Mr HHL's (unevidenced) wishes. The Tribunal could accept that Mr HHL had wanted the Respondent to be well paid, but that could only mean properly and fully paid and that wish could not properly be taken to mean that the Respondent could pay himself whatever he liked. Indeed, the Tribunal noted

that in his evidence the Respondent conceded that he was to be paid in accordance with the usual rules concerning costs. The Respondent had both accepted in evidence that he could not take any monies under Mr HHL's Will and yet tried to justify making payments of excess costs to himself by reference to Mr HHL's intentions. This approach was inconsistent and unacceptable.

177.11 The Tribunal noted also that the Respondent had submitted that his non-compliance, in particular with regard to the loan of £121,950, was caused by his poor paperwork and that all would have been in order if he had prepared the documents in the right order. The Tribunal could not accept this; the loan transaction was obviously and fundamentally flawed, and the Respondent had not thought it through properly or considered his obligations at the time he chose to borrow money from the Trust. This was a more significant problem than merely failing to organise the appropriate paperwork. The Respondent still did not appear to accept that he should not have taken the Trust's money in the way he did or that he had later failed to protect the Trust.

Allegation 1.3

177.12 During the period May 2010 to September 2011, the Respondent raised 16 bills of costs totalling £71,646.18 relating to the administration of the estate of the late Mr HHL and the subsequent administration of the Trust. There was no evidence on the client file to indicate that any of the bills had been delivered to the co-trustee/co-executory, Mr GG. During interview on 17 May 2012, the Respondent confirmed that he had not delivered any of the bills to Mr GG.

177.13 Rule 19(2) of the SAR 1998 provided that if a solicitor properly required payment of his fees from monies held for a client or trust in a client account, he must first give or send a bill of costs or other written notification of the cost incurred to the client or paying party. The Respondent failed to deliver any bill of costs or other written notification of his costs to Mr GG prior to transferring his costs from client to office bank account. As such, the Respondent made improper withdrawals from client bank account in the sum of £71,646.18.

177.14 The Applicant alleged that in transferring his costs from client to office bank account without having delivered a bill of costs or other written notification of the costs incurred to his co-executor/co-trustee, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. Not only was his conduct in transferring costs without having delivered the bills or written notification of costs to Mr GG dishonest by the ordinary standards of reasonable and honest people, the Respondent must also have been aware that it was dishonest by those standards. The Respondent took a conscious decision to transfer costs without having delivered a bill of costs or other written notification of the cost incurred to Mr GG.

177.15 The Respondent denied that he had acted dishonestly. He accepted that he should have sent the bills to Mr GG, but contended that Mr GG was too ill and was not interested in the estate/Trust and so there was no point in sending the bills to him. Further, the Respondent had suggested that he was the client, as one of the executors/trustees and he was necessarily aware of the bills.

177.16 For the reasons set out at paragraph 172 above, the Tribunal was satisfied that the allegation had been proved. However, the Tribunal was not satisfied that the reasonable and honest person would see the failure to send bills as necessarily dishonest, absent some other factors such as an attempt to conceal matters from Mr GG. The mere fact the bills were not delivered may not be seen as dishonest, and in the light of the Respondent's explanations the Tribunal could not be sure that he realised at the time that not sending the bills was necessarily improper, let alone could be dishonest. Accordingly, the Tribunal was not satisfied to the required standard that the Respondent's conduct in relation to allegation 1.3 was dishonest.

Allegation 1.4

177.17 The Applicant alleged that the Respondent improperly withdrew money from client bank account without authority and in breach of SAR 1998, totalling £82,500 as follows:

- 8 June 2010 - £12,500. The narrative to the payment indicated payment was made to Mr GG ("Memorial Trust Fund – Advice"), when in fact it was made to the Respondent;
- 8 June 2010 - £35,000 paid to Mr GG, said to be in respect of "expenses and fees";
- 25 June 2010 - £35,000 paid to Mr GG.

177.18 It was alleged, and the Tribunal found, that there was no proper basis on which those monies could be withdrawn from client account. The only justification offered by the Respondent was that the withdrawals were in accordance with Mr HHL's wishes. It was alleged by the Applicant that the terms of the Will did not reflect such wishes and that no evidence had been produced to support the Respondent's assertion. It was alleged that the withdrawals were in breach of Rule 22 SAR 1998 and Rule 20.01 AR 2011, and the Tribunal had so found.

177.19 The Applicant alleged that in withdrawing the sums totalling £82,500 the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. Not only was his conduct in withdrawing the above sums from client bank account dishonest by the ordinary standards of reasonable and honest people but the Respondent must also have been aware that it was dishonest by those standards.

177.20 The Tribunal noted the Respondent's explanations, but found them to be inconsistent and implausible. The Tribunal was satisfied that when he made the payments to himself and Mr GG, the Respondent knew there was no basis under the Will to do so. He may have convinced himself that there was some entitlement not set out in the Will, but as a solicitor executor of the Will he knew that he must act in accordance with the Will. The Respondent had misdescribed on the ledger the payment to Mr GG on 8 June 2010 as being for "expenses and fees"; even on the Respondent's case, this payment did not incorporate any fees. Further, the Respondent had misdescribed the payment on 8 June 2010 of £12,500 on the ledger as being to Mr GG, whereas the Respondent had written and signed the cheque as payable to himself. These misdescriptions supported the view that the Respondent had sought to cover up what he did, as he knew he was not acting in accordance with the Will."

177.21 The Tribunal found that in making payments to himself and Mr GG which were not justified (for the reasons set out in detail in relation to allegation 1.4 above), the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Further, the Respondent knew at the relevant time that his conduct was dishonest by those same standards.

Allegation 1.5

177.22 The Respondent raised 16 bills of costs totalling £71,646.18 in the period May 2010 to September 2011. The FIO recovered all of the files, documents and ledgers relating to Mr HHL and the Trust for the purpose of seeking a costs lawyer's opinion as to the quantum of fees charged in the matter. The report of Mr Banyard of JM Hayes Ltd recorded:

> "It has been extremely difficult for me to arrive at accurate figures for work actually undertaken in this matter given the extreme paucity of recorded time on the file. Nevertheless, I consider the amount which has been charged cannot conceivably represent work actually undertaken given the enormous discrepancy between the sums charged and the figures I have reached.
> It is quite clear that the charges raised represent an over charge. Some £71,646.18 has been charged to this estate in total in respect of profit costs whereas the maximum figure I have come to is £20,509.27. There would appear to be an overcharge of at least £51,136.91."

177.23 During the interview with the FIO on 17 May 2012, the quantum of fees charged in relation to the administration of the estate and the Trust was discussed. The Respondent was noted to have said:

> "… the fact that what [Mr HHL] wanted [Mr GG] and I to do which was to cut it down the middle and have half each, now that was on my mind, there's no doubt about that. I'd be an idiot to deny that was the case. So we come back to the point there's a specimen of that within those bills as there was with payments to [Mr GG], no hesitation in saying that".

The transcript of the interview recorded that the FIO said, "So, to be clear, you're saying that the bills in some way were inflated to take into account the wishes of [Mr HHL]". The Respondent replied:

> "I wouldn't say inflated. The view was that [Mr HHL] wanted [Mr GG] and I to benefit from his estate and we would not let him give us those instructions. Now I realise what I'm saying, it might be pulling the rope around the neck from your point of view, but I want to tell you how I thought, how I've always thought. You're open to have any explanation and I would give you an honest explanation as I see it".

The FIO said, "So if you don't like the word "inflated" what would you use?" to which the Respondent replied:

> "Very difficult to find another word. In other words, to put into effect [Mr HHL's] view that he wanted [Mr GG] and I to have something out of it, originally the lot which is totally out of the question… Yeah, I would, I am not going to deny it".

177.24 The Applicant's position was that in making a claim for costs which he knew he could not justify, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people and he must have been aware that his conduct was dishonest by those same standards. The Respondent took a conscious decision to inflate the level of his costs and in so doing he acted dishonestly.

177.25 The Tribunal considered carefully the Respondent's explanations. It could find no credible or reasonable justification for inflating the costs by about £50,000, as set out at paragraphs 163 to 165 above. The Tribunal found that in overcharging the estate/Trust, when he knew the costs claimed could not be justified, the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people. Further, as he knew the costs he billed were not justified, the Respondent was dishonest by those same standards.

Allegation 1.6

177.26 The Trust, of which the Respondent and Mr GG were co-trustees, was set up following the death of Mr HHL, with directions that the trustees conserve the capital so far as possible and use the interest for charitable purposes.

177.27 The client ledger account for the matter recorded a payment out of client account of £121,950 on 19 August 2011. The narrative for the payment stated, "PC – [HHL] investment trust re property".

177.28 The payment of £121,950 was used by the Respondent to pay off a business loan account opened on 30 June 2010 in the sum of £120,000 (plus £1,950 lending fee charge); this loan was attributable to the Respondent. The Respondent told Mr Baker in interview on 17 May 2012 that the loan was secured by way of a charge against the business premises of the Firm and that the registered proprietor of the property was the Respondent's wife. The Respondent also confirmed that in making the transfer on 19 August 2011 the bank's charge against his wife's property was released. The Respondent stated that the transfer was in accordance with a Deed of Trust, purportedly made on 19 August 2011. The Respondent accepted during interview on 17 May 2012 that the contents of the Deed of Trust were not discussed with Mr GG until after the transfer had been effected. The Respondent also accepted that the Deed of Trust was not signed until after the event and the Tribunal found it was most likely that it was signed during October 2011.

177.29 During the interview with Mr Baker on 17 May 2012, the Respondent stated,

> "I'll freely accept that with hindsight it's injudicious, I've said that all along and I wished in many ways I hadn't done it, but that is really as far as perhaps I ought to go on that".

177.30 The Applicant's position was that in transferring the sum of £121,950 on 19 August 2011 for his own benefit and without having discussed the matter with Mr GG, his co-trustee, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people and he must have been aware that it was dishonest by those standards.

177.31 The Tribunal considered carefully the Respondent's explanations, including his assertion that he had not considered there was a benefit to him and that his sole motivation was to generate an income for the Trust. The Tribunal found it incredible that the Respondent did not appreciate there was a considerable benefit to himself and his wife in a) releasing the charge on the business premises and b) paying interest at a lower rate than he was paying to the bank. The Respondent had not achieved what he said he wished to achieve, which was protecting the Trust's capital; the sum of £121,950 was paid away with no security being put in place for return of that money. The Tribunal noted and found that the Respondent had not discussed the transaction with his fellow trustee, Mr GG. Not to do so, when it was later possible to obtain Mr GG's signature to the Deed of Trust, showed that the Respondent was aware that the transaction was improper and that he wished to conceal it. Indeed, the Respondent took no steps to draw it to Mr GG's attention until his auditors pointed out that the transaction was improper. It was not just a question of having to prepare documents and execute them in the right order; the Respondent had embarked on a transaction which was fundamentally flawed.

177.32 The Tribunal found that in making the transfer as he did, the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people and that the Respondent knew that this improper transfer was dishonest by those same standards.

177.33 The Tribunal found, so that it was sure, that the allegation of dishonesty had been proved with regard to allegations 1.4, 1.5 and 1.6.

Previous Disciplinary Matters

178. There was one previous matter in which findings had been made against the Respondent.

179. In matter number 7517/1997, heard on 7 May 1998, the Respondent admitted a number of matters, which were found proved and he was ordered to pay a fine of £1,000 and costs of £5,904.40. The Tribunal noted that all of the allegations on that occasion related to breaches of the accounts rules which were then in force and included allegations that: he failed to pay into client account clients' money in the course of his practice as a solicitor; and he had drawn from client account clients' money other than in accordance with the provisions of the Rules and had utilised the same for his own benefit, alternatively for the benefit of other clients not entitled thereto.

180. The Tribunal noted that the mitigation advanced by the Respondent at the previous hearing included that he had been let down by members of staff with regard to maintaining the Firm's accounts, and that he had learned his lesson.

Mitigation

181. The Respondent thanked the Tribunal for its finding that he had not been dishonest, with regard to allegation 1.3. The Respondent told the Tribunal that he now thought he had continued in practice beyond the time he should have continued. The Respondent told the Tribunal that he had wanted to help other people but he had not taken sufficient notice of the regulations which applied; to take full account of the regulations was not in his nature. The Respondent told the Tribunal that he was ashamed to be at the Tribunal in these circumstances.

182. The Respondent's attention was drawn to the Tribunal's Guidance Note on Sanction (December 2014) and in particular the case of SRA v Sharma [2010] EWHC 2022 Admin ("Sharma"), which made it clear that the usual and proportionate sanction in a case of dishonesty was a striking off order, save where there were exceptional circumstances. The Respondent thereafter told the Tribunal that he had had no wish to deprive anyone of anything; his actions had been about creating wealth for the trust. The Respondent accepted that he did not have sufficient paperwork. The Respondent told the Tribunal that he had had to attend to put forward his position and he was grateful that the Tribunal had found partly in his favour.

Sanction

183. The Tribunal had regard to the Tribunal's Guidance Note on Sanction (December 2014) and in particular the case of Bolton v Law Society [1994] 1 WLR 51 ("Bolton"). It considered the matters before it to be of the highest level of seriousness.

184. The Tribunal had found the Respondent to be dishonest with regard to three allegations. He had used his position as a trustee and executor under Mr L's Will to benefit himself, over a period of several years. The public's trust in the profession would be seriously undermined by the Respondent's actions in overcharging, and using Trust money for his own benefit and that of Mr GG.

185. The Respondent had not submitted that there were any exceptional circumstances and the Tribunal could not find that there was anything exceptional in this case. In the circumstances, the only reasonable and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

186. The Tribunal noted that the proven allegations were serious, even without the finding of dishonesty. The previous findings against the Respondent did not have to be considered in any detail, as dishonesty had been proved in this case, but the Tribunal was concerned that the Respondent did not appear to have learned the importance of compliance with the relevant Accounts Rules. The seriousness of the proven allegations, and the fact that the Respondent had previous findings against him for Accounts Rules breaches, would have suggested that a sanction at the upper end of the range available to the Tribunal would have been appropriate, even if dishonesty had not been proved.

Costs

187. Mr Goodwin made an application for costs on behalf of the Applicant, in the total sum of £34,752.28 as set out in a costs schedule. This included forensic investigation costs of £13,191.88, of which £8,879.94 was claimed for the first investigation and report and the remainder for the second investigation and report. The Tribunal noted that the costs as at the date of issue of these proceedings were said to be £21,287.08.

188. Mr Goodwin told the Tribunal that the Respondent did not seek to argue about the amount of costs, but in the light of his means may seek an order that the costs should not be enforced without the permission of the Tribunal.

189. The Respondent had provided a recent statement of his financial circumstances, which was not challenged by the Applicant, and which indicated that his financial position was very poor. The Respondent did not make any submissions with regard to the quantum of costs.

190. The Tribunal accepted that for a solicitor advocate of Mr Goodwin's experience, an hourly charging rate of £230 was reasonable, and the use of a solicitor such as Mr Goodwin avoided the need for counsel's fees. However, the Tribunal in assessing the costs considered that the time spent on perusal and preparation of documents, together with preparing for and attending the hearing, appeared to be a little high. Further, the costs schedule set out an estimated length of hearing of 16 hours, whereas the hearing would be concluded within 10 hours. The Tribunal also noted that the investigation costs included over 20 hours of travelling time; this appeared excessive.

191. The Tribunal determined that the reasonable and proportionate amount of costs to be allowed in this case was £30,000 (inclusive of VAT and disbursements).

192. The Tribunal then considered what order should be made, given the Respondent's poor financial position. The Tribunal determined that in this case it would be appropriate to award the Applicant the full amount of the costs as assessed (without further deduction because of the Respondent's means) but order that the costs could not be enforced without the permission of the Tribunal.

Statement of Full Order

193. The Tribunal Ordered that the Respondent, PHILIP CROWE, 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 £30,000.00, such costs not to be enforced without leave of the Tribunal.

Dated this 21st day of October 2015
On behalf of the Tribunal

J. Martineau, Solicitor Member
On behalf of L. N. Gilford, Chairman