SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11416-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

STEPHEN JOHN ACRES Respondent

Before:

Mr R. Nicholas (in the chair)
Mr T. Smith
Mr P. Hurley

Date of Hearing: 20 – 21 November 2017

Appearances

Marianne Butler, counsel, of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that he:

1.1 Withdrew client money from client account to pay a personal debt in breach of Rule 20.1(a) of the SRA Accounts Rules 2011 ("SAR"), which says that client money may only be withdrawn from a client account when it is properly required for a payment to or on behalf of the client; and

1.2 By using a client's money to pay a debt for which he was personally liable he breached all or alternatively any of Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the Principles").

2.1 He failed to act in the best interests of his client MG in that he improperly signed the certificate in Part B of two Lasting Powers of Attorney ("LPA") which appointed him as an attorney, with the result that the LPA's were invalid and/or liable to be ruled invalid by a Court. In so doing he:

2.1.1 Breached Principles 2, 4, 5, 6 and 10 of the Principles; and

2.1.2 Failed to achieve Outcomes O(1.2) and O(1.5) of the SRA Code of Conduct 2011 ("the Code")

2.2 While appointed as her attorney, the Respondent handed over control of her financial affairs to a third party. In doing so he failed to fulfil is role as attorney and thereby:

2.2.1 Breached Principles 2, 4, 5, 6 and 10 of the Principles; and

2.2.2 Failed to achieve Outcomes O(1.2), O(1.5) and O(4.1) of the Code.

2.3 In handing over the control of his client's affairs to a third party, in improperly executing the LPA's and/or in paying a personal debt from MG's funds in the Firm's client account, the Respondent acted in such a way as to give rise to claims or potential claims by MG against him, but failed to notify MG of the same. In doing so, the Respondent:

2.3.1 Breached Principles 2, 4, and 6 of the Principles; and

2.3.2 Failed to achieve Outcome O(1.16) of the Code.

2.4 The Respondent failed to comply with his obligation as MG's attorney to provide the Office of the Public Guardian ("the OPG") with information that it had requested from him. In doing so, he thereby breached Principles 2, 4, 6 and 7 of the Principles.

2.5 The Respondent failed to provide the Applicant with information which it had requested from him during the course of disciplinary proceedings and thereby breached Principles 2, 6 and 7 of the Principles and failed to achieve Outcome O(10.6) of the Code.

2.6 The Respondent failed to provide the Applicant with information that it had requested from him through a Forensic Investigation Officer ("FIO") and thereby breached Principles 2, 6 and 7 of the Principles and failed to achieve Outcome O(10.6) of the Code.

2.7 The Respondent failed to create and maintain proper documentary records of his conduct in respect of MG's affairs and thereby breached Principles 4, 5, 8 and 10 of the Principles.

2.8 The Respondent posted a bill to MG's client ledger without having provided her with a bill of costs or other written notification of the costs incurred, in breach of Rules 17.2 and 20.1 of the SAR.

3.1 In response to a request by the Applicant, the Respondent failed to inform the Applicant about the existence of an account at NatWest Bank ("the NatWest Account") and/or to provide the bank statements in respect of the NatWest Account to the Applicant. In doing so:

3.1.1 He thereby:

(i) Breached Rule 31.1 of the SAR;
(ii) Breached Principles 2, 6 and 7 of the Principles; and
(iii) Failed to achieve Outcome O(10.6) of the Code.

3.1.2 In respect of the failure to provide the bank statements and in the alternative, if, at the time of the request, the Respondent no longer had copies of the bank statements in respect of the NatWest Account, the Respondent thereby breached:

(i) Rules 10 and 30.1 of the SAR; and
(ii) Principle 6 of the Principles.

3.2 While appointed as MG's attorney, and a signatory on the NatWest Account, the Respondent failed to act in the best interests of MG and breached all, or alternatively, any of Principles 2, 4, 5, 6 and 10 in that:

3.2.1 The Respondent signed and drew a cheque on the account for £4,030.00 made out to the Respondent's personal account.

3.2.2 The Respondent authorised an online transfer for £12,200.00 to his personal account.

3.2.3 The Respondent used a debit card on the account to make personal payments for his own benefit.

3.2.4 The Respondent made cash withdrawals from the account using a debit card for his own benefit.

3.2.5 The Respondent made a CHAPS transfer on 10 June 2016 of £42,404.74 to the Firm's client account.

3.2.6 The Respondent made a CHAPS transfer on 8 May 2015 of £225,023.00 with the reference "BEQUEST mrs d lewis".

3.3 Whilst appointed as MG's attorney:

3.3.1 The Respondent signed a deed of variation dated 13 May 2013 on behalf of MG which it was not in her best interests to enter into.

3.3.2 The Respondent fabricated an attendance note in order to conceal that he did not have instructions from MG to enter into the deed of variation.

The Respondent thereby breached all, or alternatively any, of Principles 2, 4, 5, 6 and 10 of the Principles.

3.4 The Respondent made charges to MG for professional services allegedly carried out by the Firm which, as the Respondent knew, either (i) related to work that had not in fact been carried out by the Firm at all; or (ii) were excessive, and therefore breached all, or alternatively any, of Principles 2, 4, 5, 6 and 10 of the Principles.

3.5 While appointed as MG's attorney, the Respondent debited the client account (posted to MG's ledger) and credited the Firm's office account (alternatively he instructed someone at the Firm to do so) in order to discharge invoices which he knew (i) the Firm had no entitlement to be paid for (or to be paid in full); and (ii) that it was accordingly not in MG's best interests to pay them. In doing so, the Respondent failed to act in the best interests of MG and breached all, or alternatively any, of Principles 2, 4, 5, 6 and 10 of the Principles.

3.6 The Respondent fabricated the purported care records in respect of MG in order: (i) to conceal the fact that invoice 18370 related to work that was either not carried out by the Firm at all or which related to charges for professional services which were excessive; and (ii) that it was accordingly not in MG's best interests to pay invoice 18370. In doing so the Respondent breached all, or alternatively any, of Principles 2, 4, 5, 6 and 10 of the Principles.

3.7 The Respondent failed to respond to letters and requests for information from the Applicant during the course of these disciplinary proceedings in a timely and/or co-operative manner (or at all) and thereby breached Principles 2, 6, and 7 of the Principles and failed to achieve Outcome O(10.6) of the Code.

4. Dishonesty or in the alternative recklessness was alleged against the Respondent in respect of allegations 1.1 and 1.2, however neither proof of dishonesty nor proof of recklessness was an essential ingredient for proof of those allegations.

5. Dishonesty was further alleged against the Respondent in respect of allegations 2.2, 2.4, 2.5, 2.6, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7, however proof of dishonesty was not an essential ingredient for proof of those allegations.

Documents

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

- Notice of Application dated 4 August 2015
- Rule 5 Statement and Exhibit AHJW1 dated 4 August 2015
- Rule 7 Statement and Exhibit AHJW2 dated 16 November 2016
- Second Rule 7 Statement and Exhibit AHJW3 dated 14 August 2017
- Respondent's Answer to the Rule 5 Statement (undated)
- Respondent's Statement dated 20 May 2016
- Applicant's Schedule of Costs dated 14 November 2017
- Letter from the Respondent (undated) received 20 November 2017

Preliminary Matters

The Respondent's non-attendance

7. The Respondent did not attend the substantive hearing. Ms Butler applied for the case to proceed in the Respondent's absence, pursuant to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"), which provided:

> "If the Tribunal is satisfied that notice of the hearing was served on the Respondent in accordance with these Rules, the Tribunal shall have the power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

8. Ms Butler submitted that the Respondent had been served with notice of the proceedings in accordance with the SDPR, and had initially been engaging in the proceedings. He had provided an Answer to the Rule 5 Statement, and had filed and served witness evidence. At the Case Management Hearing ("CMH") of 24 May 2016, the Respondent was represented and was aware that the Applicant intended to issue a Rule 7 Statement. The Respondent did not attend, and was not represented at any subsequent hearings. He had not provided an Answer to the amended Rule 5 Statement or the additional Rule 7 Statements.

9. On 25 September 2017, a process server attended the Respondent's home address and spoke to the Respondent's wife. His wife confirmed that he still resided at the address. On 3 October 2017, the Tribunal ordered that the second Rule 7 Statement be served on the Respondent by placing it through the letterbox at his home address. Service was effected on 20 October 2017.

10. Ms Butler referred the Tribunal to paragraph 33 of Yusuf v Royal Pharmaceutical Society [2009] EWHC 867 (Admin) as to the matters the Tribunal must have in mind when considering whether to proceed in the absence of the unrepresented Respondent. The Respondent had been served with the proceedings and there was no basis for saying that he was unaware of the hearing. This was a classic case of voluntary non-attendance

11. The Tribunal was mindful that it should only exercise its discretion to proceed in the absence of the Respondent with the utmost care and caution. The Tribunal accepted that the Respondent had been properly served with the proceedings and notice of the hearing. He had initially been in contact with the Applicant and the Tribunal and had previously been represented in the proceedings. The Tribunal noted that there had been no application received from the Respondent requesting that the matter be

adjourned due to ill health or any other reason. The Tribunal had regard to the principles in R v Jones [2002] UKHL 5 and GMC v Adeogba [2016] EWCA Civ 162. The Tribunal was satisfied that in this instance the Respondent had chosen voluntarily to absent himself from the hearing. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. There was nothing to indicate that the Respondent would attend if the case were adjourned. In light of these circumstances, it was just to proceed with the case, notwithstanding the Respondent's absence.

Application to amend the Rule 7 Statement dated 14 August 2017

12. Ms Butler applied to amend the Rule 7 Statement dated 14 August 2017. It had been incorrectly stated that the Respondent denied all the allegations in the Rule 5 Statement, and that the Respondent was a sole practitioner from early 2014.

13. The Tribunal determined that these amendments did not go to the allegations and were not prejudicial to the Respondent. The application to remove the inaccurate statements was granted.

Application to Adjourn

14. During the course of the Applicant's opening, a letter was received from the Respondent (undated), stating that he had been referred to a Mental Health Crisis Team as he was considered to be an at risk patient. He also explained that he was no longer residing at the address the Tribunal held on file and had been staying with friends and relatives who had been supporting him both in respect of his medical condition and financially. Given his circumstances, he had not received any documentation, nor had he been in a position to deal with the matter. He wished to defend the proceedings, but his illness and current financial position (his having been made bankrupt in August 2016 and not having worked since) had prevented him from doing so to date.

15. He asked that the proceedings against him be adjourned to the next open date after 4 months to enable him to properly deal with the matter and be represented. Further, he would provide updated contact details within the next 3 weeks, as he hoped to secure a permanent correspondence address over the next few weeks and obtain representation.

16. Ms Butler opposed the application as:

- There had been numerous items sent to the Respondent since January 2017. It was implausible that the Respondent had not received any of those items.
- There was no explanation in his letter as to how it was that he "inadvertently discovered" that the hearing had been listed.
- The process server had spoken to the Respondent's wife on 25 September 2017 who confirmed that the Respondent still resided at the address on file.

- The Respondent had provided no medical evidence in support of his application. Provision had specifically been made at the CMH on 17 January 2017 for the Respondent to file and serve medical evidence. He had failed to do so.

- The position if the matter were to be adjourned would be unaltered. The Respondent had provided no contact details in his letter, so there was no means by which any future correspondence could be served.

17. The Tribunal considered the representations made by the parties. The Tribunal noted that the Respondent had failed to provide any means by which he could be contacted. There was no return address, telephone number or email details contained in the letter to enable any future contact with the Respondent. The Tribunal did not accept that the Respondent did not have access to an address which could be used for correspondence purposes, and determined that his failure to furnish any contact details was so as to evade the proceedings. The Tribunal noted that issues in relation to the Respondent's health had been raised in 2017. The Respondent's then solicitor had requested that the timetable for the progression of the matter should take account of medical evidence which would address both the Respondent's state of health at the relevant time, and his fitness to stand trial. A direction was made at that CMH, requiring the Respondent to file and serve medical evidence "in the form of a reasoned opinion of an appropriate medical advisor including a prognosis of the Respondent's ability to deal with the proceedings and to attend and participate in the substantive hearing." It was directed that such evidence be filed by 28 February 2017. The Respondent failed to comply with that direction.

18. The Tribunal also had regard to its Policy/Practice Note on Adjournments, which stated at paragraph 4:

> "The following reasons will NOT generally be regarded as providing justification for an adjournment;
>
> ....
>
> The claimed medical condition of the Applicant or Respondent unless this is supported by a reasoned opinion of an appropriate medical advisor.
>
> ....
>
> The inability of the Respondent for financial or other reasons to secure the services of a representative at the hearing or financial reasons for the non attendance of the Respondent."

19. The Tribunal determined that the Respondent's application to adjourn did not meet the criteria set out in its Practice Note. Given the nature of the allegations (which included multiple allegations of dishonesty) and the history of the proceedings, the Tribunal determined that, notwithstanding the Respondent's late adjournment application, it remained in the interests of justice to proceed in his absence. Accordingly, the Respondent's application to adjourn was refused.

Factual Background

20. The Respondent was born in 1963 and was admitted to the Roll of Solicitors in April 1999. The Respondent was formerly a partner at Stanley De Leon Solicitors ("the Firm").

Allegations 1.1 and 1.2

21. On 2 April 2012, following a hearing at the Tribunal, the Respondent was ordered to pay £7,500 in costs to the SRA. The SRA instructed Stephen Wade ("SW") to represent its interests in respect of the recovery of those costs from the Respondent.

22. SW emailed the Respondent on 29 November 2012, requesting that he complete a Personal Financial Information Questionnaire within 14 days and to clarify his interest in a particular property. The Respondent replied on the same date and stated that he did "wish to resolve this and will work with you to agree a payment plan". On 12 December 2012, the Respondent sent SW an email attaching the completed Personal Financial Information Questionnaire.

23. On 12 February 2013, SW emailed the Respondent setting out a payment plan that was acceptable to the SRA as long as the SRA was granted a security over a rental property owned by the Respondent. Having not received as response, SW emailed the Respondent again on 22 March 2013. The Respondent replied on the same day explaining that he had previously responded to the email of 12 February and that his wife wished to see the proposed charge.

24. On 27 March 2013 SW emailed the Respondent and requested that he make an initial payment by way of a cheque. He also stated that he would have his colleagues in his firm's property department send the Respondent a draft charge for his consideration. The draft charge was sent on 3 April 2013 requesting a response within 7 days. A reminder letter was sent on 17 April 2013. No response was received and the matter was referred back to SW by his property department.

25. SW emailed the Respondent on 26 April 2013 explaining that as he had received no response, he would seek his client's instructions in relation to enforcement action. On 10 May 2013, no response having been received, SW informed the Respondent that failing contact from the Respondent within the next 7 days, his client would proceed with the Legal Charge as it saw fit. The Respondent replied on that date stating that his wife was "arranging to take legal advice in relation to the charge."

26. No further contact was received from the Respondent so SW emailed him on 23 May 2013 stating that he was instructed to proceed with insolvency action but that he would not do so until 3 June 2013. If he had not heard from the Respondent by that time he would go forward without further reference to the Respondent.

27. On 31 May 2013 the Respondent explained that his wife, having taken advice, was not happy to execute the Legal Charge. He asked that SW take instructions as to an unsecured payment plan.

28. On 12 August 2013, SW set out a proposal for the settlement of costs in accordance with his instructions. Subsequently, on 1 November 2013 SW emailed the Respondent and referred to discussions with a process server who had been endeavouring to serve a statutory demand on the Respondent. SW indicated that he understood that the Respondent had specifically requested that no appointment letters be sent to him until after 4 November 2013, as his wife was unaware of the SRA's claim for costs, and that this did not accord with information previously supplied. SW asked that the Respondent clarify the situation. In an email of the same date, the Respondent stated that: "I have now secured a facility to pay the money in full. I will be able to pay you by next Friday. I shall contact you then to confirm." He did not reply to the enquiry as to his wife's knowledge.

29. On 20 November 2013, SW received a letter, on the Firm's letterhead, dated 15 November 2013 and enclosed a cheque in the sum of £7,500. The cheque was dated 11 November 2013. Following receipt, SW wrote to the Respondent stating, amongst other things, that the cheque had been drawn on the Firm's client account, had not been cashed by the Firm, and was in any event for the wrong amount as it did not include interest.

30. Following a chasing email, the Respondent replied on 11 December 2013. He explained that he had paid the money into his Firm; the money should have been allocated to one of his personal matters; the Partners at the Firm had concluded that it would be better if the money were paid from his personal account and therefore the money had been returned to him; and that there had been a short delay in the return of the money but he could now make payment.

31. On 17 December 2013, the Respondent made payment in full, such payment being acknowledged by SW on 18 December 2013.

32. Following SW's report to the SRA, a FIO commenced an inspection of the Firm's books of account which culminated in a report dated 7 October 2014 ("the 2014 Report").

Allegations 2.1 – 2.6

33. In or around March 2013, the Firm drafted 2 LPA's on behalf of MG. Part B of each LPA required a certificate provider to certifying that:

    (i) The donor understood the nature of the LPA;

    (ii) The donor understood the authority being conferred on the attorney(s) by the LPA; and

    (iii) The donor had not been pressured into executing the LPA.

34. Part B of the LPA's also required that the certificate provider was independent of the attorney and was not "an attorney or replacement attorney named in this lasting power of attorney … for the donor".

35. Under each of the LPA's executed in March 2013, the Respondent and MG's sister KG, were appointed as joint and several attorneys in relation to MG's property, financial affairs, health and welfare. The Respondent was also the certificate provider in respect of each of the LPA's and signed the certification in Part B of the LPA's.

36. MG's sister died on 25 April 2013, leaving the Respondent as the sole attorney under the LPA's. The LPA's were registered with the OPG on 30 May 2013. Pursuant to the LPA's the Respondent was required to act in accordance with the principles set out in section 1 of the Mental Capacity Act 2005 which included the requirement that "an act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests".

37. In April 2016, the Applicant received a report which raised questions as to the Respondent's honesty in his conduct of MG's affairs. On 10 June 2016, the Applicant received a report from the OPG concerning the Respondent's conduct. The OPG stated that it had written to the Respondent on 16 March 2016 informing him that it was investigating the management of MG's property, financial affairs, health and welfare. The OPG requested that the Respondent provide it with financial information relating to MG's matter and details of DT, who the Respondent said was MG's daughter or step-daughter, and who he said had taken over the management of MG's affairs. The OPG informed the SRA that the Respondent had failed to provide the information requested.

38. A FIO attended the Firm to commence an investigation. The investigation resulted in a Forensic Investigation Report dated 29 September 2016 ("the 2016 Report"). During the investigation, the Respondent was asked by the FIO to provide information in relation to the conduct of MG's affairs. The Respondent provided some, but not all of the information requested. Repeated requests for the information were not complied with. Between July and November 2015, the Applicant wrote to the Respondent on a number of occasions requesting information. A number of emails went unanswered. In November 2015, the Respondent stated that he would provide a substantive response to queries in within the next few days. No substantive response was received. An EWW letter dated 10 October 2016 was sent to the Respondent. No reply was received.

Allegations 3.1 – 3.7

39. Due to the ongoing concerns of the FIO, the second investigation that had commenced on 29 September 2016 continued, notwithstanding the production of the 2016 Report. The continued investigation culminated in a further Report dated 4 May 2017 ("the 2017 Report").

40. In April 2012, MG became a resident in a nursing home. Prior to that she had been residing in a property she jointly owned with her sister. Under the terms of the Wills of MG and KG, both dated 7 March 2013, the Respondent and IL (a partner in the Firm at the time), were appointed as executors and trustees. MG was the residuary beneficiary of KG's estate under the terms of KG's Will.

41. On 13 May 2013 by the Respondent signing as attorney for MG, MG entered into a deed to vary the terms of her sister's Will with the Respondent and IL (as executors and trustees) ("the deed of variation"). Pursuant to the deed of variation, whilst 'DT' had not been a beneficiary under KG's Will, the Will was varied so as to "be read and construed as if it contained a pecuniary legacy of two hundred and twenty five thousand pounds (£225,000.00) free of inheritance tax to be paid to DT…". The probate file contained an attendance note which stated:

> "[MG] asked if she could give away some of the money. We said that it is possible to vary the terms of her sisters Will. She said she wanted to give [DT] her money now. We said that if she wanted to do that she could revoke the gift that she had made in her Will and give it as soon as possible but that probably won't happen until the house sold. This would be done by a deed of variation of [KG's] Will. This is possible because she is the res [sic] beneficiary. [MG] said that she wants to do this. Advised that we would put this in hand and would take about a week. She said that would put her mind at rest."

42. In early 2014, IL sold the Respondent his share of the business in the Firm.

43. On 5 May 2015, MG and KG's property was sold for £500,000.00.

44. During the course of the first investigation, the Respondent had stated that in November 2013 he and IL had decided that he should disclaim his position as MG's attorney, and that he had signed 2 forms in March 2014 to that effect. Notwithstanding those attempts, the OPG had written to the Respondent on 17 November 2014 confirming that he remained (sole) attorney for MG as at that point. No further attempts were made by the Respondent to file a disclaimer with the OPG.

45. On 19 May 2015, the Respondent had written to DT explaining that he had decided to disclaim responsibility as MG's attorney due to his having paid a personal debt using her funds and the SRA's investigation of his conduct in relation to her affairs. The Respondent sent a further letter to DT on 24 July 2015, apparently following further discussions between them. The Respondent stated in his interview with the FIO that he enclosed MG's LPA files with the letter of 24 July 2015.

46. Due to concerns as to the handling of MG's affairs by the Respondent as attorney, the OPG commenced its own investigation into the Respondent, with the investigation being conducted by JB. The OPG concluded that: MG lacked mental capacity; the Respondent had failed in his duty of care to MG with regards to her finances and property; and an application should be made to the Court of Protection to revoke the LPA's in favour of the Respondent and appointing Christopher Poxamatis ("CP") as Property and Financial Affairs Deputy for MG. In an Order of the Court of Protection dated 16 September 2016 CP was appointed as MG's Deputy and the Respondent was removed as attorney.

47. Following his appointment as MG's Deputy on 16 September 2016, CP undertook his own investigations into the Respondent. As CP's investigation was being conducted simultaneously with the SRA investigation, the officers assisted one another in their enquiries.

48. By a letter dated 8 February 2017, MP of BL stated that the Firm had ceased trading on 16 September 2016, that BL had acquired the database of files and that "We understand that this matter has/is being investigated by both the OPG and SRA [sic] all files were handed to the relative of the donor prior to the closure of Stanley de Leon". MP explained, in a letter dated 13 March 2017 that the closure of the Firm had "resulted from the bankruptcy of the sole equity partner Mr Stephen Acres", who was no longer able to practise as a solicitor, and that he had engaged the Respondent as a non-solicitor consultant. Further the Respondent was "not working as a solicitor and has no access to or control or direction over any client money pending the outcome of his disciplinary investigations and in accordance with the restrictions placed upon his practising certificate when he was a solicitor". Subsequent enquiries by the SRA showed that the Respondent had been declared bankrupt on 10 August 2016.

49. On 14 June 2016, the FIO asked the Respondent to provide all files and financial information held by him or the Firm relating to MG. The Respondent disclosed a number of documents pursuant to this request. He explained that he had transferred the LPA file to DT on 24 July 2015, and that the conveyancing file in respect of the sale of the property was in storage. The Respondent did not disclose the existence of the NatWest Account.

50. As a result of enquiries made, CP discovered the existence of the NatWest Account. In a letter to the FIO dated 4 April 2017, CP stated that he had concerns regarding the use of MG's funds arising out of his examination of the bank statements for the NatWest Account. CP identified a number of transactions from the NatWest Account which had been made between 4 August 2014 and July 2016 which he had not been able to be verify "as a genuine use of her funds on her behalf". The total value of those transactions was £319,423.99.

51. As regards the NatWest Account, the bank confirmed:

- There had only been two account holders at any one time since the account was opened in 1991. KG had originally been a joint account holder with MG but was removed in July 2013 following her death. Thereafter the Respondent was added to the account in KG's place from 19 July 2013 until 31 January 2017, when CP was substituted in his place.

- During the period July 2013 to 31 January 2017, no one other than the Respondent and MG had been on the bank mandate and no other party had been able to operate the account other than MG and the Respondent.

- The bank statements for the account were sent to the Respondent at his home address.

- Debit cards had been issued for the NatWest account to each of the Respondent and MG. The debit cards and pin numbers to operate them would have been sent to the Respondent's home address.

- There was no credit card attached to the account.

- A cheque book had been issued to the Respondent.

- MG had never been set up with online banking but the Respondent had access to online banking.

52. A review of the transactions on the NatWest account showed that:

- A cheque dated 13 October 2015 in the sum of £4,030.00 was made out to the Respondent personally and signed by him in his capacity as attorney. The cheque cleared the account on 16 October 2015.

- On 4 March 2016 an online transfer in the sum of £12,200.00 was made to the Respondent's personal account.

- Between 4 August 2014 and 9 March 2016, a number of card payments to the value of £15,426.25 were made using one of the debit cards issued by the Bank.

- Between 4 August 2014 and 22 December 2014, a number of cash withdrawals were made.

- A CHAPS payment in the sum of £42,404.74 was made on 10 June 2016 from the account to the client account of the Firm. The monies were credited to an unrelated client's account at the Firm.

- A CHAPS payment in the sum of £225,023.00 was made on 8 May 2015.

53. MG's care home confirmed that there were no records that she had been taken out on any trips between 1 August 2014 and 31 July 2016. Further, the Unit Manager that had been in post since MG's residence in 2012 did not believe that any trips had been undertaken in the time period stated. MG had been confined to her bed since October 2015.

54. The client ledger account for MG showed a number of invoices. Invoice 17979 was for £12,000.00 and was billed pursuant to "agreed commission in relation to the sale of [MG and KG's property]". Invoice 18370 was for £18,000.000, £12,000.00 of which was for 1 hour weekly visits to MG from 1 January 2015 – 31 December 2015, and £6,000.00 of which was for "liaising with the vicar and personal friends regarding photographs, sorting through photographs and arranging delivery to [the care home]". Attendance records for visiting MG were provided by the Respondent to the FIO

55. Both invoices were paid by way of transfers from the Firm's client account to its office account.

Witnesses

56. None.

Findings of Fact and Law

57. 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.

58. Ms Butler submitted that whilst the Respondent was referred to as being MG's attorney at the material time, as a result of his misconduct, the LPA's which appointed him in that capacity were technically invalid. References to his being MG's attorney at the material time should be understood as references to his being her attorney or purported attorney as appropriate.

59. **Allegation 1.1 - Withdrew client money from client account to pay a personal debt in breach of Rule 20.1(a) of the SAR, which says that client money may only be withdrawn from a client account when it is properly required for a payment to or on behalf of the client; and**

Allegation 1.2 - By using a client's money to pay a debt for which he was personally liable he breached all or alternatively any of Principles 2, 4, 6 and 10 of the Principles.

Applicant's Submissions

59.1 Ms Butler submitted that the Respondent's basis of admission as regards allegation 1.1 was not accepted. As regards allegation 1.2 the Respondent's conduct was clearly in breach of the principles. He was not assisted by his evidence that the system at the Firm was confusing and open to human error. Rather, that pointed to an unacceptably lax attitude towards his professional obligations. The protection of client funds was a matter of the utmost public importance so as to enable the public to have confidence in the security of their funds within a client account. To allow the mistakes that the Respondent submitted had occurred to go unnoticed demonstrated carelessness and was detrimental to public confidence in the profession.

Respondent's Submissions

59.2 In his witness statement, the Respondent admitted that he had breached Rule 20.1(a) of the SAR on the basis that the money was never physically withdrawn from the client account and it was the act of drawing the cheque and posting it to the wrong ledger that caused the breach. He denied breaching the Principles as alleged and further asserted that the breach would be classified as a trivial breach that was rectified on discovery.

59.3 The Respondent had arranged for a credit card so as to pay the £7,500 costs to the SRA. It had been agreed that this would be paid by him to the Firm, who would in turn make the payment. The Respondent had agreed with IL that, notwithstanding the

fact that the order was against the Respondent, the Firm would make the payment on his behalf. He was to be reimbursed by the Firm at a future date. When he requested the cheque, he had a number of matters open. The cheque request screen did not detail any client information. When requesting the cheque an error was made and it was requested from the incorrect matter as the Respondent had clicked on the wrong file; he had intended to request a cheque from his own personal matter. If there had been insufficient monies on his own matter, the request would have remained pending.

59.4 The Respondent wrote a draft letter, which was left on his desk. The cheque was also left on his desk. He did not send out the letter together with the cheque, but believes that another member of staff did so, no doubt trying to be helpful. The chronology of events was:

- Cheque request made
- Cheque drawn on 11 November 2013
- Letter to SW written on 15 November 2013
- Cheque and letter mistakenly sent out on 19 November 2013
- Call received from the SRA on 21 November 2013
- Challenge by IL as to the circumstances on 21 November 2013
- Payment to the Firm on 22 November 2013
- MG's ledger credited on 22 November 2013

Dishonesty/Recklessness

59.5 Ms Butler submitted that when considering dishonesty, the Tribunal must apply the test as set out in Ivey v Genting Casinos [2017] UKSC 67 namely:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

59.6 Ms Butler submitted that the Respondent's account was not credible as:

- There was no satisfactory explanation as to why the Respondent debited the wrong account; if the system was open to error the Respondent would have exercised more care;

- Even if there had been an error in requesting the cheque, there was no reason why the Respondent failed to consider whether the cheque he signed was properly payable;

- There was no reason for him to write a letter and leave it to be posted on a later date;

- Notwithstanding the above, the Respondent would then need to have left the letter and cheque on his desk for another employee to see and post them without his permission.

59.7 Whilst one of the errors may have happened in isolation, it was simply not credible to assert that all of them had occurred.

59.8 The Respondent knew that his actions were dishonest as:

- He was unable to make the payment at the time he wrote the cheque;

- He knew he was the sole attorney for MG's affairs and that no-one else would scrutinise her financial position during the relevant period or at all;

- He was under significant pressure from SW to meet his obligation to pay the costs of the previous proceedings;

- He knew that he should not use client money to pay his personal debt;

- He was unable to use his own money at the time of payment as either his wife was unaware of the debt, or she was unaware that the delay in payment meant that insolvency proceedings were imminent.

59.9 The Respondent denied that his conduct was dishonest. The act of drawing and submitting the cheque were genuine errors. He had not intended to use MG's money to pay a personal debt.

The Tribunals Findings

59.10 The Tribunal found the Respondent's explanation incredible. SW had been writing to the Respondent on an almost monthly basis since November 2012 in relation to the payment of the costs of the hearing. The Tribunal did not accept that, in the circumstances, the Respondent needed to write out a letter enclosing the payment as a reminder that payment was due.

59.11 At the time that he requested the cheque, the Respondent knew that he had not placed any funds into the client account on his personal matter to enable the cheque to be drawn. He also knew, when the cheque was received from the accounts department that he had not placed any funds into the client account for that cheque to have been drawn. In his statement, the Respondent explained that in the event there were insufficient funds on a matter on which a cheque had been requested, "the request would be left pending and the accounts department would then raise the issue with the relevant department who would be aware as to when the money would be available by way of money being posted or an expected payment. If however I was challenged on this and I knew the monies were coming in I would have asked for the cheque anyway." The Respondent was aware that he had not placed his matter in funds, but was not challenged on the cheque request by the accounts department. Nor had he

told them to write the cheque in anticipation of payment onto the account. It would have been clear to the Respondent that the cheque written was not drawn on his personal matter. The Tribunal did not accept that a member of staff, seeing the letter and cheque on the Respondent's desk, would place them in the post without first asking the Respondent if it was to be sent out.

59.12 Whilst the Tribunal accepted that it was possible for errors to have occurred, the number and succession of the errors contended for by the Respondent was beyond belief. The Tribunal found that the Respondent had deliberately requested a cheque from MG's account.

59.13 The Tribunal found beyond reasonable doubt that the Respondent had breached Rule 20.1(a) as alleged and admitted. The Tribunal determined that in writing a cheque to pay a personal debt, the Respondent had failed to act in the best interests of his client (Principle 4), and had failed to protect client money (Principle 10). Members of the public would be extremely concerned to know that the Respondent had acted in that way, and that would diminish the trust placed in him and in the provision of legal services (Principle 6). It was clear that in deliberately using client money to pay a personal debt, the Respondent had acted without integrity in breach of Principle 2. Accordingly the Tribunal found allegations 1.1 and 1.2 proved beyond reasonable doubt.

59.14 The Tribunal was satisfied that the Respondent was fully aware of his actions, and his misconduct was as a result of conscious impropriety, and was not a series of unfortunate errors; he knew he did not have the funds to pay, and deliberately sought to use the funds of his client to do so. The Respondent clearly knew that his actions were dishonest. Honest and reasonable people, in the Respondent's position would also have seen his actions to be dishonest. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had been dishonest.

60. **Allegation 2.1 - He failed to act in the best interests of his client MG in that he improperly signed the certificate in Part B of two Lasting Powers of Attorney ("LPA") which appointed him as an attorney, with the result that the LPA's were invalid and/or liable to be ruled invalid by a Court. In so doing he breached Principles 2, 4, 5, 6 and 10 of the Principles; and failed to achieve Outcomes O(1.2) and O(1.5) of the Code.**

Applicant's Submissions

60.1 As detailed above in paragraphs 33 - 35, the Respondent signed a declaration in each of the LPA's stating that he was independent of the attorneys and was not an attorney under the LPA's. As a result of his signing the independence declaration, as well as signing the declaration for an attorney, the LPA's were liable to be ruled invalid (or were invalid) if the matter was to go before a court under Sections 9 and 10 and Schedule 1 of the Mental Capacity Act 2005.

60.2 In his interview with the FIO dated 23 August 2016 when asked about his signing of the certificate of independence, the Respondent explained that "when I signed it clearly I did not know or realise that I ought not to have done so, had I realised I would not of (sic) done so obviously" and that "what people see about this issue is

that you're a solicitor, you do this sort of work, you should know, end of, and I can't really rebut that." The Respondent also explained that he did not complete the forms on a daily basis.

The Tribunal's Findings

60.3 The Tribunal noted that when the Respondent completed the independence declaration, he stated that he was a private client solicitor "specialising in advising the elderly". It was clear from the Respondent's having signed the certificate, and the explanation provided by him in his interview that he did not understand the importance of, nor had he read the declaration in relation to the signing of the independence certificate. The Tribunal found that it was clearly not in the interests of his client for the Respondent to sign certificates B and C, and thus found beyond reasonable doubt that the Respondent had breached Principle 4. He had also failed, beyond reasonable doubt, to provide a proper standard of service in breach of Principle 5 and Outcomes O(1.2) and O(1.5). The Tribunal also found, for the same reasons, that the Respondent had failed to protect client money and assets, and had thus breached Principle 10. The Tribunal determined that the Respondent's misconduct diminished the trust the public placed in him as a solicitor and in the provision of legal services. As the Respondent had seemed to acknowledge in his interview, members of the public would expect a solicitor who advocates that he is a specialist in advising the elderly to understand the requirements when completing an LPA, and would expect any solicitor to have properly read and understood such a document before signing it. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 6. The Tribunal did not consider that the Respondent's errors in completing the LPA's were such that he had failed to act with integrity. The Tribunal found allegation 2.1 proved beyond reasonable doubt, save that it did not find that the Respondent had breached Principle 2.

61. **Allegation 2.2 - While appointed as her attorney, the Respondent handed over control of her financial affairs to a third party. In doing so he failed to fulfil is role as attorney and thereby: breached Principles 2, 4, 5, 6 and 10 of the Principles; and failed to achieve Outcomes O(1.2), O(1.5) and O(4.1) of the Code.**

Applicant's Submissions

61.1 The Respondent stated that in November 2013, he and IL decided that he should disclaim his position as MG's attorney. This was as a result of the matters leading to allegation 1.1. The Respondent explained that he had informed MG of this in December 2013, and that she had not indicated a particular preference as to who should deal with the matter. There was no attendance note of that discussion, nor was there any record of MG's instructions in that regard. In March 2014 he completed two forms to disclaim his position under the LPA's. On 17 November 2014, the OPG wrote to the Respondent and confirmed that he remained the attorney for MG. On 24 July 2015, the Respondent wrote to DT, enclosing MG's LPA files.

61.2 Ms Butler submitted that the Respondent had knowingly abandoned his role as attorney without ensuring that there was a replacement attorney or deputy authorised to act in MG's best interests. He had also knowingly communicated information and transferred confidential documents relating to MG's affairs without instructions from

MG to do so, and to someone he knew not to be properly authorised to act on MG's behalf. In doing so, the Respondent had acted in breach of Principles 4, 5, 6 and 10, and Outcomes O(1.2) and O(1.5).

Dishonesty

61.3 Ms Butler submitted that the Respondent had deliberately passed control of MG's affairs to a third party in order to protect his own interests following his breaches of duty towards MG, and as such he had acted dishonestly.

The Tribunal's Findings

61.4 The Tribunal noted that the reason the Respondent gave DT for disclaiming his role was due to his raising a cheque from MG's matter and the subsequent SRA investigation. The Tribunal considered that given the circumstances, any solicitor would have ensured that they had noted their client's full instructions in relation to disclaiming their position under the LPA's; it was incredible that there was no record of MG's instructions in that regard. The Tribunal also noted that the Respondent had sent the LPA files to DT subsequent to receipt of the letter from the OPG dated 17 November 2014, which confirmed that he remained the attorney for both LPA's, and further to the Firm's letter to the OPG dated 1 April 2014, in which it was stated that the Firm was proceeding on the lines of applying for a Deputyship Order. The Respondent did not send the disclaimer forms to the OPG when he sent the files to DT. The Tribunal determined that in sending the files without any evidence of the express consent of MG, the Respondent had failed to act in her best interests, failed to provide a proper standard of service and had failed to protect her money and assets. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principles 4, 5 and 10, and Outcomes O(1.2), O(1.5) and O(4.1). The Tribunal further determined that the Respondent had acted in a way that was likely to diminish the trust the public placed in him and the provision of legal services, and found beyond reasonable doubt that he had breached Principle 6. The Tribunal determined that no solicitor, acting with integrity, would have abandoned their role, and handed over control of a client's affairs to an unauthorised party. Thus the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 2.

61.5 The Tribunal found that the Respondent had knowingly handed over control of his client's affairs to DT so as to protect his own interests following the breach of his duties towards MG. Further, he had done so knowing that he did not have MG's consent, and knowing that his actions were dishonest. Reasonable people, operating ordinary standards of honesty would find the Respondent's conduct dishonest in this regard. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct was dishonest, and thus found allegation 2.2 proved, including as to dishonesty.

62. **Allegation 2.3 - In handing over the control of his client's affairs to a third party, in improperly executing the LPA's and/or in paying a personal debt from MG's funds in the Firm's client account, the Respondent acted in such a way as to give rise to claims or potential claims by MG against him, but failed to notify MG of**

the same. In doing so, the Respondent: breached Principles 2, 4, and 6 of the Principles; and failed to achieve Outcome O(1.16) of the Code.

Applicant's Submissions

62.1 The Respondent, having improperly provided MG's confidential information to DT, and having written a cheque using MG's funds, was under a duty to inform MG of the potential claims she had against him pursuant to Outcome O(1.16) which provided that he should inform a current client if he discovered any act or omission which could give rise to a claim by that client against him. In failing to do so, the Respondent had breached Principles 2, 4 and 6

The Tribunal's Findings

62.2 The Tribunal determined that, given the conduct underlying its findings in relation to allegations 2.1 and 2.2, there were potential claims of which the Respondent should have notified MG. In failing to do so, the Respondent had protected his own position over and above that of his client. No solicitor acting with integrity would prioritise their own interests above that of their client, particularly when any potential detriment was caused by the solicitors own actions. Thus the Tribunal found that the Respondent had acted without integrity in breach of Principle 2. The Respondent's actions were such that they diminished the trust the public placed in him and in the provision of legal services. Members of the public would expect solicitors to inform them if a mistake had been made in relation to the conduct of their matter. Accordingly the Tribunal also found that the Respondent had breached Principle 6 and found allegation 2.3 proved beyond reasonable doubt.

63. **Allegation 2.4 - The Respondent failed to comply with his obligation as MG's attorney to provide the OPG with information that it had requested from him. In doing so, he thereby breached Principles 2, 4, 6 and 7 of the Principles.**

Allegation 2.5 - The Respondent failed to provide the Applicant with information which it had requested from him during the course of disciplinary proceedings and thereby breached Principles 2, 6 and 7 of the Principles and failed to achieve Outcome O(10.6) of the Code.

Allegation 2.6 - The Respondent failed to provide the Applicant with information that it had requested from him through a FIO and thereby breached Principles 2, 6 and 7 of the Principles and failed to achieve Outcome O(10.6) of the Code.

Applicant's Submissions

63.1 As an attorney, the Respondent was subject to the regulation of the OPG and was required to comply with requests for information from the OPG. On 16 March 2016, the OPG wrote to the Respondent seeking information about the management of MG's affairs, with a response required by 31 March 2016. On that date the Firm requested an extension of time, which was granted to 15 April 2016. The Respondent failed to provide the information requested, and a further letter was sent by the OPG on 26 April 2016. That letter reminded the Respondent of his legal obligation to provide the information sought, and gave a deadline of 18 May 2016.

63.2 On 18 May 2016, the Respondent replied providing some of the information sought; he did not provide the financial information requested. The OPG chased the Respondent to provide this information in a telephone call on 1 June 2016, by email on 6 June 2016 and by a further telephone call on 7 June 2016. During the telephone call of 7 June 2016, the Respondent informed the OPG that he was sending all the requested information that day. No response was received the Respondent.

63.3 On 7 July 2015, the Applicant emailed the Respondent seeking confirmation of whether he continued to act in relation to MG's matter, noting an apparent conflict of interest. The Respondent was also asked whether MG's relatives had been notified of the SRA's involvement. No response was received to that email. A further email was sent on 1 September 2015 seeking confirmation of the same matters. Again no response was received. On 30 October 2015, the Respondent was emailed seeking confirmation of the same matters. The Respondent replied explaining that he had decided to resign and that the Firm would apply for a Deputyship Order. The Respondent did not explain that the OPG had informed him that his attempt to disclaim had been ineffective, nor did he explain that he remained an attorney. Further, he failed entirely to answer the question as to whether MG's relatives had been informed of the matter.

63.4 On 16 November 2015, the Applicant emailed the Respondent asking him to provide the additional documents that he had previously indicated he would be relying on in the disciplinary proceedings. The Respondent replied on 16 November 2016 indicating that he would write "substantially" in the "next couple of days", however no substantive response was received.

63.5 During the course of the investigation, the FIO made a number of requests for explanations and information with which the Respondent failed to comply:

- On 14 June 2016 the FIO asked the Respondent to provide information relating to MG's affairs. He provided some information the following day, but not all requested information was provided. The Respondent agreed that the outstanding information will be provided when the FIO returned to the Firm.

- On 20 June 2016, the FIO emailed the Respondent to confirm his attendance at the Firm on 27 June 2016. However, when the FIO attended, the information was not provided. The Respondent had not prepared the information, explaining that the email of 20 June 2016 had been blocked by a spam filter.

- The FIO again requested the outstanding information on 28 June 2016. The Respondent provided further information on 29 June 2016, however the records were incomplete.

- On 15 and 27 June 2016, the Respondent informed the FIO that he had more information available that was relevant to the investigation. It was agreed that this would be provided by email by no later than 5 July 2016. However, the Respondent never provided the information. A subsequent request for that information was made by email on 14 July 2016. The Respondent did not reply.

- Subsequent requests for the outstanding information were made by telephone on 21 July, 1 August, 2 August and 12 August 2016. No response was received. On 12 August 2016 the FIO emailed the Respondent expressing concern about the delays in his complying with the request for information, and indicating that he would visit the Firm on 16 August 2016. On that date the Respondent telephoned the FIO to postpone the visit on the basis that he was out of the office unwell. A further visit was arranged for 23 August 2016, at which the outstanding information was to be provided.

- At the visit on 23 August 2016 no further information was provided. The Respondent indicated that the file may be in storage and that he would try to locate it. The information was not subsequently provided to the SRA, nor did the Respondent confirm whether any attempt had been made to find that outstanding information.

63.6 Ms Butler submitted that the Respondent had failed in his duty to provide the OPG with the information it had requested to enable an investigation into the management of MG's affairs to be undertaken. In doing so he had deprived her of the protection of the OPG, who would consider whether it should use its powers to protect her interests. In doing so the Respondent had failed to act in MG's best interests, diminished public trust in him and the provision of legal services, and failed to comply with his regulatory obligation. He had also failed to act with integrity.

63.7 The Respondent had failed to comply with his obligation to co-operate with the SRA, as he did not comply with reasonable requests from both the SRA and the FIO for the provision of information, and failed to respond to communications. In doing so, the Respondent failed to co-operate fully with the SRA in breach of Principle 7 and Outcome O(10.6). The Respondent's conduct meant that he had acted in a way likely to diminish public trust in him and the provision of legal services. Further, he had failed to act with integrity.

Dishonesty

63.8 Ms Butler further alleged that the Respondent's conduct in relation to allegation 2.4, 2.5 and 2.6 had been dishonest as he realised that his conduct of MG's affairs fell far below the standards expected and contrary to his promises to provide information requested, the Respondent had no intention of providing that information, as it would reveal the extent of his misconduct.

The Tribunal's Findings

63.9 The Tribunal found that the Respondent had failed to provide the information requested by the OPG and the SRA as alleged, and found beyond reasonable doubt that in failing to comply with his legal and regulatory obligations, he had breached Principle 7. His failure to comply with his obligations to the OPG and the SRA meant that he had failed to act in his clients best interests in breach of Principle 4, as he was preventing the effective investigation into MG's affairs. His failure to comply with his obligation to the SRA meant that he had also failed to achieve Outcome O(10.6) pursuant to which he was obliged to co-operate fully with the SRA at all times. The Tribunal determined that the Respondent's failures were the result of deliberate

attempts to circumvent the scrutiny and effective regulation of his conduct by both the OPG and the SRA. Such conduct, it was found, was likely diminish the trust the public placed in him and the provision of legal services. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principles 4, 6 and 7 and failed to achieve Outcome O(10.6). Further, no solicitor acting with integrity would have behaved in the way that the Respondent did. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 2.

63.10 The Tribunal determined that the Respondent had deliberately informed the OPG and the SRA that he was going to provide information that he had no intention of providing as he knew that the information would show the extent of his misconduct in terms of the mismanagement of MG's affairs. The Respondent knew that lying to the OPG and the SRA was dishonest. The Tribunal determined that ordinary and honest people would find that it was dishonest to lie to the regulator and the OPG, and thus found that the Respondent's conduct in that regard had been dishonest.

63.11 Accordingly, the Tribunal found allegations 2.4, 2.5 and 2.6 proved beyond reasonable doubt, including that the Respondent had been dishonest in relation to each allegation.

64. **Allegation 2.7 - The Respondent failed to create and maintain proper documentary records of his conduct in respect of MG's affairs and thereby breached Principles 4, 5, 8 and 10 of the Principles.**

Applicant's Submissions

64.1 During the course of the investigation, the FIO requested a number of documents relating to the conduct of MG's matters. The Respondent was unable to provide a number of documents including utility bills and bank statements. He was also unable to provide a complete record of MG's financial affairs as documents in that regards had either not been created or maintained. Further, he was unable to provide a copy of any retainer letter with DT in respect of costs incurred by the Firm. Ms Butler submitted that the Tribunal could infer that no retainer existed with DT. If such a document had been created, it would, in all likelihood have been located on the Firm's case management system, or in some other electronic location, or a copy could have been sought from DT. As no searches or request seemed to have been undertaken, the Tribunal could properly conclude that the retainer letter did not exist. In the alternative it was submitted that in so far as the letter did exist, but was not locatable, the Respondent had failed in his obligation to ensure that client documents were preserved so that the Firm was able to demonstrate compliance with its regulatory requirements.

The Tribunal's Findings

64.2 The Tribunal found that the Respondent had failed to keep proper records - there was no full record of MG's financial affairs, no proper attendance notes recording her instructions and no retainer letter in respect of DT. All those records were necessary and important to create, keep and maintain in order to ensure the proper management of MG's matters. The Tribunal determined that no retainer letter with DT existed. The Respondent was an experienced solicitor who knew the importance of

maintaining proper client records, and creating and keeping retainer letters when instructed by clients on a matter, and if such a letter existed it would have been retained. The Tribunal determined beyond reasonable doubt that in failing to keep proper records, the Respondent had breached Principles 4, 5, 8 and 10. He had failed to act in MG's best interests and provide her with a proper standard of service. By failing to keep a proper account of her financial affairs, he had failed to protect her money and assets. Those breaches led, consequentially to a finding that the Respondent had failed to carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles. Accordingly, the Tribunal found allegation 2.7 proved beyond reasonable doubt.

65. **Allegation 2.8 - The Respondent posted a bill to MG's client ledger without having provided her with a bill of costs or other written notification of the costs incurred, in breach of Rules 17.2 and 20.1 of the SAR.**

Applicant's Submissions

65.1 On 21 April 2015, a bill in the sum of £18,000 was posted to MG's client account. The bill was addressed to DT and not MG. The sum was withdrawn from MG's client account, meaning that she was both the client and the paying party in accordance with the SAR. The money was therefore not properly required by the Firm within the meaning of the SAR and should not have been withdrawn from her account.

The Tribunal's Findings

65.2 The Tribunal found that no bill or other written notification of costs had been sent to MG and thus the monies were not properly withdrawn from her client account; the monies were withdrawn in breach of Rules 17.2 and 20.1 of the SAR. Accordingly, the Tribunal found allegation 2.8 proved beyond reasonable doubt.

66. **Allegation 3.1 - In response to a request by the Applicant, the Respondent failed to inform the Applicant about the existence of the NatWest Account and/or to provide the bank statements in respect of the NatWest Account to the Applicant. In doing so:**

3.1.1 He thereby: (i) Breached Rule 31.1 of the SAR; (ii) Breached Principles 2, 6 and 7 of the Principles; and (iii) Failed to achieve Outcome O(10.6) of the Code.

3.1.2 In respect of the failure to provide the bank statements and in the alternative, if, at the time of the request, the Respondent no longer had copies of the bank statements in respect of the NatWest Account, the Respondent thereby breached (i) Rules 10 and 30.1 of the SAR; and (ii) Principle 6 of the Principles.

Applicant's Submissions

66.1 On 14 June 2016, the FIO attended the Firm's office and asked the Respondent for "details of any other bank/building society accounts which the firm/partner may operate (e.g. power of attorney; trust accounts; receiver's accounts" and for "all financial information held by you or the firm relating to the affairs of [MG]". In response to the former question, the Respondent replied that there were "none". No reference was made at any time to the existence of the NatWest Account to which the Respondent was a signatory.

66.2 The Respondent did not provide the bank statements for the NatWest Account to the FIO notwithstanding that he was receiving the bank statements at his home address. The Respondent's position was that he was only able to provide incomplete records as the LPA file, bank statements and other financial information had been sent to DT. In response to being asked in the interview whether "since 2015 have you continued to receive bank statements how were those being dealt with", the Respondent replied "I haven't no".

Dishonesty

66.3 Ms Butler submitted that the Respondent had sought to conceal the existence of the NatWest Account from the Applicant by: (i) lying as to its existence; (ii) failing to provide the Applicant with the bank statements relating to the account; and (iii) lying as to what he knew about payments made to or from the account. Those actions were clearly dishonest.

The Tribunal's Findings

66.4 The Tribunal found that the Respondent had deliberately concealed the existence of the NatWest Account. The Respondent was asked during his interview on 23 August 2016 whether he had continued to receive bank statements in relation to MG's affairs and stated that he had not. The Tribunal considered that it was inconceivable that he did not recall the existence of the NatWest Account – the statements were being sent directly to his home address. The Tribunal noted that at no time subsequent to the interview did the Respondent volunteer the existence of the NatWest Account; the details in relation to that account were in fact discovered as a result of the enquiries made by CP. The Tribunal found that the Respondent had failed to produce the bank statements to the SRA in breach of Rule 31.1 of the SAR, had failed to retain the statements in breach of Rule 30.1 of the SAR. In failing to comply with Rules 30.1 and 31.1, the Respondent had breached Rule 10.1 of the SAR.

66.5 Further, the Respondent was clearly in breach of the Principles. He had failed to deal with the SRA in an open, co-operative and timely manner. Members of the public would be extremely concerned about the Respondent's failure to inform the SRA of the existence of an account which contained client money, to which he was a signatory, and for which the statements were sent to his home address. It was evident that his conduct was not that of a solicitor acting with integrity. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached the Rules, Principles and Outcomes as alleged. The Tribunal also found that the Respondent's

conduct was dishonest. For the reasons stated above, the Respondent knew of the existence of the NatWest Account and deliberately failed to disclose that. The Tribunal determined that this was so as to conceal the extent of his conduct, which he knew was dishonest. Reasonable and decent people operating ordinary standards of honesty would find that the Respondent had been dishonest. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct was dishonest.

67. **Allegation 3.2 - While appointed as MG's attorney, and a signatory on the NatWest Account, the Respondent failed to act in the best interests of MG and breached all, or alternatively, any of Principles 2, 4, 5, 6 and 10 in that:**

3.2.1 The Respondent signed and drew a cheque on the account for £4,030.00 made out to the Respondent's personal account.

3.2.2 The Respondent authorised an online transfer for £12,200.00 to his personal account.

3.2.3 The Respondent used a debit card on the account to make personal payments for his own benefit.

3.2.4 The Respondent made cash withdrawals from the account using a debit card for his own benefit.

3.2.5 The Respondent made a CHAPS transfer on 10 June 2016 of £42,404.74 to the Firm's client account.

3.2.6 The Respondent made a CHAPS transfer on 8 May 2015 of £225,023.00 with the reference "BEQUEST mrs d lewis".

Applicant's Submissions

67.1 Ms Butler submitted that the Respondent had breached the Principles alleged and had been dishonest for the following reasons:

- The cheque for £4,030.00 dated 13 October 2015 was made out to the Respondent personally and signed by him in his capacity as attorney. There was no evidence that he was a close personal friend or someone to whom MG might have wanted to gift significant sums of money, as evidenced by the fact that he was not a beneficiary of her Will. The Respondent had at no time contended that they had a close relationship. Payment for his work as attorney should have been invoiced to, and paid by, MG through the Firm.

- The Respondent was in financial difficulty at the time as evidenced by the fact that he was declared bankrupt on 10 August 2016.

- He stayed silent about what he had done and actively sought to conceal the existence of the NatWest Account from the Applicant when asked about MG's financial affairs.

- The Bank confirmed that the debit of £12,200.00 from the NatWest Account on 4 March 2016 was an online transfer to the personal account of the Respondent. In circumstances where only the Respondent had access to online banking, the transfer could only have been made by him. There was no evidence that he was entitled to take that money.

- The debit card payments from the account amounted to £15,426.25, and were made between 4 August 2014 and 9 March 2016. In circumstances in which: (i) MG had not left the care home between 1 August 2014 and 31 July 2016 and had been confined to her bed since October 2015; and (ii) MG and the Respondent were the only signatories on the NatWest account during that time, the card payments could only have been made by the Respondent.

- Cash withdrawals in the amount of £320 were made between 4 August 2014 and 22 December 2014. Given MG's circumstances, the cash withdrawals could only have been made by the Respondent.

- As regards the CHAPS transfer for £42,404.74 made on 10 June 2016 from the NatWest Account referenced as "STANLEY DE LEON" to the client account of the Firm, it was confirmed by BL that "there was a Chaps payment from [MG's] account to the client account of [the Firm]. The net sum of £42,404.74p (the difference being a £21 bank charge) was credited to another … client, [Mr M]." Further, "the person dealing with [Mr M] was [the Respondent]. I cannot think of any reason why [he] would transfer MG's money to the benefit of [Mr M] but clearly this is a matter [to be investigated]. The ledger account of [MG] shows no such transaction. I have asked [the Respondent] to explain why he appears to have used [MG's] money to credit another client's account and he has given me no explanation other than to deny it. However, the money missing from [MG's] bank account has not been paid to the Firm … but misused in another transaction on behalf of another client and this clearly is a matter that merits urgent investigation".

- BL transferred the sum of £40,000 to CP. That sum had been received from the Respondent. In an email BL stated that the Respondent had "explained … that he had not taken the money from [MG] and it had been paid by mistake because he had money belonging to [Mr M] to which [sic] intended to return to [Mr M] – a friend and client of his – by a transfer but that in error this transfer been done [sic] from the account of [MG]. He told me that his wife had been holding the funds".

- It followed from that email that the Respondent accepted that he was the individual who made the CHAPS transfer. On his own case (as relayed by BL), the Respondent was allegedly using the money to return money to Mr M that the Respondent was holding for him or alternatively repaying a debt owed by the Respondent to Mr M, who was said to be a friend of the Respondent's. It was to be inferred that the payment was made by the Respondent to Mr M for the Respondent's benefit.

- The Respondent only repaid £40,000.00 of the amount transferred, after the transfer was discovered by CP. Ms Butler submitted that the account given by the Respondent was implausible.

- On 8 May 2015, a CHAPS payment of £225,023.00 was made from the NatWest Account referenced as 'BEQUEST [Mrs DL]'. It was to be inferred: (i) that the transfer was the payment of the purported legacy to DT as provided for by the deed of variation in circumstances in which 'DT' and 'DL' reside at the same address and appeared to be the same individual; and (ii) that the Respondent will say that he made the transfer in accordance with the contents of the deed of variation and pursuant, therefore, to instructions from MG.

- It was the Applicant's case that: (i) notwithstanding the contents of the purported attendance note, the Respondent did not have instructions from MG to enter into the deed of variation by which she would be gifting £225,000.00 to an individual who was not a close and/or longstanding friend of hers; and (ii) the purported attendance note apparently recording such instructions was fabricated by the Respondent in circumstances in which DT was known to the Respondent such that (as the Tribunal was asked to infer), he was to benefit directly or indirectly from the transfer.

- The circumstances regarding, inter alia, the purported attendance note, the fact that there was no gift in favour of DT in MG or KG's Will, the failure by the Respondent to provide a copy of the Will to the SRA, and the failure to record the transfer in the probate client ledger all evidenced that the Respondent had acted dishonestly.

The Tribunal's Findings

67.2 The Tribunal had no hesitation in finding that the cheque for £4,030.00, the £12,200.00 online transfer, the debit card transactions and the cash withdrawals had all been made by the Respondent for his own benefit without the knowledge or consent of MG. The Tribunal accepted the evidence of Wendy Walker, the General Manager at the care home, who had explained in a statement dated 15 August 2017 that MG had not been taken on any day trips or outings between 1 August 2014 and 31 July 2016. The Tribunal also accepted the evidence contained in an exhibit to CP's statement that MG had been confined to her bed since October 2015. In the circumstances, it was not possible for MG to have conducted any of those transactions, and the Respondent had been responsible for them all.

67.3 As regards the CHAPS transfer to the client account of Mr M, the Tribunal determined that the explanation given by the Respondent, via BL, was completely implausible. The 'mistake' was not discovered by the Respondent until he was questioned by BL about it. This in turn did not happen until the transfer was discovered by CP almost 1 year after the transfer was made. The Respondent had provided no explanation as to how the error occurred, or as to why it had remained undetected. Whilst the Tribunal was invited to look at this transfer taking into account the other transactions, the Tribunal found, notwithstanding those other matters, that the monies had been deliberately transferred by the Respondent, although his motive for doing so was unclear.

67.4 As regards the bequest to DT (and as to which see further the Tribunal's findings in relation to allegation 3.3 below), the Tribunal determined that the Respondent did not have instructions from MG to enter into the deed of variation. The Tribunal accepted

the evidence of Iris Vousden contained in her statement dated 10 August 2017. Mrs Vousden had been friends with MG and her sister for over 20 years, and had been attending the care home on a regular basis to visit MG. On being told by the Respondent that he had waived his power of attorney and handed matters over to DT, whom he described as having a "mother/daughter" relationship with MG, Mrs Vousden made enquiries of MG's friends, some of whom had known her throughout her life; no-one could recall having heard of DT. The Tribunal noted that in a letter to the FIO dated 20 February 2017, Ms Walker confirmed that the care home had "no record of a [DT] visiting anyone on that unit at all during the period which you mention, and certainly not to [MG]". An examination of the visitors' book did not show DT visiting MG. The Tribunal also noted that DT was not a beneficiary under either MG or her sister KG's Wills.

67.5 The Tribunal determined that it was patently obvious that the Respondent had breached the Principles as alleged. He had clearly failed (i) to act with integrity, (ii) to act in MG's best interests, (iii) to provide her with a proper standard of service, (iv) to protect her money and assets, and (v) to uphold the trust the public placed in him and in the provision of legal services. The Tribunal found that the Respondent knew that he was not entitled to make the payments from the NatWest Account and that in doing so he had acted dishonestly; that was his motivation for concealing the existence of the account from the Applicant. The Tribunal found that reasonable and decent people operating ordinary standards of honesty would find that the Respondent had been dishonest. Accordingly, the Tribunal found allegation 3.2 proved beyond reasonable doubt, including that the Respondent's conduct was dishonest.

68. **Allegation 3.3 - Whilst appointed as MG's attorney:**

3.3.1 The Respondent signed a deed of variation dated 13 May 2013 on behalf of MG which it was not in her best interests to enter into.

3.3.2 The Respondent fabricated an attendance note in order to conceal that he did not have instructions from MG to enter into the deed of variation.

The Respondent thereby breached all, or alternatively any, of Principles 2, 4, 5, 6 and 10 of the Principles.

Applicant's Submissions

68.1 The Respondent had explained to the FIO that he had sought to disclaim his position as attorney to DT as "it seemed to me that looking at everything she was the one key closest person to her um [sic] of her long standing relationship of twenty/thirty years I guess wasn't it", and that the relationship between DT and MG was "of um mother/daughter type relationship". In a telephone conversation with the OPG on 19 May 2016, he described DT as being "the daughter or step-daughter" of MG.

68.2 Enquiries made by the OPG and/or the FIO revealed that there was no evidence in the probate file of DT assisting MG following the death of her sister or of the Firm having even contacted DT to inform her of the death of KG.

68.3 Following the death of KG in April 2013, the probate file showed that the Firm had used the address books of KG and information obtained from the friends of KG (including Mrs Vousden), in order to obtain details of KG's friends so as to advise them of the death and funeral arrangements. In a telephone call of 27 March 2017, Mrs Vousden explained to the FIO that she had KG's address books, which had been kept by KG on behalf of both herself and MG, but that she could not find any record of DT in the address books. Nor could she find any record of DT in any of the photographs that MG had retained following the sale of the house (in circumstances in which KG would write the names of the people in the photographs on the back of them).

68.4 Whilst the Respondent had informed the FIO that he had been discussing the transfer of MG's financial affairs with DT, and that her affairs had been transferred to DT in July 2015, there was no evidence on the conveyancing file of correspondence or discussion with DT regarding the sale of the property or the distribution of the sale proceeds, despite the Respondent being in discussion with DT at the time of the sale.

68.5 Further, and contrary to what had been stated to Mrs Vousden by the Respondent, DT was not a beneficiary in MG's Will. Nor was she a beneficiary in MG's previous will dated 23 December 1996.

68.6 The FI Officer wrote to DT on two occasions at the address provided by the Respondent. However, although recorded delivery letters were signed for by "[T]", no response was received to either letter.

68.7 There was no evidence of DT having had any contact with MG or of her having taken any steps in respect of the attempts by the Respondent to disclaim as attorney to her. In particular: (i) DT had not submitted the forms that the Respondent claimed to have sent her in order to disclaim his position as attorney; and (ii) contrary to the claim of the Respondent that DT had arranged to pay the care home fees following the transfer to her in July 2015, at least some of the fees for the care home were in fact being paid from the NatWest Account.

68.8 The only reference to DT that appeared in any of the documents located by the FIO was in relation to the deed of variation. In addition to the deed of variation itself, the probate file contained an attendance note dated 3 May 2015, which purported to record the instructions of MG in relation to varying her sister's Will.

68.9 Ms Butler submitted that there were oddities on the face of the purported attendance note in that it bore the initials of both the Respondent and Ms Goodenough ('PAG') whereas: (i) every other attendance note retrieved from the Firm contains only one set of initials at the end of it (namely the person who had taken the attendance note); and (ii) the attendance note began by saying "SA attending [MG]", with no reference to Ms Goodenough.

68.10 Further:

- Contrary to what was recorded in the purported attendance note, MG's Will did not contain a gift to DT. It provided for 4 small legacies to various individuals, with the residue to be held upon trust for KG. In the event that she should

pre-decease her, the residue was to be paid to 2 named charities and 2 named churches in equal shares.

- Despite having been asked by the FIO on 14 June 2016 to provide a copy of "All files held by you or the firm relating to MG", the Respondent had not provided a copy of MG's Will to the SRA. A copy of the Will was obtained by CP from BL.

- There was no evidence that the legacy paid to DT had been recorded in the probate file, the client ledger account or the draft estate accounts.

- Instead of paying the legacy to DT directly, the sale proceeds from the sale of the property (£468.795.21) had been paid by the Firm to MG (into the NatWest Account). A CHAPS transfer was then made to DT 3 days later.

68.11 In the circumstances, contrary to the position as stated by the Respondent that he did not know DT but that she was (and he believed her to be) a close and longstanding friend of MG's, Ms Butler asked the Tribunal to find that: (i) DT was not in fact a close and/or longstanding friend of MG (let alone the "one key closest person"); (ii) the Respondent knew that DT was not a close and/or longstanding friend of MG; and (iii) DT was in fact someone known to the Respondent from whom the Respondent would stand to benefit (directly or indirectly) in respect of payments made to her.

The Tribunal's Findings

68.12 The Tribunal had regard to the evidence of Paula Arnold (nee Goodenough), who stated that she did not type the attendance note dated 3 May 2013. She recalled attending the care home with the Respondent on 2 occasions, but had no recollection of the discussion as detailed in the attendance note. Mrs Arnold further explained that she had carried out quite a lot of work on KG's probate file, but had no recollection of the deed of variation. Further, she was not familiar with the name DT which "didn't ring any bells" with her. The Tribunal accepted the evidence of Mrs Arnold in its entirety. The Tribunal also accepted the evidence of Mrs Vousden, and Ms Walker in its entirety.

68.13 The Tribunal determined that the Respondent, purportedly acting on MG's behalf had entered into the deed of variation. Indeed, it was evident on the face of the document, which was signed by the Respondent both in his capacity as her attorney and also in his capacity as an executor of the Will. The Tribunal determined that DT was not a close or longstanding friend of MG's, nor did they possess a "mother/daughter" relationship, and that the Respondent knew that to be the case. Whilst the Tribunal was unable to attribute a motive to the Respondent's conduct, (and in that regard did not find that the Respondent stood to personally benefit from the payment to DT) the Tribunal determined that the attendance note did not reflect any instructions the Respondent had received from MG, and further, that he did not have instructions from MG to vary the will as suggested or at all. The Tribunal considered that the payment of the sale proceeds into the NatWest Account and the later transfer of funds to DT was a mechanism by which the Respondent sought to conceal the payment, in the knowledge that the payment was not properly required or authorised. Similarly, the Respondent's failure to provide copies of the Will to the SRA was an attempt by him

to conceal the extent of his misconduct. Given its findings, the Tribunal determined beyond reasonable doubt that the Respondent had breached the Principles as alleged. The Tribunal found that the Respondent knew that his conduct, in signing the deed of variation and fabricating the attendance note in order to conceal that he did not have instructions to enter into the deed of variation was dishonest, and that reasonable and decent people operating ordinary standards of honesty would find that the Respondent had been dishonest. Accordingly, the Tribunal found allegation 3.3 proved beyond reasonable doubt, including that the Respondent's conduct was dishonest.

69. **Allegation 3.4 - The Respondent made charges to MG for professional services allegedly carried out by the Firm which, as the Respondent knew, either (i) related to work that had not in fact been carried out by the Firm at all; or (ii) were excessive, and therefore breached all, or alternatively any, of Principles 2, 4, 5, 6 and 10 of the Principles.**

Allegation 3.6 - The Respondent fabricated the purported care records in respect of MG in order: (i) to conceal the fact that invoice 18370 related to work that was either not carried out by the Firm at all or which related to charges for professional services which were excessive; and (ii) that it was accordingly not in MG's best interests to pay invoice 18370. In doing so the Respondent breached all, or alternatively any, of Principles 2, 4, 5, 6 and 10 of the Principles.

Applicant's Submissions

Invoice 17979

69.1 The client ledger account for the sale of the property showed that the Firm's costs for the sale of the property were £1,080 pursuant to invoice number 17966, and that on 12 December 2014 a further £12,000.00 was billed pursuant to invoice number 17979 in respect of what was described as "agreed commission in relation to the sale of the above property"

69.2 On 23 August 2016, the Respondent told the FIO that the Firm had the property valued by an estate agent but that the Firm then marketed and sold the property. Ms Butler submitted that the charges to which Invoice 17979 related either: (i) related to work which had not been carried out by the Firm at all; or (ii) were excessive, in circumstances in which:

- Neither the conveyancing file nor the probate file contained any evidence that the property had been marketed by the Firm, and BL had been unable to supply any evidence showing that the property had been marketed by the Firm;

- Mrs Vousden told the FIO that "there were a lot of concerns about how things were being dealt with. Not quite right. One of the neighbours said the property was sold privately and never went on the market which is odd".

69.3 Ms Butler further submitted that the Respondent knew that Invoice 17979 was rendered dishonestly as the Respondent, who was the fee earner acting at the Firm in the sale of the property, had lied to the Applicant as to the nature of his involvement in respect of the sale of the property and had not provided the conveyancing file when

it was requested. Further, he was in financial difficulty at the time as was evidenced by the fact that he was declared bankrupt on 10 August 2016.

Invoice 18370

69.4 Of Invoice 18370 dated 21 April 2015 for £18,000.00:

- £12,000.00 was said to relate to "attendance upon [MG] in person and or by other enquiry. 1 hour per week @ £250 ph from 1 January 2015 – 30 June 2015" and "attendance upon [MG] in person and or by other enquiry. 1 hour per week @ £250 ph from 1st July 2015 – 31st December 2015". In support of those charges the Respondent provided the FIO with purported attendance records from 1 January 2015 to 27 June 2016 which he explained were his records of the attendance upon MG to check that she was being cared for. The Respondent stated in the interview that he or another fee earner from the Firm had been visiting Miss Green in the care home once a week to check that she was being cared for and, if not able to attend personally, he or another member of the Firm, would check on her by calling the care home. The Respondent said that the Firm charged for the visits pursuant to a retainer entered into with DT

- £6,000.00 related to "liaising with the vicar and personal friends regarding photographs, sorting through photographs and arranging delivery to St Christopher's care home".

69.5 Ms Butler submitted that the charges to which Invoice 18370 related either: (i) were made for work which had not been carried out by the Firm at all; or (ii) were excessive as it was not plausible that the Respondent would exercise towards MG the level of care evidenced on the face of the purported care records and/or in respect of sorting MG's photographs whilst at the same time taking the steps to steal from MG and/or to cover up his misconduct.

69.6 As to the alleged visits to the care home:

- Only two visits were recorded in the visitor book at the care home.

- The Respondent was not able to provide the FIO with a copy of the alleged retainer letter with DT. Ms Butler invited the Tribunal to draw the inference that no such retainer with DT existed.

- The purported care records were strikingly similar to one another and contained minimal information as to the alleged visits and telephone calls and/or the action to be taken following them.

69.7 In all the circumstances, Ms Butler invited the Tribunal to find that the purported care records were fabricated by the Respondent and did not record actual attendances upon MG.

69.8 As to the alleged photograph work:

- The minimal references to MG's photographs recorded in the 3 attendance notes located by the FIO on the probate file did not evidence work being carried out by the Firm to the value of £6,000.00.

- The FIO found no evidence on the probate file of the Firm liaising with the vicar and/or sorting through the photographs.

- Mrs Vousden told the FIO that a box containing photo albums had been left by the clearing company on the floor at the property and that the same box had later been left on the floor of MG's room at the care home.

69.9 Given the above, it was submitted that invoice 18370 had been rendered dishonestly by the Respondent.

The Tribunal's Findings

69.10 As regards invoice 17979, whilst there was no evidence in the files that the Firm had marketed the property, and there was no retainer letter in relation to commission from the sale, the Tribunal was not sure beyond reasonable doubt that the Firm had not undertaken the work in relation to that invoice. The property had been sold and had not been marketed with an Estate Agent, and whilst there was no evidence of any marketing by the Firm, it was plausible that it had been marketed by the Firm.

69.11 As regards invoice 18370, the Tribunal did not accept that the Respondent, or someone else from the Firm had been attending the care home on a weekly basis to see MG. Ms Walker explained that the visitor logs showed that Ms Goodenough visited on 22 September 2014; the Respondent and Ms Goodenough visited on 18 December 2014; and the Respondent visited once in May 2015. Ms Walker further confirmed that visitors were expected to sign in and out whenever they attended, but it was possible that the book was not signed. In order to access the unit, visitors could only gain entry on admission by a member of staff, and thus it was likely that staff would recall admitting visitors for MG. Further, had there been any calls enquiring as to MG's welfare, they would have been logged by the nurse in charge at the time. There was no log of any phone calls.

69.12 The Tribunal noted that Ms Vousden's name, amongst others, appeared in the visitors' book regularly despite her being well known to staff given the frequency of her visits. The Tribunal did not accept that the Respondent (or someone else from the Firm) could have been visiting MG on a weekly for over a year, and this not be noted or remembered by any member of staff. Nor could calls have been made to the extent reflected in the attendance notes and there be no record of a single call. Accordingly, the Tribunal determined that the attendance notes were fabricated by the Respondent so as to enable him to charge for work that had not been carried out. The Tribunal repeated its findings that no retainer letter existed with DT (see the Tribunal's findings in relation to allegation 2.7 above). As regards the charges for liaising with the vicar and friends and sorting out the photographs, the Tribunal found there was no evidence that this work was undertaken, and the evidence as regards the photographs was to the contrary. The Tribunal accepted Mrs Vousden's evidence that she had met with Ms Goodenough at MG's property to take some of MG's personal items to the care home, and that those items consisted, amongst other things, of a few

photographs, and that subsequent to the house being cleared, a box of photographs had been left at the property. That box was later delivered to the care home.

69.13 Given its findings, the Tribunal determined beyond reasonable doubt that the Respondent had breached the Principles as alleged. No solicitor acting in his client's best interests and protecting his client's money and assets would fabricate attendance notes so as to charge for work that had not been carried out. In so doing he had failed to provide a proper standard of service and had behaved in a way that diminished the trust the public placed in him and the provision of legal services. Members of the public would be alarmed to know that the Respondent had fabricated over a year's worth of attendances that he had charged the client for, when he had not attended on more than 2 occasions. That his conduct was not that of a solicitor acting with integrity was plain. The Tribunal found beyond reasonable doubt that the Respondent knew that fabricating attendance notes, and charging for work that had not been undertaken was dishonest, and that reasonable and decent people operating ordinary standards of honesty would find that the Respondent had been dishonest. Accordingly, the Tribunal found allegation 3.4 proved beyond reasonable doubt, in so far as it related to invoice 18370, including that the Respondent's conduct was dishonest. The Tribunal also found allegation 3.6 proved beyond reasonable doubt, including that the Respondent's conduct was dishonest. The Tribunal did not find allegation 3.4 proved as regards invoice 17979.

70. **Allegation 3.5 - While appointed as MG's attorney, the Respondent debited the client account (posted to MG's ledger) and credited the Firm's office account (alternatively he instructed someone at the Firm to do so) in order to discharge invoices which he knew (i) the Firm had no entitlement to be paid for (or to be paid in full); and (ii) that it was accordingly not in MG's best interests to pay them. In doing so, the Respondent failed to act in the best interests of MG and breached all, or alternatively any, of Principles 2, 4, 5, 6 and 10 of the Principles.**

Applicant's Submissions

70.1 Ms Butler submitted that for the reasons given in relation to allegation 3.4, the transfer of funds in settlement of invoices 17979 and 18370 from the Firm's client account to its office account was not properly required and in making or causing the transfers to be made, the Respondent had been dishonest.

The Tribunal's Findings

70.2 For the reasons stated above, namely that the Tribunal made no findings of misconduct in relation to invoice 17979, the Tribunal did not find that the monies paid in settlement of that invoice had not properly been paid, and thus did not find that the Respondent had been dishonest in making or causing the transfer to be made in settlement of that invoice.

70.3 Given the Tribunal's findings in relation to allegations 3.4 and 3.6 as regards invoice 18370, the Tribunal found that in making or causing payment to be made in settlement of that invoice, the Respondent had breached the Principles as alleged, and had been dishonest.

71. **Allegation 3.7 - The Respondent failed to respond to letters and requests for information from the Applicant during the course of these disciplinary proceedings in a timely and/or co-operative manner (or at all) and thereby breached Principles 2, 6, and 7 of the Principles and failed to achieve Outcome O(10.6) of the Code.**

Applicant's Submissions

71.1 On 27 February 2017, the Applicant wrote to the Respondent further to the CMH on 17 January 2017 asking him to confirm what his present position was in relation to whether he was still represented in the proceedings. The letter had been sent by Special Delivery to the address recorded by the SRA as the current address of the Respondent. No response was received.

71.2 On 28 March 2017 the Applicant wrote to the Respondent again in terms that the letter of 27 February 2017 had been returned "not called for" and asking, amongst other things, for the Respondent to confirm whether the address was correct. No response was received. The letter was sent by Royal Mail post.

71.3 On 3 April 2017 the FIO wrote to the Respondent stating that he was continuing to investigate the handling of MG's affairs and that "During the course of the investigation I have been in contact with various parties including [MG's] care home and friends of [MG]. They have provided me with additional information and I would like to offer you the opportunity to comment on the information they have provided. Please therefore contact me by 7 April 2017 so that I can make arrangements to meet with you to discuss this matter". No response was received to the letter.

71.4 On 11 May 2007 the Applicant wrote to the Respondent in respect of the upcoming CMH and asking for a current email address. The letter was sent by Royal Mail post. No response was received.

71.5 A further letter was sent on 22 May 2017, with documents, ahead of the CMH. The letter enclosed a copy of the FIO's report dated 4 May 2017. The letter was sent by Royal Mail post. No response was received to the letter.

71.6 A further letter was sent on 26 June 2017, however, no response was received.

71.7 A Regulatory Supervisor in the Applicant's Supervision Department, wrote to the Respondent on 25 July 2017 giving him a further opportunity to make representations in respect of matters set out in the FIO's May 2017 Report dated 4 May 2017 and asking him to respond to a number of allegations which he had identified. However, as the date of this statement, no response has been received.

The Tribunal's Findings

71.8 The Tribunal found that in failing to respond to any of the letters sent to him, the Respondent had failed to comply with his regulatory obligations and deal with his regulator in an open, timely and co-operative manner and was thus in breach of Principle 7. The Tribunal determined that the Respondent's failure to comply was the result of his continuing deliberate attempts to prevent the scrutiny and regulation of

his conduct by the SRA. As such, his conduct was likely diminish the trust the public placed in him and the provision of legal services. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principles 6 and 7 and failed to achieve Outcome O(10.6). The Tribunal also found that no solicitor acting with integrity would simply ignore all communication received from the regulator given the serious nature of the allegations, and accordingly found beyond reasonable doubt that the Respondent had breached Principle 2. The Tribunal did not find that the Respondent's conduct in this regard was dishonest. He had declined to respond to any correspondence, but had not (as was the case with regards to allegations 2.4 – 2.6 above) stated that he would provide documents or information that he had no intention of providing; whilst he had remained silent, he had not lied to the SRA. The Tribunal determined that the Respondent would not have believed his conduct to be dishonest, and that reasonable and decent people operating ordinary standards of honesty would not find that the Respondent had been dishonest. Accordingly, the Tribunal found allegation 3.7 proved save that it did not find that the Respondent's conduct was dishonest.

Previous Disciplinary Matters

72. On 2 April 2012, (Case No. 10866-2011), the Respondent was ordered to pay a fine in the sum of £2,500.00, and costs in the sum of £7,500.00

Mitigation

73. None.

Sanction

74. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition-December 2016). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

75. The Tribunal considered that the Respondent's conduct was motivated by personal financial gain. His misconduct was planned and was in breach of the trust placed in him by his client. As an attorney, he was expected and trusted to conduct MG's affairs properly and for her benefit. Instead he acted in gross breach of that trust and repeatedly stole money from her. He was fully and directly responsible for his conduct; as both the executor and the sole attorney, there was very little oversight from anyone else in relation to the management of MG's affairs. He was an experienced solicitor who was fully aware of his obligations to his client and his obligations as regards client monies. His conduct had caused significant harm to his client and to the reputation of the profession, and was a complete departure from the standards of integrity, probity and trustworthiness expected of a solicitor. The harm caused by the Respondent's conduct was not only entirely foreseeable, but was inevitable. His conduct was aggravated by the numerous findings of dishonesty. In fabricating over a year's worth of attendance notes, and the attendance note purporting to record instructions from MG as to the deed of variation, it was clear that

the Respondent's conduct was both deliberate and calculated. He had sought to conceal his dishonesty by the fabrication of documents. The continuous use of the debit card to pay for personal items and withdraw cash was an example of the Respondent's repeated dishonest conduct. He had continually and unremittingly taken advantage of his elderly and extremely vulnerable client. The Respondent's conduct was one of the most deplorable cases of dishonest conduct involving the outrageous plundering of his vulnerable and elderly client's assets. This was of the utmost gravity; misconduct did not get much worse than this. It was clear that the Respondent knew that his conduct was entirely contrary to his obligation to protect the public and the reputation of the profession. He had displayed no insight, and had sought to evade the proceedings.

76. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "....Lapses from the required standard (of complete integrity, probity and trustworthiness)....may....be of varying degrees. The most serious involves proven dishonesty....In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

77. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin. The Tribunal found that the seriousness of the Respondent's misconduct was at the highest level such that the protection of the public and the protection of the reputation of the profession required that he be struck off the Roll of Solicitors, and that no lesser sanction would be appropriate in the circumstances.

Costs

78. Ms Butler applied for costs in the sum of £74,034.79. This included deductions for the reduced hearing time and other consequential expenses. Ms Butler explained that the Respondent was made bankrupt in August 2016, and that the cost of the proceedings would fall into the bankruptcy as the proceedings had commenced prior to his being made bankrupt. It was further explained that the Respondent's discharge from bankruptcy was recorded as being indefinitely suspended on the basis that the Respondent had not co-operated with his trustee in bankruptcy.

79. The Tribunal considered that the investigation into the Respondent's conduct had been lengthy and complex. There had been a number of hearings, and it had required the drafting of 2 additional Rule 7 Statements given the facts that continued to come to light during the proceedings. The Tribunal made some additional reduction for the repetition of work during the preparation of the case and determined that the reasonable and proportionate amount of costs that the Applicant should recover was £70,000.

Statement of Full Order

80. The Tribunal Ordered that the Respondent, STEPHEN JOHN ACRES, 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 £70,000.00.

Dated this 5th day of December 2017
On behalf of the Tribunal

R. Nicholas
Chairman