SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11373-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

EDGAR STEPHEN GEORGE THOMAS Respondent

Before:

Miss J. Devonish (in the chair)
Mr P. Housego
Mr S. Marquez

Date of Hearing: 14 -16 March 2016

Appearances

Mr Edward Levey, barrister of Fountain Court Chambers, Fountain Court, Middle Temple Lane, London EC4Y 9DH instructed by Daniel William Robert Purcell, solicitor of Capsticks Solicitors LLP of 1 St George`s Road, London, SW19 4DR, for the Applicant

The Respondent appeared and represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent, Edgar Stephen George Thomas, on behalf of the Solicitors Regulation Authority ("SRA") were that whilst in practice as Steve Thomas and Co ("the Firm") he:

1.1 failed to provide adequate or accurate information to clients about likely overall costs at the outset of matters or throughout the conduct of them where required, and thereby breached Rules 1(a) and/or 1(e) and/or 1(d) and/or 15 of the Solicitors Practice Rules 1990 ("SPR") and/or the Solicitors Costs Information and Client Care Information Code 1999 ("SCICCIC 1999") and/or Rules 1.02 and/or 1.05 and/or 1.06 and/or 2.03(1) of the Solicitors Code of Conduct 2007 ("SCC 2007") and/or Principles 2 and/or 5 and/or 6 of the SRA Principles 2011 ("the Principles") and further or alternatively failed to achieve outcome O(1.13) of the SRA Code of Conduct 2011 ("SCC 2011");

1.2 failed to provide adequate or accurate information to clients about the basis of calculation of costs where required and thereby breached Rules 1(a) and/or 1(e) and/or 1(d) and/or 15 of the SPR and/or the SCICCIC 1999 and/or Rules 1.02 and/or 1.05 and/or 1.06 and/or 2.03(1)(a) of the SCC 2007 and/or Principles 2 and/or 5 and/or 6 of the Principles and further or alternatively failed to achieve outcome O(1.13) of the SCC 2011;

1.3 transferred sums from his Client Account to his Office Account in respect of his fees otherwise than in accordance with Rule 19 of the Solicitors' Accounts Rules 1998 ("SAR 1998") and/or Rules 17.2 and/or 20.1 of the SRA Accounts Rules 2011("SAR 2011"), in that:

1.3.1 sums transferred were not properly required in payment of the Respondent's fees; and/or

1.3.2 a bill of costs or other written notification of the costs incurred had not been given or sent where required;

1.4 made transfers from Client Account to Office Account of sums which were in excess of those which might properly be charged for the work undertaken, which did not reflect the work actually undertaken, and which were not fair and reasonable, and thereby breached Rule 1(a) of the SPR and/or Rule 1.02 of the SCC 2007 and/or Principle 2 of the Principles;

1.5 on or about 16 June 2014 provided misleading information to a client as to the reasons for delay in distributing the proceeds of an estate and thereby breached Principles 2 and/or 5 and/or 6 of the Principles.

2. It was further alleged that the Respondent had acted dishonestly in respect of the matters set out at paragraph 1 above or any of them. Dishonesty was not an essential ingredient to the allegations at 1 above and it was open to the Tribunal to find those allegations proved with or without a finding of dishonesty.

Documents

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

Applicant

- Application dated 27 March 2015
- Rule 5 Statement and Exhibit "PS1" dated 26 March 2015
- Applicant's Schedule of Costs dated 4 March 2016
- Applicant's Bundle of Correspondence Regarding Disclosure and Application for Adjournment

Preliminary Matter

Respondent's Application to Adjourn

Lack of Disclosure

4. The Respondent explained that he was not a litigator and thus not used to either making submissions or applications. At the case management hearing ("CMH") on 28 July 2015 the Tribunal ordered, amongst other things, that the Applicant serve the Respondent with copies of correspondence between the parties by 1 September 2015. The Respondent submitted that the Applicant had failed to comply with this direction as there were still items of correspondence that had not been disclosed. In particular, the Applicant had failed to disclose letters written to the Respondent, and his responses to those letters. The Respondent explained that he had retained copies of that correspondence at his home address, however those items had been seized by the police when they attended his home address and arrested him in connection with these matters. Further the Applicant, or its agents, had removed correspondence from his former offices on 29 July 2014 when his practice was intervened into. The Respondent accepted that the Applicant had provided him with copies of correspondence dated 22 February 2015 and beyond, but had not received any correspondence that predated February 2015. The Respondent explained that he had not kept a log of all the letters he had sent out and received, and so was unable to provide a particularised list of the correspondence he sought.

5. The Respondent argued that the content of the correspondence was relevant as it dealt specifically with the matters which were the subject of the proceedings; he had specifically answered questions relating to the matters upon which the proceedings were based. The Respondent explained that he did not suggest that the Applicant was being untruthful in the disclosure statement dated 22 February 2016, but that as it was the complainant in the criminal proceedings, it should be able to obtain copies of the papers removed by Dyfed-Powys Police. Further, he had been unable to provide his Answer, as directed, without the requested paperwork. The Respondent was concerned that during his evidence or submissions, the Applicant would produce a letter to show that he had provided a different answer during correspondence effectively ambushing him, and seeking to rely on any inconsistencies as further support for the allegation of dishonesty.

6. The Respondent accepted that the application to adjourn should have been made at an earlier stage, however he only became aware of this on reading the Tribunal's practice note on adjournments, which he had read for the first time that morning. The Respondent accepted what was contained in the note, and asked the Tribunal to exercise its discretion in allowing an adjournment. Further, in view of the length of time of these proceedings, there was no real urgency. He no longer held a practising certificate, and had not worked since July 2014. He had not held himself out to be a solicitor, and did not hold any client money. In the circumstances, there would be no prejudice in adjourning the proceedings. The Respondent explained that the decision to refer him to the Tribunal had been made in 2012, but due to the Applicant losing its file, the referral was not made until April 2014. Given the Applicant's failure to disclose the correspondence, and the lack of any prejudice, the Respondent submitted that matters should be adjourned for proper disclosure to take place.

7. Mr Levey submitted that the position was entirely unsatisfactory, and that the case should proceed. The Respondent had failed to file and serve an Answer, despite numerous directions requiring him to do so, which left the Applicant in the position of opening and presenting its case, without knowing what the Respondent's case was. Mr Levey did not accept that there was anything further to be disclosed to the Respondent, and submitted that his application to adjourn on the basis of lack of disclosure was total obfuscation and an attempt to avoid dealing with the issues.

8. Mr Levey explained that the Applicant could do no more by way of disclosure. The Respondent had been served with a witness statement confirming that the Applicant had provided all documents in its possession. Further, the Applicant had provided all copy correspondence between the parties including that which was not relevant to the allegations, but had been disclosed for the sake of completeness. The matter files, on which the allegations were based, were disclosed to the Respondent in full; this being so, the Respondent had all the information he needed to file an Answer and know the case against him. Leaving aside the "absurdity" that the Respondent wished the Applicant to disclose letters that he, the Respondent, had himself written to the Applicant, Mr Levey submitted that there could be nothing in the correspondence between the parties that the Respondent could need in order to file his Answer.

9. Mr Levey accepted that the Respondent wished to ensure consistency with what was said by him in correspondence with the Applicant. Mr Levey assured the Tribunal and the Respondent that the Applicant did not seek to produce any further correspondence, and that the Applicant was not seeking to put its case on the basis of any inconsistencies; the evidence against the Respondent was overwhelming and the Applicant did not need to rely on any inconsistency to prove its case to the requisite standard. In any event, there was no further correspondence in the Applicant's possession. Mr Levey was prepared to undertake, if necessary, not to produce any further correspondence. Mr Levey wished to proceed even without knowing what the Respondent might then put forward as a defence.

The Tribunal's Decision

10. The Tribunal had regard to Practice Direction No.2, which stated:

"Where directions are sought as to disclosure or discovery of documents, the Tribunal will adopt the view that material should be disclosed which could be seen on a sensible appraisal by the Applicant:-

(i) to be relevant or possibly relevant to an issue in the case;

(ii) to raise or possibly raise a new issue whose existence is not apparent from the evidence the Applicant proposes to use, and which would or might assist the Respondent in fully testing the Applicant's case or in adducing evidence in rebuttal;

(iii) to hold out a real (as opposed to a fanciful) prospect of providing a lead on evidence which goes to (i) or (ii)."

11. The Tribunal considered the documents that had been served on the Respondent by the Applicant. The Respondent had been served with the Rule 5 Statement and exhibits. Further, he had received, and had confirmed that he had received, the full case files for the matters upon which the Applicant relied to prove the allegations. He had been provided with all correspondence between the parties, whether relevant or not, that was in the possession of the Applicant. The Applicant had provided a witness statement confirming that it did not have any further documents in its possession. The Respondent had accepted that the Applicant may not be in possession of the information, but believed that the documents he required were in the possession of the police. The Tribunal did not have the jurisdiction to order the Applicant to disclose material that was not in its possession.

12. The Tribunal found that the Respondent required the correspondence as an aide memoire and to ensure consistency of his evidence, and not for the reasons outlined in Practice Direction No.2, namely because it was relevant or possibly relevant to an issue in the case, or to raise a new issue whose existence was not apparent from the evidence the Applicant proposed to use.

13. The Tribunal accepted the disclosure statement of Ian Brook, an officer of the Applicant, confirming that the Applicant had disclosed all documents that were in its possession. The Tribunal found that the Applicant had disclosed all material that the Respondent required in order to answer the case against him, and had, in fact, gone further than it was required to do. Further, the Tribunal accepted the undertaking of Mr Levey that no further documentation would be produced during the hearing, thus there would be no inconsistencies to be put to the Respondent. The Tribunal refused the disclosure application, and further refused the application to adjourn for lack of disclosure.

<u>The Existence of Other Proceedings</u>

14. The Respondent told the Tribunal he had been arrested by Dyfed-Powys police in relation to these matters, and remained on police bail. He was due to return to the police station in May 2016. He understood that the police were still carrying out enquiries, but that they could attend to arrest him at any time before his bail to return date. Given that, the possibility of criminal proceedings was imminent. He stated that he had a common law right to a fair hearing, and did not believe that he could

receive a fair hearing at any subsequent criminal trial if the misconduct allegations were dealt with in advance of any trial. The Respondent explained that he lived in a small rural community, and that the outcome of the proceedings was sure to make the local paper. If the allegations against him were found proved, then his community would see the findings, making it impossible for him to have a fair trial. The Respondent apologised for the lateness of the application. He explained that he had not previously had the benefit of legal advice, but having recently contacted solicitors, he was advised that he should seek to adjourn these proceedings until the outcome of the criminal matter.

15. Mr Levey submitted that as the Respondent had not yet been charged, there was no possible basis, under the Tribunal's practice direction, to justify adjourning the hearing; charges had not yet been laid so criminal proceedings could not be described as "imminent". The Applicant had contacted Dyfed-Powys police with a view to ascertaining how they intended to proceed. Unfortunately, no response had been received from them, and the Applicant was unable to provide any update to the Tribunal. This issue had been mooted with the Tribunal at the CMH on 28 July 2015. At that hearing the Tribunal had made it clear that it would consider the position again should the situation change. It was submitted that nothing had changed since the hearing in July - the Respondent remained on bail, the police were still considering the matter and no charges had been laid. The Respondent's application to adjourn proceedings on this basis was therefore misconceived.

The Tribunal's Decision

16. The Tribunal considered its practice note on adjournments. It was aware of the potential criminal proceedings, and of the possibility that those proceedings may relate to the same, or substantially the same underlying facts. The Tribunal noted that nothing had progressed in relation to any potential criminal case; the Respondent remained on bail, as he had been on 28 July 2015. Further, the Respondent had been interviewed in relation to other matters, as well as those that were the subject of the allegations. Without the Respondent having been charged, he was unable to say with certainty that the matters to be considered by the Tribunal would form a part of any criminal proceedings. As such the Tribunal was not convinced that there was a genuine risk that the proceedings before the Tribunal might "muddy the waters of justice" so far as concerned the potential criminal matter.

17. Although the Respondent believed he might be arrested and charged at any time, there was no indication that the Respondent was likely to be charged in the near future. The Tribunal did not accept that criminal proceedings were imminent. Given its findings, the Tribunal refused the Respondent's application to adjourn the hearing on the basis of the existence of other proceedings.

Factual Background

18. The Respondent was admitted to the Roll of Solicitors in October 1991. At the relevant time he practised as a sole Principal, from premises in Pembrokeshire. Following a decision of an Adjudication Panel on 25 July 2014, the SRA intervened into the Respondent's practice on 29 July 2014.

19. An investigation was commenced on 12 July 2011 by Richard Esney, a Forensic Investigation Officer ("the FIO") of the SRA, and as a result he prepared a report ("the First FI Report") dated 5 April 2012. The FIO interviewed the Respondent at the Respondent's offices on 21 July 2011 and subsequently on 16 February 2012. The First FI Report, which was disclosed to the Respondent during the course of the investigation, recited information provided by him during the interviews.

The First FI Report

20. The First FI Report focused on five matters in which the Respondent had acted for executors or was the executor in probate matters, and disclosed the following issues:

- on or around the dates, and in respect of the matters, set out in the table below, the Respondent accepted instructions from clients and, in some cases, provided an estimate of overall costs. In each case on which an estimate was given, the estimate was for costs of £10,000 plus VAT and disbursements;

- on various dates summarised in the table below, the Respondent transferred funds from his Client Account to his Office Account. In many instances clients had not been provided with a bill of costs or other written notification of the costs purportedly incurred;

- in two of the matters examined, no record was kept of any initial written costs estimate having been given;

- in three of the matters investigated, the costs incurred substantially exceeded the amount of the Respondent's initial, and only, estimate of likely costs;

- in some cases, the pattern of transfers from Client Account to Office Account did not reflect the activity undertaken on the file, and transfers were identified as having been undertaken in quick succession (including on successive working days) with little or no evidence or record of underlying activity to justify the pattern or quantum of such transfers;

- in one case, the amounts transferred from Client Account to Office Account, after substantive work was apparently concluded, and with no record of activity having been provided during the period for which bills were raised, matched exactly the amounts of client monies being held as a result of the substantive instruction after distribution of legacies;

- the total value of the transfers in respect of which client sums were transferred without notification to clients in advance were as follows:

Matter	Date of Initial costs estimate	Value of Estimate	Number of Transfers	Date Range of Transfers	Total Value of Transfers (incl. VAT)
LE (dec'd)	26.04.2010	£10,000	58	23.12.2010–28.02.2014	£149,300.00
WM (dec'd)	27.04.2009	£10,000	44	20.01.2010-15.01.2014	£53,606.25
EJ (dec'd)	07.01.2009	£10,000	61	05.03.2010-01.04.2014	£89,500.00
JA (dec'd)	None Recorded	None	34	08.11.2007-30.10.2009	£43,492.50
ME (dec'd)	None Recorded	None	36	24.10.2005-26.10.2009	£54,001.92

Estate of LE

21. The FIO reviewed the Respondent's file in this matter, relating to the estate of LE who died in 2010. The file recorded that the estate had a value of approximately £552,000. A grant of probate in respect of the estate was dated 26 November 2010. The administration of the estate was not complete at the time of the First FI Report. However, the investigation identified a number of concerns which had already arisen in respect of the matter prior to its conclusion.

22. The Respondent had sent a letter to the executor client on 26 April 2010 indicating anticipated costs of £10,000 plus VAT. Those costs were stated to be calculated by reference to two elements, namely a "time-charge" element calculated at a rate of £200 per hour, and an element based on the value of the estate and calculated in accordance with Law Society Guidance. The letter stated that:

> "The basis for this firm's charges for dealing with the administration of estates are set out in the enclosed terms of business (a copy of which does not appear on the file) and, as you will see, include both a time spent element and also a value element';
>
> "We only charge for work carried out by fee earners who do the actual work";
>
> "The value element is calculated in accordance with Law Society Guidelines";
>
> "Bills will be raised on an interim basis as and when this Firm considers it prudent to do so."

23. An analysis of the bills issued since the files were reviewed by the FIO showed that in total 58 transfers of costs had been made with a total value of £149,300 (including VAT). This included 9 transfers with a total value of £31,100 between December 2010 and March 2011, and transfers on successive working days. Further, not all of the transfers made were recorded on bills, and the file contained two paper bills which did not appear to have given rise to transfers.

24. The Respondent's file was reviewed by a costs draftsman, Marc Banyard ("MB"), on the instruction of the FIO. MB reported that the file produced by the Respondent did not enable him accurately to quantify the work undertaken, because of the inadequate recording of time spent or work undertaken. However, MB was able to identify that 78 letters had been sent and 106 pages of correspondence received. Also there were two hours recorded on personal attendance and six telephone calls made.

25. Applying the Law Society Guidelines for calculating the "value-based" element of charging, by reference to the value of the estate recorded on the file, MB calculated that a value-based charge of £4,170.93 would be applicable.

26. The Respondent's client care letter indicated an hourly rate of £200 per hour plus VAT. On that basis, and taking into account the "value" element calculated by MB, the total amount transferred from Client Account to Office Account indicated that the Respondent needed to have spent over 642 hours on the matter in order to justify the overall charge (subject to any disbursements incurred). MB's view of the transfers which had occurred up to the point of his review of the file was that this level of charging was not justified by the paper file or the activity which it identified.

27. MB's opinion was that an overall charge of £12,170 plus VAT would have been appropriate and justified by reference to the level of activity identified or estimated, and applying the basis of charging set out in the Respondent's letter at the outset of the instruction.

28. Transfers were made in quick succession on the following occasions:

- Friday 4 February 2011 (when a bill of £6,000 was raised) and the next working day, Monday 7 February 2011 (£3,600);

- Monday 28 February 2011 (£3,600) and Thursday 3 March 2011 (£6,000), representing 25 hours' work at the applicable chargeable rate, between which dates a single letter appeared on the file sending the client a copy of a registered title;

- Friday 6 May 2011 (£6,000) and the next working day, Monday 9 May 2011 (£6,000), between which dates no work appeared.

29. MB concluded that the file did not support this pattern of billing. Further, from August 2012 onwards, 35 transfers were made, with a total value of £71,400, while the file recorded no activity having been undertaken other than one receipt into, and two payments out, from the Client Account as recorded on the ledger.

30. The Respondent, in his interview with the FIO, accepted that bills had not been sent to the client before transfers were made. The Respondent said that he considered that the hourly rate set out in his letter to clients was inadequate for his experience and expertise and had not been amended for ten years, and that a more appropriate hourly rate would be £350 per hour. In answer to questions about this matter raised by the FIO in his letter to the Respondent of 18 August 2011, the Respondent stated that charges had been calculated by reference not only to time spent and value, but to the "complexity of the issues" and "the assets of the estate". The Respondent confirmed

his view that the charges raised had been properly incurred, and that interim bills were raised "as and when I considered it appropriate taking into consideration all relevant matters pertaining to the file". The Respondent did not identify the "relevant matters pertaining to the file" which he considered justified interim billing at the level incurred on this file or with the frequency identified.

Estate of WM

31. The FIO reviewed the Respondent's file in this matter, relating to the estate of WM who died in April 2009. The file recorded that the estate had a value of approximately £490,000. A grant of probate in respect of the estate was dated 9 December 2009. The Respondent had sent a letter to the executor on 27 April 2009 indicating anticipated costs of £10,000 plus VAT. The letter contained the same information recited at paragraph 22 above as to the basis of charges.

32. The Respondent's file was reviewed by MB, who reported that the file produced did not enable him accurately to quantify the work undertaken, because of the inadequate recording of time spent or work undertaken. MB was able to identify that 75 letters had been sent and 95 pages of correspondence received. MB calculated that a value-based charge of £3,648.13 would be applicable. Applying an hourly rate of £200 per hour plus VAT, and the "value" element calculated by MB, suggested that the Respondent would have needed to spend over 241 hours on the matter in order to justify the overall charge. MB indicated that the file did not support such a conclusion.

33. MB's view of the transfers which had occurred at the point of his review of the file was that such a level of charging was not justified by the file, which indicated an appropriate overall charge of £12,650 plus VAT based on the level of activity identified or estimated, and the basis of charging that was set out in the Respondent's letter at the outset of the instruction. Although the file contained copy bills in respect of the transfers, many of the bills carried no address, and the Respondent accepted that they had not been sent to the clients.

34. From July 2012 onwards, 12 transfers were made, with a total value of £18,300, while the file recorded no activity having been undertaken. The most recent item of correspondence which appeared on the file was dated 27 June 2012. An analysis of the bills issued since the files were reviewed by the FIO showed that in total 44 transfers of costs had been made with a total value of £53,606.25 (including VAT).

35. The Respondent accepted, when interviewed on 21 July 2011 that bills had not been sent to clients before the transfers had been made. When asked to comment on the FIO's concerns about the file, the Respondent observed that work had been undertaken in respect of Agricultural Property Relief and Business Property Relief, however, MB found no evidence to support this on the file, such as a record of advice given or copies of relevant forms. Further, neither relief appeared to have been claimed for the estate.

Estate of EJ

36. The FIO reviewed the Respondent's file in this matter, relating to the estate of EJ who died in June 2008. The file recorded that the estate had a value of approximately £271,068. A grant of probate in respect of the estate was dated 29 January 2010.

37. The Respondent sent a letter to the executor on 7 January 2009 indicating anticipated costs of £10,000 plus VAT, with the same information as recited at paragraph 22 above as to the basis of charges.

38. The file was reviewed by MB, who reported that, as with the matters recited above, and for the same reasons, he was unable accurately to quantify the work undertaken. MB did identify that 36 letters had been sent and 48 pages of correspondence received.

39. MB calculated that a value-based charge of £825.94 would have been applicable. Applying an hourly rate of £200 per hour, MB calculated that the Respondent would have needed to have spent over 376 hours on the matter in order to justify the overall charge.

40. MB's view was that such a level of charging was not justified by the file, which indicated an appropriate overall charge of £4,325 plus VAT based on the level of activity identified or estimated, and the basis of charging set out in the Respondent's letter at the outset of the instruction.

41. The file contained copy bills in respect of the 61 transfers, but many of the bills carried no address, and the Respondent accepted that they had not been sent to the clients.

42. The file recorded no activity from the end of August 2010, and no correspondence appeared on the file after that date other than a single letter dated 11 September 2012. The Respondent accepted that he had received "little or no instructions for long periods of time." However, after August 2010, when no work was recorded, the Respondent raised invoices (but did not send them to clients) and made transfers from Client to Office Account on 45 occasions, including on five occasions in February and May 2011. The Respondent accepted when interviewed that bills were not sent to the clients before transfers were made. The most recent item of correspondence which appeared on the file and was dated 11 September 2012. An analysis of the bills issued since the files were reviewed by the FIO showed that in total 61 transfers of costs had been made with a total value of £89,500 (including VAT), representing over 62% of the value of the estate.

43. The Respondent, when asked to comment on the FIO's concerns about the file, observed that site visits had been undertaken. The file contained no record of any such visits. The Respondent accepted, in his letter to the FIO of 9 September 2011, that "I appreciate with hindsight that the costs estimate given initially should have been re-visited and the client notified accordingly".

Estate of JA

44. The FIO reviewed the file in this matter in which the Respondent acted as executor. The file recorded that the estate had a value of approximately £70,000. A grant of probate in respect of the estate was dated 3 April 2008.

45. MB reported that the file produced by the Respondent did not enable him accurately to quantify the work undertaken, because of the inadequate recording of time spent or work undertaken. He identified a handwritten note on the file which recorded that "Each week since date of death I have attended at the property weekly to make sure that it and its grounds are secure. On average including travelling that takes approximately 1 hour each time."

46. The Respondent stated in his letter of 9 September 2011 to the FIO that the basis for calculation of charges on this matter was "the value of the Estate the work done and the time Involved." MB considered that work recorded on the file would support charges of approximately £38,765 if a weekly one-hour attendance occurred. However, the file did not contain evidence to support the necessity of, or instructions to undertake, such attendance. The insurance document produced by the Respondent recorded that monthly attendances were required (with fortnightly visits during November-January). Furthermore, in his interview with the FIO, and in his letter to the SRA of 9 September 2011, the Respondent claimed to have been required to undertake attendances on the property monthly, not weekly. MB calculated that if a weekly attendance of one hour at the deceased's address was provided for, the actual costs incurred would have exceeded the amount billed from the client account once VAT was included.

47. There were periods in this matter during which frequent transfers were made, including on successive working days and with four bills rendered across a period of six working days (the following amounts were exclusive of VAT):

- Monday 28 April 2008 (£1,500);
- Friday 2 May 2008 (£2,000);
- Tuesday 6 May 2008 (the following working day) (£2,000);
- Thursday 8 May 2008 (£1,200);
- Monday 12 May 2008 (£1,500).

48. MB concluded that the file did not support this pattern of billing.

49. An analysis of the bills issued since the files were reviewed by the FIO showed that in total 34 transfers of costs had been made with a total value of £43,492.50 (including VAT), representing over 62% of the value of the estate. Not all of the transfers which were made were recorded on bills.

Estate of ME

50. The FIO reviewed the file in this matter, relating to the estate of ME, where the Respondent acted as the executor. The file recorded that the estate had a value of approximately £541,074.

51. An analysis of the bills issued since the files were reviewed by the FlO showed that in total 36 transfers of costs had been made with a total value of £54,001.92 (including VAT). As with the matters above, MB reported that he was unable accurately to quantify the work undertaken but identified that 49 letters had been sent and 75 pages of correspondence received.

52. MB calculated that a value-based charge of £4,058.06 would be applicable in respect of the period during which the Respondent was handling the matter after its transfer from another firm. The work recorded on the file would support charges, in MB's view, of approximately £8,400.

53. The file recorded that all beneficiaries had received their legacies by June 2007, with the matter only apparently being active between October 2005 and October 2006 other than in respect of a single payment out to a beneficiary in June 2007 and a small receipt in July 2007, recorded on the ledger. After all beneficiaries had received payment, the sum of £36,185.21 remained in Client Account in July 2007. Subsequently, bills were raised depleting the Client Account to zero. Between August 2008 and March 2009, when no correspondence appeared on the file, eleven bills with a total value of £18,000 (including VAT) were raised.

54. In his letter to the SRA of 9 September 2011, the Respondent stated that: "I regret to say that I can offer no explanation as to why there is not a client care letter on the file."

The Second FI Report

55. A further investigation was undertaken in 2014 leading to the preparation of a further report by the FIO dated 21 October 2014 ("the Second FI Report"). During the course of that investigation the Respondent was interviewed on 27 June 2014.

56. The Second FI Report focussed on several matters in which the Respondent had acted for executors or as executor in probate matters. In respect of one of those matters, the Respondent also acted in a compensation claim relating to a compulsory purchase order of the deceased's land. The Report highlighted the following issues:

- in respect of the matters, set out in the table at paragraph 57, the Respondent accepted instructions from clients, although no estimate of costs was given (other than in one case, in relation to which there is a client care letter giving an estimate of costs of £2,000 plus VAT);

- on various dates, summarised in the table below at paragraph 57, the Respondent transferred funds from Client Account to his Office Account, when, in many instances, clients had not been provided with a bill of costs or other written notification of the costs purportedly incurred;

- in all of the matters examined, no record had been kept of any initial written costs estimate having been given (other than in respect of the client care letter referred to above);

- in some cases, the pattern of transfers from Client Account to Office Account did not reflect the activity undertaken on the file, and transfers were identified as having been undertaken in quick succession with little or no evidence or record of underlying activity to justify such transfers;

- in one case, the amounts transferred from Client Account to Office Account, after substantive work was apparently concluded, (and with no record of activity having been provided during the period for which bills were raised), had depleted the client account almost entirely of funds received as a compensation payment in respect of a compulsory purchase order relating to the deceased's property.

57. The total value of the transfers in respect of which client sums were transferred without notification to clients in advance were as follows:

Matter	**Date of Initial costs estimate**	**Value of Estimate**	**Number of Transfers**	**Date Range of Transfers**	**Total Value of Transfers (incl. VAT)**
CO (dec'd)	None	None	24	10.01.2013–02.04.2014	£112,560.00
PP (dec'd)	None	None	48	02.09.2013-14.02.2014	£130,879.00
MW (dec'd)	None	None	6	29.04.2014-16.06.2014	£29,640.00
JD (dec'd)	None	None	20	19.02.2013-04.06.2014	£40,500.00
DR (dec'd)	12 April 2011	£2,000 plus VAT	10	03.10.2012-01.02.2013	£123,600.00
AW (dec'd)	None	None	50	06.12.2011-24.09.2013	£150,600.00

Estate of CO

58. The FIO reviewed the file in this matter, relating to the estate of CO who died in June 2012. The file recorded that the estate had a value of approximately £258,000. A grant of probate in respect of the estate was dated 21 November 2012.

59. Between 4 February 2013 and 25 March 2013 invoices were raised weekly, but the Respondent's file contains a record of only six letters having been written by the Respondent during this period.

60. MB's opinion was that an overall charge of £3,750 (plus VAT) would be appropriate and justified by reference to the level of activity identified or estimated. The Applicant considered that a value-based charge of £1,959.31 would be applicable in respect of the period during which the Respondent was handling the matter. Applying

an hourly rate of £200 per hour plus VAT, and the "value" element meant that the Respondent would have needed to have spent over 480 hours on the matter in order to justify the overall charge. An analysis of the bills issued since the files were reviewed by the FlO showed that in total 24 invoices were raised with a total value of £94,250 (plus VAT).

61. A statement was obtained from MH, the nephew of the deceased and the sole executor of the deceased's estate. MH explained that, having instructed the Respondent, he received no information for a year, and that, on making enquiries thereafter, he was informed that the matter was "almost complete" and that "all was well". During that period, the Respondent had made transfers of £59,400 (plus VAT).

Estate of PP

62. The FIO reviewed the file in this matter, which related the estate of PP who died in April 2013.

63. The file recorded that the estate had a value of approximately £583,000. A grant of probate in respect of the estate was dated 15 July 2013.

64. An analysis of the bills issued since the file was reviewed by the FlO showed that in total 14 invoices were raised between 2 September 2013 and 3 February 2014 with a total value of £111,000 (plus VAT), representing 19% of the estate value. The total value of all bills raised was £133,200 (inc VAT). The total value of all transfers made was £130,879 (inc VAT).

65. Between 24 September 2013 and 28 October 2013 invoices were raised weekly, however only five letters were sent out by the Respondent during this period. MB considered that an overall charge of £6,500 plus VAT would be appropriate and justified by reference to the level of activity identified or estimated.

66. Applying the Law Society Guidelines for calculating the "value-based" element of charging, a value-based charge of £4,828.61 would have been applicable in respect of the period during which the Respondent was handling the matter. Applying an hourly rate of £200 per hour plus VAT, and the "value" element meant that the Respondent would have needed to have spent over 569 hours on the matter in order to justify the overall charge.

67. A statement was obtained from PE, the twin sister of the deceased and the sole executor of the deceased's estate. PE explained that on instructing the Respondent at a meeting on 25 April 2013, there was no discussion of costs, and no costs information was provided during the course of the matter. PE detailed the difficulties she had experienced in obtaining information from the Respondent as to the progress of the matter, and that she was informed by the Respondent at a meeting on 16 June 2014 that monies could not be released because they were "invested". The ledger gave no indication that funds had been invested by the Respondent, with or without the instructions of his client, or that he was awaiting the receipt of invested funds falling within the estate. In fact, the ledger recorded that, at the time of the meeting, the Respondent had, since the last distribution in December 2013, transferred

over £20,000 from Client Account to Office Account, leaving less than £1,000 in Client Account.

Estate of MW

68. The Respondent acted as executor on this matter. The file recorded that the estate had a value of approximately £303,600. A grant of probate in respect of the estate was dated 14 April 2014.

69. An analysis of the bills issued since the files were reviewed by the FlO showed that in total six invoices were raised with a total value of £24,700 (plus VAT). No ledger was present on the client file. The file revealed frequent billing; four bills were raised between 29 May and 16 June 2014 for a total of £21,000, with no indication of any work having been undertaken to support a bill of that quantum during that period.

70. MB's opinion was that an overall charge of £2,500 plus VAT would be appropriate and justified by reference to the level of activity identified or estimated. Applying the Law Society Guidelines for calculating the "value-based" element of charging, the Applicant considered that a value-based charge of £3,889.92 would be applicable in respect of the period during which the Respondent was handling the matter. Applying an hourly rate of £200 per hour plus VAT, and the "value" element meant that the Respondent would have needed to have spent around 143 hours on the matter in order to justify the overall charge.

Estate of JD

71. The Respondent acted as executor in this matter. The file recorded that the estate had a value of approximately £295,000. A grant of probate in respect of the estate is dated 4 April 2014.

72. Analysis of the bills issued since the files were reviewed by the FlO showed that in total 8 invoices were raised with a total value of £33,750 (plus VAT). Not all of the transfers made were recorded on bills.

73. The file revealed frequent billing; bills were raised on 18 and 19 February 2013 for a total of £1,250. Further bills were raised on 7 and 14 April 2014, with the costs in respect of these two bills having escalated to a total of £18,000 (plus VAT). MB, having reviewed the file, identified that between 7 and 14 April 2014, four letters had been written by the Respondent; two letters were sent on 10 April 2014 and two further letters were sent on 14 April 2014.

74. MB's opinion was that an overall charge of £15,000 plus VAT would be appropriate and justified by reference to the level of activity identified or estimated, and including an element for the costs of a frustrated conveyance of the deceased's property. Applying the Law Society Guidelines for calculating the "value-based" element of charging, the Applicant considered that a value-based charge of £3,210.30 would be applicable in respect of the period during which the Respondent was handling the matter. Applying an hourly rate of £200 per hour plus VAT, and the "value" element meant that the Respondent needed to have spent around 185 hours on the matter in order to justify the overall charge.

Estate of DR

75. This matter related to the estate of DR. The Respondent sent a client care letter to the widow of the deceased on 12 April 2011 indicating anticipated costs of £2,000 plus VAT. The letter contained the same information recited at paragraph 22 above as to the basis of charges. The file recorded that the estate had a value of approximately £146,000. The file did not record any distribution.

76. Analysis of the bills issued since the files were reviewed by the FlO showed that in total 10 transfers of costs had been made with a total value of £103,000 (plus VAT).

77. Applying the Law Society Guidelines for calculating the "value-based" element of charging, the Applicant considered that a value-based charge of £2,189.03 would be applicable in respect of the period during which the Respondent was handling the matter. Applying an hourly rate of £200 per hour plus VAT, and the "value" element meant that the Respondent needed to have spent over 525 hours on the matter in order to justify the overall charge.

Estate of AW

78. The Respondent was instructed in respect of the administration of AW's estate and additionally, in respect of her compensation claim against the Welsh government. This concerned a compulsory purchase order relating to a road improvement scheme which impacted on her property. Compensation payments in relation to this matter were received in the total sum of £166,238.09. The Respondent held three separate ledgers for AW, which referred to the road improvement scheme, her general affairs and the administration of the estate.

79. Analysis of the bills contained within the client file shows that there was only one invoice on the file dated 16 December 2011 for £500 plus VAT, addressed to the AW's Attorney and in respect of "for taking instructions from yourself with regard to a claim against the National Assembly Government in respect of roadworks affecting [PG], ……..near Narberth".

80. The ledger for the road improvement scheme showed that fifty transfers in the sum of £150,600 had been made between 16 December 2011 and 6 September 2013, for which one bill was issued on 16 December 2011.

Interview with the Respondent

81. On 27 June 2014 during an interview with the Respondent about two of the files referred to above, the Respondent stated that:

- the quantum of costs on matters about which he was questioned were "between me and my client" and that the SRA "shouldn't interfere";

- after initially asserting that he had sent bills to clients before making transfers of funds from Client Account to Office Account in respect of his fees, the Respondent accepted that he had not done so, but that clients were informed of costs at the conclusion of probate matters by way of an estates account;

- the charges he applied in respect of a matter were based on "what I deem the file to be worth", and that he did not apply an hourly rate to his work on files.

82. The Respondent advanced the view, in his interview with the SRA, that he had not changed his hourly rate for ten years and felt that it did not properly reflect his level of experience and expertise. Further, he confirmed in his letter of 9 September 2011 that he made all of the transfers referred to in this Statement.

Witnesses

Marc Banyard ("MB")

83. MB confirmed that the contents of his two reports and his witness statement were true to the best of his knowledge and information. He explained that each report had taken him approximately two days to write. In preparing the reports he had looked at every piece of paper on the files, including correspondence clips, attendance notes, documents and generated forms. He counted up pages of documents received, looked at the documents generated together with everything else on the files. He had spent three hours, on average, to examine and cost for each file. MB was not cross-examined by the Respondent.

84. In response to a question from the Tribunal, MB explained that there was no real time recording on any of the files. One or two of them had occasional attendance notes, but there was no systematic computerised or manual time recording system operated on the files of the Respondent.

The Respondent

85. The Respondent explained that he had set up his firm as a sole practitioner in 2005. As a result of advice from his accountant, he changed the firm to a company. He was the only person in his practice who dealt with the probate matters which were the subject of the allegations. He denied that he had overcharged his clients, stating that he "honestly and truly believe that the charges were correct." He relied, in his defence, on his letters to the FOI dated 9 September 2011 and 6 September 2014. He also relied on the answers he gave to the FIO during his interviews.

86. The cash shortage of £144,326.25 identified by the FIO in his first report had been rectified by the Respondent delivering bills of costs to the clients. The letters sending out the bills had sent by the Respondent to the FIO.

87. In relation to the file of AW the Respondent explained that there were in fact three files, but only one had been examined by MB; had the SRA looked at the other files, they would have found all the appropriate bills on those files. He denied making transfers where no record had been kept on the file of a bill or other written notification of fees.

88. He had been advising AW in relation to her affairs for approximately 10 years. The Firm had not been paid for the advice and assistance provided during that time as they had agreed that payment would be made out of compensation that AW expected to receive from the Welsh Government. TR and her husband David were beneficiaries

under AW's will. AW was not expected to live for any substantial period of time, however she survived David. The Respondent asserted that since David's death, it seemed as though the payment agreement had been forgotten. The drawing down of the monies received from the Welsh Government was entirely correct and in accordance with the agreement, and was not evidence of dishonesty or a lack of integrity.

89. In relation to WM the Applicant had exhibited an Inheritance Tax ("IHT") form in the bundle, where no mention of Agricultural Property Relief ("APR") was made. The copy exhibited was a draft copy. The Respondent knew this as it was partially typed, partially handwritten and was unsigned. The final version of the form would have been signed and typed in its entirety. He had a meeting with the WM's son and an Accountant to discuss APR.

90. The Respondent denied that he had acted dishonestly or without integrity. In relation to the successive billing dates with little or no work shown in between, he explained that the dates of the interim bills and the time between them did not signify the work done during that period, but in total was an accurate reflection of how much work had been done on the file; the interim bills reflected the final figure and not the work undertaken from one bill to the next. He had not billed for the work previously, but all the work had been carried out. He chose to bill files in that way as it worked well for his company, to assist in running the business, and could help, for example, to ensure that he did not receive a large VAT bill by taking all sums due in one go.

91. The Respondent accepted that he had written a file note on the matter of JA which stated:

> "Each week since date of death I have attended the property weekly to make sure that it and its grounds are secure. On average including travelling that takes about 1 hour each time.
>
> To my knowledge there are 3 missing attendance notes of 1 hour each attending upon [Mrs CH and Mrs MN]."

92. He explained that stating in the note that he had been attending weekly had been "an innocent mistake", and that he had in fact been attending the property monthly (except during November to January when he attended every two weeks). He had corrected this mistake both in meetings with the FIO, and in his letter to the FIO of 9 September 2011 where he stated:

> "…This is a case where in addition to the usual administration I have…..personally had to attend the property monthly in order to comply with the requirements of the building insurer."

93. He stated that the remaining money on the ME matter after the distribution of assets, was money properly due to the Firm and drawing down on the money in the way that he had was down to him "drawing the bill when I wanted to draw it".

94. He denied that he had provided misleading information to PE on the PP estate. He stated that there must have been a misunderstanding on PE's part, as he would never have told her that the money was invested. The money was invested in the Swansea Building Society by PP, but PE was mistaken in the belief that he had told her that any investment was the reason for the delay in distributing the assets.

95. The Respondent explained that he was initially advising AW in person, and was then advising TR in relation to AW's affairs; TR having a registered enduring Power of Attorney. He explained that costs had been incurred in advising on transferring land, attending AW's home and her attending the office. He denied that he had failed to return TR's calls, explaining that he had known her for 25 years. He explained that although interim bills had not been sent to clients, he would always send out a set of estate accounts at the conclusion of the matter which would show the costs incurred and everything would be brought to account.

96. In relation to the file of EJ, the Respondent appreciated that "with hindsight…..the costs estimate given initially should have been re-visited, and the client notified accordingly", however, all the costs were justifiable, and properly incurred. He had been very busy at that time, working 7 days a week, often working until 8 or 9pm. The solicitor he had employed to assist in the practice had been off sick, so he was undertaking the work of two people, when in reality he barely had enough time to complete his own work.

97. He explained that in his previous practice, interim bills were not sent out to clients, and he continued to practice in this regard in the way that he had been trained. Further, he was not responsible for putting the bills on the system, this was done by his accountants who came to his office every Monday and input the information; he was not computer literate, and did not even know the password to access the ledgers, only his accountants had that information. He kept a manual record of transactions. He stated that the ledgers should reflect what he did, the account it came from and the bills raised. Further, his accountants prepared his annual report for the SRA each year, and no issues had arisen from those reports.

98. He denied personally benefitting from any breaches (having denied any breaches), and stated that the legitimately taken monies had been used for the purposes of the company to pay employees, HMRC, office expenses and other business related expenditure.

99. He relied on his statement of 24 June 2015, in which he had denied all allegations. In particular, he asserted that all fees taken were properly required, the fees were not excessive and they reflected the work actually undertaken.

100. The Respondent explained that his "client care letter was rubbish" and that he "held [his] hands up" to the fact that he had not read or looked at the values/estimates contained in those letters. Further, he accepted that the values/estimates did not truly reflect the amounts claimed. He explained that his hourly rate in his client care letter was not reflective of the rate charged or reflective of his experience. In relation to MB's opinion that the "terms of the Rule 2 letters are wholly disregarded when it comes to billing" the Respondent stated that he did not draft the Rule 2 letter properly.

He would simply instruct his secretary to "do a client care letter", which he would then sign without reading through.

101. He ran a niche practice, and was often called upon to advise and act for solicitors who consulted him on questions relating to the administration of estates. He accepted that there was very little time recording on his files, explaining that his was a very busy practice undertaking mainly conveyancing work. He did not spend time filling in attendance notes for every attendance and call. He stated the bill of the Applicant's agents in this matter was "great", being well detailed, but that he had not created bills of this nature; he was too busy buying and selling houses, and attending his clients. He had conducted the work, but had not time recorded it, and was negligent for not having done so. He described himself as his "own worst enemy" in that regard as he was now unable to prove what work he had undertaken.

102. Under cross examination, the Respondent stated that he had written a number of letters to the Applicant, but as he did not have any copies of that correspondence he had been unable to prepare his Answer to the allegations. He did not know who he had written to at the SRA, nor could he say which department he had written to, simply that he had sent his letters to the SRA at their Birmingham address. He confirmed that his Answer to the allegations could be found in his letters to the FIO of 9 September 2011 and 6 September 2014. He accepted that neither of those letters dealt with the matters raised in MB's Second Report, and save for what he had already stated in evidence there was nothing further in relation to MB's Second Report.

103. He confirmed that he had received the physical files upon which the allegations were based, and that he had taken the time to look through those files. He stated that the files delivered to him did not contain all of the documentation that he had conducting those matters. For example, in the matter of JA he had piles of documents on his floor there were 2'6 – 3' high, all of which had been removed from the office, and none of which had been examined by MB. Also, in relation to AW, there were two other files that contained the bills, which were not delivered to him, and not examined by MB. When asked if he was not concerned that the files were incomplete, the Respondent stated that the documents would not have added to the Applicant's case or to his Answer, as they were simply bundles of documents that related to the estates. He did not accept that he had sufficient information to provide a reasonable cost estimate, as he did not have all of the required information. When asked to clarify whether he believed that MB had sufficient documentation to undertake the estimates, the Respondent explained that MB did not have all of the documentation for any of the estates. All he had was copies of the correspondence file and attendance notes, and as he had already stated he did not keep detailed attendance notes.

104. It was put to him that the allegations he faced at the Tribunal were serious. MB had costed a matter at £12,000 and the Respondent had charged approximately £150,000. The Respondent explained that he often received bundles of papers/files/documents that he would then have to go through when administering an estate. When asked if he believed that MB was wrong because he did not have all of the necessary information, the Respondent replied "I'm not saying that." Mr Levey suggested that the issue of additional documentation was so important that it was inconceivable that the Respondent would not have said anything about those missing documents until he

was being cross-examined. When asked why he had not raised such an important matter at any other stage, the Respondent explained that the documents were not files, and until he had been asked about what was in the boxes that were delivered to him, he had not thought about it.

105. Mr Levey reminded the Respondent that he appeared at the Tribunal on allegations of dishonest overbilling, and asked whether the Respondent whether he was being untruthful when he stated that the issue of the unexamined documents had never crossed his mind. The Respondent explained that he was being truthful and if he had thought about it before he would have raised it. Further, the reports prepared by MB consisted of MB's opinion, and if he (the Respondent) had the means to have his own cost draughtsman examine the files, it was highly likely that there would be a different estimate. Mr Levey referred the Respondent to the file of CO. He asked the Respondent whether any estimate could possibly have come within 10% of the £94,000 he charged on that matter, instead of the £3,750 that MB thought was appropriate. The Respondent replied that he did not know.

106. In relation to the AW matter, the Respondent reiterated that he had been working for her for about eight years, and had in fact been acting in her matters before he set up his practice in 2005. He continued working for AW until her death. He explained that he advised AW in relation to all manner of things, and later advised TR, who was AW's attorney. He explained that AW was a heavy drinker, and would often call him and tell him to come to visit her at home. When he arrived there she was often intoxicated and unable to provide him with any instructions. The advice he gave her was in relation to selling land, giving land away, making a will, IHT and other matters. He did this work on the basis that TR and David were going to pay him at a later stage. They were the sole beneficiaries under AW's will, and it was agreed that they would pay him. When Mr Levey challenged the Respondent about only then providing any sort of explanation, the Respondent stated that it was not until he had read Mr Levey's synopsis that he had realised that one of the allegations against him was that he had withdrawn client monies without raising a bill. It was at that point that he understood that MB did not have the other two related matters, where all the bills could be seen. The Respondent stated that there was no written agreement between him and AW, TR or David. He explained that once TR had registered the enduring Power of Attorney, she was entitled and fully authorised to act on AW's behalf. TR was fully entitled to, and asked to see the will, at which point she knew that she and her husband were the sole beneficiaries. The Respondent could not recall the date that this had happened, but stated it was sometime between 2005 and 2014. An examination of the AW ledger showed only one bill for £600. The Respondent explained that this was because the bills were on the other files. Although he was the only person who could make the transfers, his Accountants made the notes on the ledger, and posted all items to the ledgers.

107. The Respondent explained that he did not transfer all the costs due to him on AW's death, as he transferred it when he believed it was appropriate for him to do so, as the needs of his practice dictated. He could see no benefit in transferring the entire sums due in one go; taking the sums due in small chunks worked well for him. The money he had transferred was all due to him for work that he had been doing for no charge at the time for AW or her attorney, or for TR and/or her husband David, all on the basis that the compensation money, once received, would be his fee for all that work. He

did not accept that taking his costs in this way was irrational or dishonest and rejected the suggestion that he took smaller amounts as his dishonesty was less likely to be noticed in this way. Mr Levey argued that to simply assert that he had taken his costs in that manner as it suited him was not an acceptable answer.

108. In relation to the DR matter, the client care letter sent by the Respondent estimated costs at £2,000, and had charged costs of approximately £103,000. The Respondent confirmed that the costs charged regularly exceeded the estimate provided to the client in the client care letter. When asked whether the thought that client care letters were a good idea, the Respondent explained that were not previously required, but had been brought in "for whatever reason" and that all solicitors had to comply with that requirement. He did not accept that clients would have any expectations on the basis of the information contained in the client care letter as clients did not read these letters. He explained that his client care letters were generated by his secretary using a pro forma letter. It was his responsibility to adjust the estimates in the letter. When asked what a reasonable estimate for this matter should have been in the client care letter, the Respondent replied that he did not know. He accepted that the letter, and his failure to amend the estimate was "ridiculous" and stated that it was his "ridiculousness". When pushed on an estimate the Respondent asserted that he was "in a no win situation"; if he said £50,00 was appropriate, Mr Levey would ask why he had charged £100,000, and if he said £100,000 Mr Levey would ask him how he knew that.

109. The Respondent agreed that his client care letter stated that the cost of the bill was calculated partly on an hourly basis and partly on the value of the estate. He did not accept that all of his clients were told that the hourly rate was £200, but he was unable to point to any documents where the hourly rate was different; he did, however, tell the FIO that the correct hourly rate was £350. When asked how he could innocently tell clients that he charged £200 per hour, but was in fact charging them £350 per hour, the Respondent explained that the letter was wrong. He had not studied it in detail and he was negligent in not reading the letter. The Respondent accepted that to charge on a timed basis, he ought to have time recorded his work, but that his time recording was "atrocious." He had, however, worked for the time that he had charged for.

110. When questioned about the LE matter, the Respondent explained that it was incorrect for the Applicant and MB to assume that the time between the interim bills was directly related to the amount of work that took place between those bills. An assessment was made of what would be charged, and then he took that money in the way that best suited the business. He confirmed that by the time he was regularly taking interim payments, the work had already been undertaken. When it was suggested that it was only honest to charge a reasonable amount for the work he had done, the Respondent explained that it was honest to charge for what the matter was worth, and to the extent that it was charged by time, it should be a reasonable accurate reflection of the time spent. Mr Levey submitted that it would not be honest or fair to charge for 50 hours, if the work in fact took 20 hours – the Respondent agreed. Mr Levey asked how the Respondent could be sure that his charges were fair and reasonable if they were based on "gut feel and the number of letters". The Respondent explained that it was down to experience, and that when he started out in the 1980's they used to charge on the basis of "how much a file weighed". He based

his charges on the work he had done, the documents he had perused, what he did for his clients and his attendances, but he had no attendance notes as his keeping of them was "not what it should be".

111. In relation to the CO matter, the Respondent did not accept the content of the statement of MH. He explained that MH was a distant relation, and he would see him at rugby. He agreed that he had not challenged the evidence by way of responding to the Civil Evidence Act notice sent to him on 31 March 2015, but he did not agree or accept in full the content of the statement. He had spoken to MH on more than one occasion. The Respondent stated that he was "shocked to incredulity" when he read in the statement that MH had no idea of the costs, had never discussed costs with the Respondent, and did not know that costs had been taken from CO's estate until informed of that by the SRA. The Respondent accepted that costs of £94,000 on an estate valued at £258,000 were high. Further, if the SRA had not intervened into his practice there would not be complaints in this manner; his clients would have discussed matters with him and not been in contact with the SRA.

112. The Respondent was asked clarification questions by the Tribunal. He did not know what the average cost of a probate matter was, as he had "never worked it out". He explained that costs of £100,000 were at the top end of the types of probate matters that he dealt with. When asked about work that he had conducted, when his costs were in the region of £100,000, the Respondent explained that none of it stuck in his mind, over and above writing letters, visiting beneficiaries, attending estates, and getting the money in.

113. The Tribunal asked about the agreement with AW, TR and David. The Respondent confirmed that he had agreed to work for nothing, until the compensation payment came in. They had no idea, at that time, of the amount of compensation that be awarded. They did know that AW would receive some payment. The Respondent explained that he did not have any idea of how much was owed to him, but the agreement was that he would be entitled to the compensation payment in full. If it had been much less then that was a risk that he had taken. He did not feel over rewarded, as it was agreed that he would take whatever was paid. He did think that if the compensation payment had been double what it was, then he would have received a disproportionate amount of money for the work he had undertaken, and would have made some adjustment.

114. When asked about his billing practices, and not drawing down on all of the money he was entitled to at one time, and thereby keeping office money in client account the Respondent stated that he did not think of it in that way. He confirmed that he had a copy of the Solicitors Accounts Rules in his office, and when asked if he understood those rules stated "obviously I didn't or I would not have done what I did." He believed that his only fault in relation to the client care letter was to not check the amounts estimated and the way in which costs would be calculated. He explained that he used the pro forma letter and did not pay proper attention to it. The Respondent accepted, when asked, that the only proper way to bill on a time/cost basis was to time record. He also accepted, when asked, that he needed to send a bill before taking any costs from client account. He explained that quite often he was not asked how much he charged, and that he had quite often acted for the generations of the same family. When asked if, as a solicitor, he did not feel that it was appropriate to instigate

conversation about costs when not asked by his client, he responded "I should say yes but it never crossed my mind." He explained that people did not shop around, but would simply call him and ask him to represent them.

115. The Respondent confirmed that he did not believe that he had charged excessive amounts, although he did think that the charges on the CO matter were excessive. When asked what he considered the value of the work to be, he replied that he did not know. He did not accept MB's costs estimate of £3,750, describing the amount as "silly", and stated that a realistic value of the work undertaken, for which he had billed approximately £100,000, was about £50,000. If he was still in business, then he would simply have raised credit notes on that matter, and things would have gone no further as he knew MH so well. The Respondent stated that he knew most of his clients quite well.

116. The Tribunal asked about the file of JA. The Respondent explained that the note was not intended to mislead the SRA, but saying weekly instead of monthly was an innocent mistake. He explained that he was getting the requested files ready for collection by the SRA. He had written the attendance note as he knew there was nothing on the file to show that he had been attending the estate, and without a note the file would "look ridiculously over-billed". He had no concern that any of the other files would look over-billed.

117. When asked about what he believed a member of the public who was listening to the evidence in this case would think on the question of dishonesty, the Respondent replied that when listening to Mr Levey, they would think he was guilty, but he hoped that after hearing his side, the member of the public would come to a different conclusion.

118. When asked why he did not request MH and PE to attend for cross-examination, the Respondent explained that he expected the matter to be adjourned. He had intended to call PE, as he did not tell her that the money was invested. He had discussed costs with MH and/or his mother, but did not intend to call him, as he was a friend.

119. The Tribunal went through each allegation with the Respondent. The Respondent accepted the breaches alleged in allegations 1.1 and 1.3.2; all other allegations were denied.

Findings of Fact and Law

120. 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. The submissions below include those made by the parties in the documents and those made at the hearing.

121. **Allegation 1.1 - failed to provide adequate or accurate information to clients about likely overall costs at the outset of matters or throughout the conduct of them where required, and thereby breached Rules 1(a) and/or 1(e) and/or 1(d) and/or 15 of the SPR and/or the SCICCIC 1999 and/or Rules 1.02 and/or 1.05 and/or 1.06 and/or 2.03(1) of the SCC 2007 and/or Principles 2 and/or 5 and/or 6**

of the Principles and further or alternatively failed to achieve outcome O(1.13) of the SCC 2011;

Allegation 1.2 - failed to provide adequate or accurate information to clients about the basis of calculation of costs where required and thereby breached Rules 1(a) and/or 1(e) and/or 1(d) and/or 15 of the SPR and/or the SCICCIC 1999 and/or Rules 1.02 and/or 1.05 and/or 1.06 and/or 2.03(1)(a) of the SCC 2007 and/or Principles 2 and/or 5 and/or 6 of the Principles and further or alternatively failed to achieve outcome O(1.13) of the SCC 2011;

121.1 Mr Levey submitted that in relation to the files of LE, WM and EJ, the Respondent's client care letters estimated costs to be £10,000 with an hourly charging rate of £200. On the file of DR, the estimated costs were £2,000 with the same £200 hourly charging rate. In all of those matters, the costs had far exceeded the estimates provided. At no point during the conduct of any of the matters did the Respondent provide an update as to the costs incurred.

121.2 The Respondent did not provide any costs information to the executors in relation to the estates of CO and PP either at the outset or during the conduct of those matters. This was evidenced in the statements of MH and PE respectively,

121.3 Mr Levey submitted that in failing to provide an adequate or accurate estimate of costs, and by charging at a different hourly rate than that stated in his client care letter, the Respondent, as well as breaching the SPR and the SAR, had failed to act with integrity (Principle 2), failed to provide a proper standard of service to his clients (Principle 5), and failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services (Principle 6). In particular, the Respondent knew when he sent out the client care letters that they were an inaccurate reflection of the likely level of charges. He calculated his bills by reference to factors other than those explained to clients – he justified his charges to clients at an hourly rate of £350 whereas his client care letter stated that his hourly rate was £200. Mr Levey submitted that the appropriate rate, for a solicitor undertaking similar work to the Respondent in the same area as the Respondent was £201 per hour. The Respondent had provided no real justification as to why his charges should be almost double the hourly rate in his client care letter.

121.4 The Respondent, whilst giving evidence, accepted that his client care letter was "rubbish", and that the costs estimates in those letters did not reflect the likely costs or the actual costs charged in any of the matters. To that extent, and with the benefit of hindsight, the Respondent accepted that he should have reviewed the costs estimates, and thus accepted the misconduct alleged in allegation 1.1 during his evidence.

121.5 The Respondent relied on his responses to the FIO in his evidence. During his interviews with the FIO, the Respondent stated that the hourly rate set out in his client care letter, was inadequate for his experience and expertise and had not been amended for ten years. He explained that £350 per hour was a more appropriate rate. Further, he argued that he ran a niche practice, and his level of expertise was such that he was often called upon by other solicitors to advise on the administration of estates. This was further proof of his expertise, and justified his hourly rate.

121.6 The Tribunal had no doubt that these allegations had been proved on the evidence. It was clear that the costs estimates provided by the Respondent bore absolutely no relation to the costs that were actually charged by him. The Tribunal examined in detail the client care letters sent by the Respondent, together with the statements of MH and PE. The Tribunal noted that the Respondent's client care letter stated that:

> "All hourly rates are reviewed from time to time. We will provide you with prior notice of any change to the hourly rate."

121.7 In failing to inform clients that his hourly rate was not as stated in his letter, but was in fact £350, the Respondent had failed to comply with the terms of his own client care letter. In any event this was an attempt at ex post facto justification as the bills had been prepared with no reference to time spent on each matter other than in the sense of "gut feel". The Tribunal accepted that the Respondent may well have trained in an 'old fashioned firm', where costs were assessed by 'weighing the file' at the conclusion of the matter, however the Respondent was aware that a client letter had to be sent which had to include an estimate of the likely costs, together with an hourly rate (if one was to be charged). The Tribunal did not accept that the Respondent was not aware of the estimate being provided to clients as he was using a pro forma; a different estimate was provided on the file of DR. If the letter sent was simply a pro forma with no amendments, the estimate for DR would have been the same as that on the other matters.

121.8 The Tribunal noted that the Respondent accepted, in the exemplified matters, that his hourly charging rate was incorrect and that he was justifying charging clients on the basis of an hourly rate of £350, but that he did not admit allegation 1.2. The Tribunal accepted, in their entirety, the statements of MH and PE. The Tribunal found no evidence that the value element of the estates were calculated by the Respondent in accordance with Law Society Guidelines.

121.9 The Tribunal found that in failing to provide accurate information on overall costs and the basis of charging, the Respondent had breached the Principles, Rules and Codes as pleaded and alleged. Accordingly the Tribunal found allegation 1.1 proved beyond reasonable doubt on the admission, evidence and submissions. The Tribunal found allegation 1.2 proved beyond reasonable doubt on the evidence and submissions.

122. **Allegation 1.3 – the Respondent transferred sums from his Client Account to his Office Account in respect of his fees otherwise than in accordance with Rule 19 of the SAR 1998 and/or Rules 17.2 and/or 20.1 of the SAR 2011, in that:**

1.3.1 sums transferred were not properly required in payment of the Respondent's fees; and/or

1.3.2 a bill of costs or other written notification of the costs incurred had not been given or sent where required;

Allegation 1.4 – the Respondent made transfers from Client Account to Office Account of sums which were in excess of those which might properly be charged for the work undertaken, which did not reflect the work actually undertaken,

and which were not fair and reasonable, and thereby breached Rule 1(a) of the SPR and/or Rule 1.02 of the SCC 2007 and/or Principle 2 of the Principles;

122.1 Mr Levey relied on the reports of MB, and the reports of the FIO. Mr Levey submitted that the Respondent's misconduct in relation to allegations 1.3 and 1.4 was amply demonstrated in all of the exemplified matters. The file of AW was a particularly egregious example of this. In that matter, the Respondent received £166,238.09 from the Welsh Government. Between 16 December 2011 and 6 September 2013, the Respondent had transferred costs of £150,600, where only one bill of £600 (including VAT) appeared on the file.

122.2 On the file of MW, the Respondent was acting as the executor of the estate, and had no executor client. The estate was valued at approximately £303,600 and the Respondent charged costs of £24,700. MB assessed the true value of the costs to be £2,500. The Respondent's charges equated to an overcharge of approximately £22,000, ten times as much as they ought to have been. This, it was submitted, could not possibly be proper billing within the terms of the Accounts Rules. MB examined the file and found that the instances of frequent billing on the file were "very concerning". An invoice in the sum of £6,000 was raised on 2 June 2014, four days after the file was last billed. Using the hourly rate of £350, this amounted to 17 hours of work over two working days. There was no evidence of any work having been conducted on the file during that time. Following that invoice, further invoices were issued on 9 June 2014 (£5,000) and 16 June 2014 (£6,000). There was only one short letter on the file between 2 and 9 June 2014, and nothing on the file between 9 and 16 June 2014. MB concluded that costs of £24,700 were in no way fair and reasonable, and that a sum not exceeding £2,500 would represent reasonable costs in that matter.

122.3 The other exemplified matters showed either a pattern of successive billing, or excessive overbilling, or quite often both. Common to all the matters was a lack of any evidence of the work undertaken to justify the level of billing.

122.4 The Respondent accepted that he had not sent out interim bills or other notification of costs; a fact that he had accepted when interviewed by the FIO. During his evidence, the Respondent formally admitted allegation 1.3.2, but denied allegations 1.3.1 and 1.4. The Respondent submitted that all of his costs were fair and reasonable, and that he honestly and truly believed that his charges were correct. The Respondent's submissions in relation to the file of AW are at paragraphs 95, 106 and 107. In summary, the Respondent asserted that the bills on that matter were contained on associated files that had not been examined, and the monies he had taken were due to him for the work he had been carrying out over the last eight years, and pursuant to an agreement between the Respondent, AW and/or TR and/or David.

122.5 The Respondent submitted that in each case, the charges were based on the value of the estate, the complexity of the issues, the assets of the estate and the work involved. The Respondent submitted that all costs had been properly incurred as per the SAR 1998 and/or the SAR 2011, and that all costs charged were justifiable. The Respondent recognised that his time recording was woeful, and his failure to properly time record his work left him in difficulty when proving that the work billed for had in fact been carried out.

122.6 The Respondent accepted that, with hindsight, in the matter of CO only, his costs were high, and should have been closer to £50,000 rather than the amount charged. He did not accept that any of the other matters had been overbilled. The matters before the Tribunal were not run of the mill probate matters, and some of them had been going on for years. The Respondent submitted that the successive bills were not a reflection of the work undertaken during the billing periods, but were in fact a reflection of the work that had been carried out; he chose to bill for his work in this way for operational reasons. Further, he had received no complaints from his clients about the level of his fees.

122.7 The Respondent highlighted a matter, which was not the subject of the proceedings, where he believed that he had charged his client more that he ought to have done. In that case, he did not believe that his charges were justifiable. Without consultation with his client, and before distribution, he credited the money back to the client.

122.8 The Tribunal considered the meaning of the word "properly"; its definition being contained in Note vii to Rule 17 SAR 2011. Properly, for the purposes of Rule 17.2 SAR 2011 meant that for costs to be properly required, the work for which costs had been charged had "actually been done…..and the solicitor [was] entitled to appropriate the money for costs".

122.9 The Tribunal found that as the Respondent had failed to send a bill, or other written notification of costs. The transfers he made, notwithstanding that they were on account of costs incurred, could not be properly required in accordance with the Rules. The Tribunal found that even if the bills or other written notification of costs had been delivered, the monies were not properly required, as he had not undertaken the work for which he had billed.

122.10 The Tribunal noted that the Respondent had been in possession of the client files since September 2015, and found it inconceivable that the Respondent would not have realised the importance of MB having all the documents in the case such as to provide a realistic estimate of costs. Whilst the Tribunal accepted that the Respondent's time recording was almost non-existent, it did not accept that the difference between that which was recorded and that which was not, justified the costs charged. There was no evidence that the work that he undertook on the exemplified matters was anything other than routine.

122.11 The Tribunal found that MB had sufficient relevant documents so as to provide a reasonable and sensible estimate of the work undertaken. The Tribunal did not accept that the Respondent did not realise the importance of providing other documents to the SRA, or in the event that the SRA was in possession of those documents, highlighting to them that they should also be considered to provide a more accurate assessment of costs. In any event all the Respondent described was the everyday occurrence of executors or family of the deceased bringing in bundles of unsorted papers.

122.12 In relation to the Respondent's explanation of his costs on the matter of AW, the Tribunal found it incredible that any solicitor would work for eight years without payment, awaiting a compensation payment for which the amount was not certain. There was no evidence to support the Respondent's assertions; they were so

extraordinary that the Tribunal found his explanation to be inherently incredible and implausible.

122.13 The amount of costs charged by the Respondent were eye-wateringly large. The Respondent had supplied no cogent evidence of time recording of any meaningful nature, and no credible evidence of what could justify the costs. When he had been asked about the work he had conducted that could justify costs of £100,000 on what the other evidence showed to be a routine probate, the Respondent had been unable to provide any proper or plausible explanation. The Tribunal found that the PP matter was straightforward and routine, requiring the Respondent to do not much more than gathering monies in and paying monies out. The Tribunal accepted MB's analysis of this matter, agreeing that costs should not have amounted to more than £6,500. The Tribunal had every sympathy for PE who was "stunned" when she was informed of the amount of costs the Respondent had charged and taken. Given the nature of the estate, the Tribunal could not accept that the charges made by the Respondent were a reflection of the work he had conducted.

122.14 The Tribunal noted that the Respondent accepted, in relation to the matter of CO, that his costs were excessive. The Tribunal did not accept that reasonable costs in that matter would have amounted to £50,000, further the Respondent provided no reasonable or rational explanation as to why the costs would have been at that level, or indeed, of how it was that he had charged almost double that amount.

122.15 The Tribunal considered it abundantly clear that in transferring sums not properly required, failing to send out bills or other written notification of costs, and excessively overcharging, the Respondent had breached the Rules, Codes and Principles as pleaded by the SRA. Accordingly the Tribunal found allegation 1.3.2 proved beyond reasonable doubt on the admission, evidence and submissions. The Tribunal found allegations 1.3.1 and 1.4 proved beyond reasonable doubt on the evidence and submissions.

123. **Allegation 1.5 - on or about 16 June 2014 the Respondent provided misleading information to a client as to the reasons for delay in distributing the proceeds of an estate and thereby breached Principles 2 and/or 5 and/or 6 of the Principles.**

123.1 Mr Levey submitted that the Respondent provided misleading information to PE at a meeting on 16 June 2014, when he explained that monies could not be released as they had been invested. An examination of the ledger gave no indication that monies were invested or that the receipt of further funds was expected. The entries that preceded the meeting showed that since the last distribution in December 2013, the Respondent had transferred over £20,000 from Client Account to the Office Account, leaving less that £1,000 in the Client Account.

123.2 The Respondent submitted that PE had misunderstood what he said. The money was never invested and he would not have told her that it was. It was previously vested in the Swansea Building Society, but it was not invested.

123.3 The Tribunal accepted in its entirety the statement of PE; it did not accept the Respondent's evidence on this point as credible. The Tribunal noted that the meeting took place between the Respondent and PE in or around 16 June 2014. The money

from Swansea Building Society had been received by the estate, and into the Respondent's client account on 2 September 2013, almost nine months before the meeting took place. In those circumstances, the Tribunal found it implausible that the Respondent would have been talking about money being vested in Swansea Building Society when he knew that he had already gathered that money in. The Tribunal had no hesitation in finding that the Respondent had misled PE as to the reasons for the delay, and found the Respondent's conduct was in breach of the Principles as pleaded. Accordingly the Tribunal found allegation 1.5 proved beyond reasonable doubt on the evidence and the submissions.

124. **Dishonesty**

124.1 It was further alleged that the Respondent acted dishonestly in that, in respect of all or any of the allegations particularised above, he:

- sent letters to four of the clients referred to above setting out an anticipated level of costs which he knew, at the time of sending them, were an inaccurate reflection of the likely level of charges;

- provided information as to the intended basis of calculation of costs which was not, and were known by the Respondent not to be, the actual basis upon which costs were calculated;

- made transfers of sums from Client Account to Office Account which he knew had not been calculated using the method explained to clients;

- made periodic transfers of sums from Client Account to Office Account in respect of professional fees in the knowledge that no work had been undertaken during the period since any previous transfer;

- made transfers of substantial sums from Client Account to Office Account in respect of professional fees in the knowledge that the sums being transferred did not represent a fair and reasonable fee for the work undertaken;

- made transfers of substantial sums from Client to Office Account in respect of professional fees in the knowledge that clients had not at the time of the transfers been notified of the fact and quantum of transfers;

- knowingly provided misleading information to a client as to the reasons for delay in payment of sums held on behalf of an estate;

- personally benefited from the matters set out above.

124.2 It was the SRA's case that on an objective basis, the taking of clients' funds, without the clients' knowledge or consent and in circumstances where such funds were not properly due, was regarded as acting dishonestly by the ordinary standards of honest people. On a subjective basis, the Respondent acted dishonestly in that he knew that he was not entitled to take, but in any event did take, client funds without the clients' knowledge or consent and in circumstances where those funds were not properly due, and knew that such conduct would breach the ordinary standards of honest people.

124.3 Mr Levey submitted that in applying the dual test laid down in Twinsectra v Yardley and others [2002] UKHL 12 ("Twinsectra"), it was not always easy to prove that a Respondent knew that their actions were dishonest. It often had to be inferred from the facts what the Respondent knew or must have known at the time. Mr Levey submitted that this was not such a case, and was as far away from that type of conundrum as it was possible to be. It was abundantly clear that the Respondent knew that he had acted dishonestly when he, for example, charged his client £100,000 on a wholly routine probate matter with an estate valued at a modest £250,000. This amount of excessive overcharging applied to each and every one of the exemplified matters. In the matter of DR, the estate was valued at £146,000. The Respondent provided an estimate of £2,000, but went on to charge in excess of a £100,000. Mr Levey submitted that in this case, there was no room to find that the objective test for dishonesty was not satisfied, but that the Respondent did not know he was being dishonest. It was submitted that it was impossible that the Respondent honestly believed his charges to be fair and reasonable. He knew he was charging far in excess of market rates, the value of the work done, the cost agreed with the client, and the cost that any client would reasonably have been expected to pay. This was not just a conventional case of overcharging by padding out a bill. This was a case of fraud and theft. The Respondent had possession and control over large amounts of money and under the guise of charging clients legal fees, he had effectively stolen their money. The amounts charged by the Respondent bore no resemblance at all to the work undertaken. There had been massive overcharging on a large scale. These were routine probate matters, and even when calculating charges on the Respondents rate of £350, it was still impossible to get anywhere near the figures charged by the Respondent to his clients.

124.4 Mr Levey submitted that his dishonesty was all the more repugnant where he was the executor of the estate, and had no client to which he was answerable. On the estate of JD, where the Respondent was acting as the executor, his charges amounted to a 100% uplift from what the Respondent himself said would have been a reasonable figure. Mr Levey submitted that overcharging at this level could not be done negligently or mistakenly, it could only be done dishonestly, and knowingly so.

124.5 Mr Levey submitted that the Respondent's failure to send out interim bills supported the SRA's case, as it showed that the Respondent was trying to hide the amounts that were being billed from his clients. He had offered no proper explanation as to why bills had not been sent out; simply asserting that this was the way that he had always done it was not good enough.

124.6 The random nature of his interim billing, and successive bills over short periods of time was completely inexplicable, other than it was dishonest; there could be no honest explanation for billing in this way. Nor could there be any honest, reasonable or rational explanation for not billing the entire amount due on a file, rather than holding the money in client account and billing it in dribs and drabs.

124.7 The Respondent strenuously denied that he had in any way acted dishonestly. The amounts charged and funds transferred were properly due, with reference to the work undertaken and the amounts charged. He submitted that his choice of taking the sums due in small amounts, as opposed to a lump sum, were not an indication that his actions were dishonest; he took the sums due in this way for legitimate business

reasons. His failure to send out interim bills had no sinister or dishonest undertones; he simply continued to bill matters in the same way that he had always done, and in the way that he had been trained. Although he had a copy of the Accounts Rules, he was not aware that he had to send out a bill or other written notification of costs before transferring any money from his Client Account to Office Account. The successive bills were as a result of the way that he chose to bill his matters, and not directly correlated to the work undertaken between bills.

124.8 The Respondent did not accept that the DR estate was worth £146,000 as there were a number of properties, and the estate was worth far more. Nor did he accept (although he did not cross examine) the conclusions reached by MB as to the value of the work he had undertaken. The Respondent stated that none of his clients had complained about the level of costs. He came from a small rural community, and was well known in that community. His clients did not ask how much the work would cost, but simply asked him to do the work. The matters that had been exemplified were not "run of the mill" matters; many of them had been going on for years. The standard probate matters that he had conducted did not form part of the proceedings; they had not been questioned.

124.9 The Tribunal considered whether the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people and whether, by those standards, he knew that he had acted dishonestly.

124.10 The Tribunal determined that there could be no doubt that reasonable and honest people, applying ordinary standards, would consider that a solicitor who charged excessive amounts, and in one instance 50 times the estimate provided, had acted dishonestly. Likewise, reasonable and honest people, applying ordinary standards, would consider that a solicitor who stated that his hourly rate was £200, but had in fact justified his charges at £350 per hour, had acted dishonestly. The objective test laid down in Twinsectra was therefore satisfied.

124.11 The Tribunal then considered whether the Respondent was subjectively dishonest. The Tribunal found it inconceivable that this level of charging could occur in any way other than by reason of dishonesty; it was impossible to overcharge to such an extent accidentally, negligently or mistakenly. The Respondent had sent no bills out to his executor clients, the Tribunal found this to be the Respondent's way of concealing the amounts taken. Further, his billing practices were so far removed from being acceptable that they could only be dishonest.

124.12 The Tribunal simply could not accept the Respondent's assertions in relation to the AW matter. His explanation was fanciful and completely implausible. The explanation offered of weekly or monthly visits to the property in the case of EJ was not credible. The cost of monthly visits required by the insurer would not justify the charges made to the estate, and there was no record of any such visit, and the assertion of weekly visits was simply an attempt to cover up the dishonesty of the charges made to this estate.

124.13 Having found that the Respondent had not completed the work for which he had charged, the Tribunal determined that he knew that he had not done so, and knowingly and consciously charged clients excessive amounts. That the Respondent

had been the sole executor in relation to some of the exemplified matters made his misconduct all the more serious; he had blatantly abused his position of trust in the most despicable way. The Tribunal found his actions to be completely abhorrent. In some instances, the fees charged as a percentage of the value of the estate were so large as to be completely disproportionate. This type of excessive overcharging was simply a disgrace.

124.14 The Tribunal was amazed that even after issues of overcharging had been raised by the FIO in his first report, the Respondent continued with the same practices. This was particularly evident on the file of LE, where the overcharge as at 26 October 2011 was approximately £60,000. By the time of the Rule 5 Statement in March 2016, a further £75,000 had been charged to that file. Although the Tribunal recognised that the Respondent may well have conducted some work on that matter between October 2011 and March 2016, it did not accept that the value of that work would have been £75,000.

124.15 The Tribunal was satisfied that the Respondent knew that he was excessively overcharging his clients, and had taken advantage of his position of trust. Accordingly, the Tribunal, having found that his actions were objectively dishonest had no hesitation in finding that the Respondent had consciously, knowingly and deliberately acted in the manner alleged, and knew at the time of doing so, that he was acting dishonestly. The explanations provided by the Respondent of his conduct were incredible and simply not plausible; the Tribunal was satisfied that the Respondent was subjectively dishonest. To take the most extreme example, to bill nearly £100,000 on a probate matter of which the Respondent could recall no detail at all, and which he said at the hearing was worth £50,000 (itself a figure far in excess of MB's estimate of reasonable costs – that assessment being calculated using an hourly rate of £350 and not £200) could not have been considered by the Respondent to be honest by the standards of ordinary people. This exemplified a pattern of work, and the Tribunal found all the examples cited to be dishonest. Further, the case of AW, where the Respondent had taken, in dribs and drabs over an extended period, over £160,000 allegedly for (unrecorded) work done over many years for both the testator and TR's husband David, was nothing other than calculated defalcation. Accordingly the Tribunal found, beyond reasonable doubt, that both elements of the Twinsectra test had been satisfied, and the Respondent's conduct was dishonest.

Previous Disciplinary Matters

125. None.

Mitigation

126. The Respondent did not advance any mitigation. The Tribunal found that all that could be said by way of mitigation for the Respondent was that he had no previous appearances before the Tribunal.

Sanction

127. The Tribunal had regard to the Guidance Note on Sanction (4th Edition).

128. The Tribunal considered the seriousness of the Respondent's conduct. The Tribunal found the Respondent to be completely culpable for the breaches; the misconduct having arisen as a direct result of his sole actions. The Respondent was wholly responsible for the transfers and was the only fee earner with conduct of the matters. The Respondent was an experienced solicitor, who disregarded the regulations put in place to protect his clients. He utilised the funds in his client account in such a way as to demonstrate that he did not believe that he was accountable to his clients. His actions were planned and calculated. Of most concern was the blatant dishonesty he had displayed in abusing his position of trust. He deliberately and calculatedly delayed in distributing in full a number of estates, and during the delay drew down on the monies in those estates. The Tribunal found that in acting in the way that he did, the Respondent had caused harm not only to his clients and beneficiaries, but also to the trust the public places in the profession and the provision of legal services.

129. The Tribunal found the Respondent's conduct to be aggravated by his proven dishonesty which was deliberate, calculated and repeated, and was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin ("Sharma"):

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

130. The Tribunal did not find any factors to mitigate the seriousness of the Respondent's conduct. His very limited admissions were made during his evidence, and only when he was attempting to clarify matters for the Tribunal. He had displayed so small an amount of insight into his conduct that it was negligible.

131. The Tribunal had regard to the cases of Bolton v Law Society [1994] 1 WLR 512 CA, Bultitude v Law Society [2004] EWHC 2022 and Sharma. It was clear from the case law, in particular Sharma, that the usual and proportionate sanction in a case of dishonesty was a striking off order, save where there were exceptional circumstances. The Tribunal found that the Respondent had systematically abused his position of trust over an extended period of time, causing harm to clients and beneficiaries. The Respondent did not submit, and the Tribunal did not find, any exceptional circumstances in this case; the only appropriate and proportionate sanction was to order the Respondent to be struck off the Roll.

Costs

132. Mr Levey applied for the Applicant's costs to be summarily assessed in the full amount claimed of £87,035.18, with an appropriate reduction for the reduced hearing time from five to three days. Further, the Respondent had been written to about placing proper evidence before the Tribunal in relation to any costs order in the event that he wished to submit that he was unable to pay. The Respondent had failed to provide any financial information to the Tribunal or the Applicant.

133. The Respondent submitted that his bankruptcy order had been discharged on 7 February 2016. He had not worked since July 2014, and was not in receipt of any state benefits. He had been living on the salary of his wife who was a full-time nurse. He resided in a four bedroomed detached house, which had approximately £50,000 outstanding on the mortgage. He was unable to provide the Tribunal with an estimated value of that property, as he had never had it valued, and had built that house. He explained that he owned a further property, but that was vested in the trustee in bankruptcy. He also had a private pension fund worth approximately £100,000.

134. The Tribunal determined that the rates charged by the Applicant were perfectly reasonable. As the Respondent had failed to provide an Answer, the Applicant had prepared its case on the basis that all matters were to be fully contested. The Tribunal determined that with the appropriate reduction for the reduced hearing time the Applicant's costs were £80,219.18. The Tribunal noted that the preparation time, given the nature of the very clear and well-presented reports of the FIO and MB, was a little high, and thus reduced the costs to reflect this. The Tribunal assessed the costs at £76,000.

Statement of Full Order

135. The Tribunal Ordered that the Respondent, Edgar Stephen George Thomas, 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 £76,000.00.

Dated this 30th day of March 2016
On behalf of the Tribunal

J. Devonish
Chairman