

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11488-2016

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

CHARLES EDWARD ROBERT CHRISTIAN RHODES

Respondent

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Before:

Ms A. E. Banks (in the chair)

Mr W. Ellerton

Mr S. Marquez

Date of Hearing: 27 September 2016

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## Appearances

Andrew Bullock, solicitor of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

The Respondent appeared in person and was not represented.

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## JUDGMENT

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## **Allegations**

1. The Allegations against the Respondent made upon behalf of the Applicant were:
  - 1.1 That between 5 March 2002 and 4 August 2011 he misappropriated client money to a total value of £266,875 from the Estate of Mr BD, Deceased, and thereby breached any or all of:
    - 1.1.1 Practice Rule 1(a) Solicitors Practice Rules 1990 (“SPR 1990”)
    - 1.1.2 Practice Rule 1(d) SPR 1990
    - 1.1.3 Rule 22(1) Solicitors Accounts Rules 1998 (“SAR 1998”)
    - 1.1.4 Rule 1.02 Solicitors Code of Conduct 2007 (“SCC 2007”)
    - 1.1.5 Rule 1.06 SCC 2007.
  - 1.2 That on 3 July 2014 he caused the firm of Gichard & Co (“the Firm) to provide a false document, namely a spreadsheet which purported to be, but was not, an accurate client ledger in relation to the matter of Mr BD, Deceased, to an officer of the SRA and thereby breached (or failed to achieve) any of or all of:
    - 1.2.1 Principle 2 SRA Principles 2011 (“the Principles”)
    - 1.2.2 Principle 6 of the Principles
    - 1.2.3 Principle 7 of the Principles
    - 1.2.4 Outcome 10.6 SRA Code of Conduct 2011 (“SCC 2011”)
    - 1.2.5 Outcome 10.8 SCC 2011
    - 1.2.6 Outcome 10.9 SCC 2011
  - 1.3 That on 16 July 2013 he provided false documents, namely bills in relation to the matter of the Estate of Mr BD, Deceased, which purported to have been, but were not, raised in respect of his costs of that matter, to a solicitor representing an executor and a beneficiary of that estate and thereby breached any or all of:
    - 1.3.1 Principle 2 of the Principles
    - 1.3.2 Principle 6 of the Principles
  - 1.4 That between 2007 and 16 September 2014 he withdrew the sum of £69,311.45 otherwise than in the circumstances permitted by Rule 19(1) SAR 1998 and Rule 22(1) SRA Accounts Rules 2011 (“SAR 2011”) in breach of those Rules.
  - 1.5 That between January 2009 and November 2010 he made a claim for costs for work done in relation to the Estate of CR, Deceased, in the sum of £37,906.25 which he knew or should have known was excessive and thereby breached any or all of:
    - 1.5.1 Rule 1.02 SCC 2007
    - 1.5.2 Rule 1.04 SCC 2007
    - 1.5.3 Rule 1.05 SCC 2007
    - 1.5.4 Rule 1.06 SCC 2007
  - 1.6 That between June 2014 and March 2015 he made a claim for costs for work done in relation to the Estate of DN, Deceased, in the sum of £19,200 which he knew or should have known was excessive and thereby breached any or all of:

- 1.6.1 Principle 2 of the Principles
  - 1.6.2 Principle 4 of the Principles
  - 1.6.3 Principle 5 of the Principles
  - 1.6.4 Principle 6 of the Principles
- 1.7 That between June 2007 and 17 March 2015 he made a claim for costs for work done in relation to the Estate of JL-C, Deceased, in the sum of £47,758.90 which he knew or should have known was excessive and thereby breached any or all of:
- 1.7.1 Rule 1.02 SCC 2007
  - 1.7.2 Rule 1.04 SCC 2007
  - 1.7.3 Rule 1.05 SCC 2007
  - 1.7.4 Rule 1.06 SCC 2007
  - 1.7.5 Principle 2 of the Principles
  - 1.7.6 Principle 4 of the Principles
  - 1.7.7 Principle 5 of the Principles
  - 1.7.8 Principle 6 of the Principles
2. Whilst dishonesty was alleged with respect to the allegations at paragraphs 1.1, 1.2 and 1.3, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

### **Documents**

3. The Tribunal considered all the documents in the case including:

#### **Applicant**

- Application and Rule 5 Statement with exhibit AJB/1 dated 25 February 2016
- Witness Statement of Liz Bond dated 14 June 2016
- Schedule of Costs

#### **Respondent**

- Answer to Rule 5 Statement dated 31 March 2016
- Witness Statement of the Respondent dated 14 June 2016

### **Factual Background**

4. The Respondent was born in 1963 and admitted to the Roll of solicitors on 15 February 1991. At the date of the hearing his name remained on the Roll but he did not hold a practising certificate. At all material times to this application up until 16 June 2011 the Respondent was a partner in the Firm which carried on in practice from offices in Rotherham.
5. The Firm acted for the executors of Mr BD, deceased, in relation to the grant of probate and the subsequent administration of his estate. The Respondent was one of those executors and was the fee earner who primarily dealt with the matter and was responsible for raising bills. In or about April 2012 a firm of solicitors was instructed by Mr JS, the grandson of Mr BD, to advise upon issues relating to the estate. On

16 April 2014 a report was made to the SRA concerning the conduct of the Respondent and the Firm.

6. The SRA subsequently commenced an investigation into the Firm and as part of this investigation a notice pursuant to Section 44B Solicitors Act 1974 was served upon the Firm requiring it to produce the original probate file including the client account ledger for the matter. By letter dated 3 July 2015 the Firm forwarded various documents to the SRA in purported compliance with that notice. The documents enclosed included a spreadsheet which purported to be the client account ledger. Subsequently a duly authorised Forensic Investigation Officer (“the FIO”) commenced an inspection of the books of account and other documents of the firm. In addition to inspecting those documents the FIO also interviewed the Respondent on 12 February 2015 and 29 July 2015. The FIO also referred five of the files that she had inspected to two cost lawyers for them to review. The inspection culminated in an interim report dated 26 February 2015 and a final report dated 22 September 2015 (“the FIR”).

#### Allegation 1.1

7. The Respondent was an executor of the estate of the late Mr BD and the grant of probate in relation to that estate and its subsequent administration was dealt with by the Firm. The Respondent was a fee earner who primarily dealt with the matter and he was responsible for raising bills. The documents reviewed by the FIO in the course of her investigation included a final bill raised by the Firm on 16 March 2012 in the sum of £145,000 plus VAT making a total of £170,250. This was in relation to work done in obtaining probate and administering the trusts of the will of the late Mr BD. That bill bore the Respondent’s signature. However, the financial ledger for that matter showed that a total of £437,125 had been transferred from client account to office account in respect of that matter in the period between 5 March 2002 and 4 August 2011. Consequently, a shortage of £266,875 existed on the client account as at the date of inspection.
8. In the course of a meeting with the FIO on 30 January 2015 the Respondent informed her that he had been solely responsible for the transfers and that no other staff at the Firm had been aware. A contemporaneous note of that interview was put to the Respondent by the FIO on 12 February 2015 at which the Respondent was represented, and its accuracy was not disputed.

#### Allegation 1.2

9. During the course of her investigation, the FIO requested the Firm’s cashier to extract a copy of the client account ledger for the matter of Mr BD deceased from the Firm’s accounting software. A comparison between that ledger and the spreadsheet produced to the SRA by the Firm on 3 July 2014 showed that the two documents differed. The ledger extracted by the Firm’s cashier recorded transfers from client account to office account totalling £437,125 in respect of costs, whereas the ledger produced to the SRA by the Firm recorded transfers of £252,016.52 in respect of costs. The ledger produced to the SRA by the Firm showed that on 13 April 2011, three bills to a total value of £83,000 and dated 20 September 2010, 6 December 2010 and 17 January 2011 had been reversed. The ledger extracted by the Firm’s cashier did not

show any such reversed bills although it did show a deposit of £82,500 from a bank on 13 April 2011, which the Respondent confirmed was part of the estate. In interview with the FIO on 12 February 2015 the Respondent accepted that the ledger produced by the cashier was one that accurately reflected the position. In the course of a separate interview on the same date the Firm's Compliance Officer for Legal Practice ("COLP") confirmed that he was not the author of the spreadsheet.

### Allegation 1.3

10. In 2012 Mr S, a beneficiary of the estate of Mr BD deceased, and Mr B, a joint executor of the estate instructed DC, a firm of solicitors, over concerns that there had been overcharging by the Firm. DC entered into correspondence with the Firm and requested copies of the documentation concerning the estate. On 16 July 2013 the Firm sent copies of what purported to be the interim bills on the matter to DC. Each of those bills bore a signature which the Respondent accepted was his during the course of his interview on 18 August 2015.
11. The date and the costs stated within those bills corresponded with the date and the amount of each of the client account to office account transfers recorded in the ledger produced to the SRA on 3 July 2014. However, they did not correspond with the date and amounts of the client account to office account transfers recorded in the ledger obtained by the FIO from the cashier in the course of her investigation, albeit that the information as to amounts and dates of transfers in the latter ledger did agree with the amounts and dates bills held within the central billing system of the Firm. In the course of his interview on 18 August 2015 the Respondent confirmed that he was the author of the letter to DC of 16 July 2013 and the bills which accompanied it were fake.

### Allegation 1.4

12. In addition to the matter of Mr BD deceased, the FIO reviewed a further 12 files in the course of her inspection. On nine of those matters money to the value of £69,311.45 had been withdrawn in respect of costs for which no bills had been raised. The particulars of those withdrawals are set out in the table below as follows:

<b>Estate</b>	<b>Date</b>	<b>Total of bills located on file</b>	<b>Total of costs taken on file (exclusive of VAT)</b>	<b>Difference</b>
N	4.6.14	No bills on file	£19,200	£19,200
G	29.1.14	£168	£18,000	£17,832
L-C	2007	£30,000	£42,179.45	£12,179.45
M	8.9.14	No bills on file	£7,200	£7,200
R	14.8.14	No bills on file	£5,400	£5,400
S	16.9.14	No bills on file	£5,400	£5,400
C	7.4.14	£4,200	£5,100	£900
W	5.8.14	£7,200	£7,800	£600
B	29.1.14	£1,200	£1,800	£600
<b>TOTAL</b>				<b>£69,311.45</b>

### Allegation 1.5

13. The files reviewed by one of the costs lawyers on the instructions of the FIO included the matter of CR Deceased, in which total costs of £37,906.25 had been taken from the date of commencement of the matter in June 2007 up until February 2015. The Firm held £83,056.80 upon the client account in relation to the matter and 45% of those monies had been charged in respect of costs. The Respondent was the fee earner responsible for this matter. The cost lawyer expressed the opinion that the reasonable profit costs dealing with the matter came to £3450 (exclusive of VAT) equating to an overcharge of £30,050, equating to 871%. In the course of his interview with the FIO the Respondent was asked about this matter and replied that on the face of it the costs seemed excessive.

### Allegation 1.6

14. The files reviewed by the other cost lawyer on the instructions of the FIO included the matter of Mrs TN Deceased, in which interim costs of £19,200 had been taken on 23 July 2014. This represented 14% of monies received into the client account in relation to this matter and the Respondent was once again the fee earner responsible for the matter. The cost lawyer expressed the opinion that the reasonable profit costs dealing with the matter stood at £2814.71. The interim costs amounted to 267% of the costs estimate of £6,000 plus VAT given by the Respondent for dealing with the entire matter as contained in a client care letter dated 4 June 2014. In interview with the FIO the Respondent had accepted in relation to this matter that he had “over egged it” and to “taking it earlier” than he should.

### Allegation 1.7

15. The costs lawyer also reviewed the file in relation to the matter of JL-C Deceased, in which interim costs of £44,758.90 had been taken from the commencement of the matter in June 2007 up to February 2015. This represented 18% of monies received into client account. The Respondent was once again the fee earner responsible for the matter. The costs lawyer expressed the opinion that the reasonable profit costs for dealing with the matter came to £20,993.60 equating to an overcharge of £12,006.40, 57.19%.

### **Witnesses**

16. The Respondent gave evidence on oath. The Respondent confirmed that his witness statement and his answer were true to the best of his knowledge and belief. He told the Tribunal that he felt it was important that he attend the hearing and not shirk away from his responsibilities.
17. In respect of Allegation 1.1 the Respondent did not accept that the sum had been misappropriated but admitted that there had been an overcharge in the sum of £266,875. The estate had been repaid in full in May 2016. This followed the completion of the sale of his property in June 2015. It had taken several months for the arrangements to be made between the Respondent’s solicitors and the solicitors for JS for the transfer of the funds. The Respondent denied that he had acted dishonestly.

18. In cross examination the Respondent confirmed that the final bill issued on 16 March 2012 had been prepared by him and had been addressed to the executor care of the Firm. He had not sent it to the co-executor. That bill was in the sum of approximately £145,000, by which time he had taken £466,000 in costs. The Respondent was asked whether he would regard it as honest or dishonest for a solicitor to take more than three times the amount in costs that he regarded as reasonable. The Respondent replied that it was hard to escape the conclusion, looking at it now, that it was dishonest. The Respondent was asked why the final bill did not reflect the fact that there was money in fact owed to the estate at the time, based on a bill of £145,000. The Respondent stated that he had wrestled with that question and was unable to answer it. It was suggested to the Respondent that the answer was that he had not wanted the beneficiary to find out that the estate had been overcharged. The Respondent stated that looking at it now that would appear to be the case. The Respondent accepted that looking at the paperwork now his actions appeared dishonest. At the time however he had been under considerable pressure relating to matters in his personal life as well as his own health. He was operating on “autopilot” and was not thinking at all.
19. The Respondent admitted the breaches of the Rules and Principles and Outcomes in respect of Allegations 1.2 and 1.3 on the basis of recklessness but he denied acting dishonestly. The matter of BD, Deceased, was a lengthy and complex matter owing to the fact that the principal beneficiary was only 16 at the time. At the age of 18 the beneficiary had wished the Respondent to arrange a deed of variation, the effect of which was to produce an equal split of the estate between the beneficiary and his mother. Bills of costs were taken throughout the conduct of the matter and at no point during the ongoing conduct of the administration of the matter had the Respondent considered the amounts taken to be excessive. With the benefit of hindsight the Respondent could not understand why he had acted in a reckless manner. It was put to the Respondent in cross-examination that an honest person would not produce 17 fake bills. The Respondent accepted this but told the Tribunal that he may have panicked and reiterated that at the material time he had been on autopilot. The Respondent confirmed that the ledger that had been produced was a “work of fiction” and he had spent two to three days preparing it. He agreed that some effort had gone into producing it and that the purpose of doing so was to verify the fake bills. It was put to the Respondent that he had also intended that the SRA would believe that the bills were genuine. The Respondent agreed that that was the natural conclusion to be drawn but that at the time he had no idea. It was put to the Respondent that over the course of the days he spent preparing the ledger, and subsequently, he had had the opportunity to reflect on what he was doing. The Respondent replied that he had not reflected on anything at the time.
20. The Respondent disputed the figures contained in Allegation 1.4 on the basis that the sums taken in respect of costs were justified and that bills had been raised for the relevant amounts. He had also stated in his answer that two of the entries duplicated Allegations 1.6 and 1.7. The Respondent confirmed in cross-examination that all bills that were raised would be kept on the file. It was put to him that this meant that if the FIO could not find bills on a file, the only reason for that could be because the bills had not been raised. The Respondent did not accept this and maintained that bills were always raised in respect of costs. The Respondent was unable to explain why the FIO had not been able to find the bills as set out in the table above.

21. The Respondent fully admitted the breaches of the Rules and Principles in respect of Allegation 1.5 on the basis that the sum of £33,852.50 was repayable. The Respondent made a similar admission in respect of Allegation 1.6 in the sum of £16,385.29 and in respect of Allegation 1.7 in the sum of £12,006.40. The Applicant confirmed that although these figures were not identical to the Rule 5 Statement, there was no intention to enter into an argument over the precise level of overcharging.
22. The Respondent told the Tribunal that he had been “manifestly stupid” and that he would always regret his actions. His reputation lay in tatters and he had put at risk the reputation of the profession as well as the livelihoods of his members of staff. The Respondent described himself as “a fool not a knave”. He told the Tribunal in detail about the difficult circumstances that he faced both with his own health and with that of close family members at the time.

### **Findings of Fact and Law**

23. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

#### Applicant’s Submissions on Dishonesty in relation to Allegations 1.1, 1.2 and 1.3

24. The Applicant submitted that the Respondent’s actions were dishonest in accordance with the test for dishonesty set out in Twinsectra Ltd v Yardley and Others [2012] UKHL 12. That test required that the person has acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he or she was acting dishonestly.
25. Reasonable and honest people would consider it to be dishonest for a solicitor to both misappropriate client money which he knew he was not entitled to take and to provide false documents to the SRA and to a fellow member of the profession.
26. The Applicant submitted that the Respondent realised that by those standards he was acting dishonestly. At the time of the beginning of the events giving rise to the allegations of dishonesty the Respondent was 39 and had over 11 years post-qualification experience. By the time investigation commenced he was 54 and had over 24 years post-qualification experience. Throughout the material period he was involved in the management of the Firm and he was therefore at all material times an experienced solicitor with responsibility for the supervision of others. He must therefore be taken to have understood his fiduciary and professional duties in respect of his client account, the sacrosanct nature of client money and the need for a solicitor to act with probity such that the public would trust them to the ends of the earth. A solicitor possessed of such understanding would recognise that it was dishonest to take client money to which he was not entitled and to promulgate false documents. The misappropriations of client money in relation to Mr BD extended over a period of nine years and involved 38 separate transactions. This was consistent with his having acted deliberately and with knowing impropriety. The period of time for which these misappropriations continued provided the Respondent with ample opportunity to reflect on the propriety of his dealings and with the client ledger in



question. The Respondent had the opportunity to admit the full extent of his misappropriations from the estate of Mr BD, on 16 March 2012 when he raised the final bill in relation to the matter and did not make the necessary repayments to the estate. Instead of doing so the final bill suggested, on its face, that no interim payments had been taken for work done.

27. In interview with the FIO on 12 February 2015 the Respondent had accepted that he had not checked the sums which had been taken from the estate before raising his final bill. These were not the actions of an honest solicitor, who would have been sufficiently astute to ensure they had checked the total amount of interim payments received on account of costs for raising a final bill so as to ensure that the bill was accurate and that any necessary refund could be made to the estate. The Respondent's actions in creating a false client account ledger together with false bills to substantiate the entries in the ledger were deliberate acts of concealment for which no plausible honest explanation could be advanced. It would have been unnecessary for the Respondent to conceal his dealings with money held in relation to that estate from the SRA and the beneficiaries unless he understood that his actions would be viewed by them as being wrong. The irresistible inference that the Tribunal was invited to draw was that the Respondent knew that his actions were dishonest by the ordinary standards of reasonable and honest people.

#### Respondent's Submissions

28. In addition to his evidence, the Respondent submitted that at the time he did not know what he was thinking and that had he been thinking clearly it would be obvious that his actions would inevitably be discovered. Any enquiry of the cashier at the Firm would have revealed it. It was "blindingly obvious that this would be discovered". His actions were not premeditated acts of concealment and he reminded the Tribunal of the evidence that he had given concerning his personal circumstances at the time. He agreed that he had been a "monumental fool" and for that he had taken responsibility.
29. **Allegation 1.1: That between 5 March 2002 and 4 August 2011 he misappropriated client money to a total value of £266,875 from the Estate of Mr BD, Deceased, and thereby breached any or all of:**
- 1.1.1 Practice Rule 1(a) SPR 1990**
  - 1.1.2 Practice Rule 1(d) SPR 1990**
  - 1.1.3 Rule 22(1) SAR 1998**
  - 1.1.4 Rule 1.02 SCC 2007**
  - 1.1.5 Rule 1.06 SCC 2007.**
- 29.1 The Respondent had denied this allegation on the basis that the money had not been misappropriated, although he had overcharged the estate. The Applicant submitted that if this argument was taken to its logical conclusion, there could be a scenario in which there were insufficient monies in a client account without there being a breach of the accounts rules. The fact that interim bills may have been raised was only relevant up until the point where the final bill was produced. At that stage, because the final bill came to less than the sums taken in costs, the monies should have been

replaced immediately. In any event the bills were sent internally and were never sent to the co-executor and so the interim bills were defective in any event.

- 29.2 The Tribunal found that the amount of money was so significant that it could not simply be regarded as overbilling. The Respondent's actions in creating fake bills and a fake ledger, which he had admitted and which are discussed in more detail below, were relevant to his state of knowledge at the time. The interim bills that had been generated were defective and accordingly the monies had not been withdrawn from client account in compliance with Rule 22(1) SAR 1998. The Tribunal was satisfied beyond reasonable doubt that the sum of £266,875 had been misappropriated by the Respondent. The Respondent's integrity had been compromised by these actions, as had the good repute of the solicitor and the profession. The Respondent had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services.
- 29.3 The Tribunal considered the allegation of dishonesty by applying the test set out in Twinsectra. The Tribunal considered the objective test. The Tribunal found that misappropriating client funds in excess of quarter of £1 million over a period of nine years would be regarded as dishonest by the ordinary standards of reasonable and honest people.
- 29.4 The Tribunal considered the subjective test. The Respondent had produced the final bill which was very detailed and was for a sum that amounted to less than a third of the money that he had taken from the client account on account of costs. The bill made no mention of the fact that funds in excess of the total value of the final bill had been taken and that therefore the estate was in fact owed a very significant sum of money by the Firm. The Respondent had told the Tribunal that all he would have had to do in order to obtain accurate figures would have been to go to the cashier. The Tribunal was satisfied that the reason he did not do so was that he knew that he was being dishonest. Even if he was not aware of it at the time, which the Tribunal did not accept, he had subsequent opportunities to rectify the situation both when dealing with DC and later the SRA. He had not availed himself of either of those opportunities. This reinforced the Tribunal's belief that the Respondent knew that he was acting dishonestly as it was reflective of the fact that he was aware that he was acting dishonestly when he misappropriated funds.
- 29.5 The Tribunal was satisfied beyond reasonable doubt that both limbs of the test for dishonesty had been met. Allegation 1.1 was found proved in full beyond reasonable doubt.
30. **Allegation 1.2: That on 3 July 2014 he caused the Firm to provide a false document, namely a spreadsheet which purported to be, but was not, an accurate client ledger in relation to the matter of Mr BD, Deceased, to an officer of the SRA and thereby breached (or failed to achieve) any of or all of:**
- 1.2.1 Principle 2 of the Principles
  - 1.2.2 Principle 6 of the Principles
  - 1.2.3 Principle 7 of the Principles
  - 1.2.4 Outcome 10.6 SCC 2011
  - 1.2.5 Outcome 10.8 SCC 2011

### 1.2.6 Outcome 10.9 SCC 2011

- 30.1 The Respondent had admitted being responsible for a “work of fiction” being provided to the SRA in response to the Section 44B notice. He had created the spreadsheet by cross-referencing the 17 fake bills that he had sent to DC a year earlier. The Respondent had made admissions to this Allegation which were set out in the course of his evidence. The Tribunal was satisfied that these admissions were properly made. The Respondent had not cooperated fully with the SRA nor had he complied promptly with any written notice. Although he had responded in a timely manner to the notice, doing so by submitting false documentation did not amount to compliance and accordingly the Tribunal was satisfied that he had failed to achieve outcomes 10.6, 10.8 and 10.9 of SCC 2011. In failing to achieve these outcomes the Respondent had, by his own admission, lacked integrity, failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services and had failed to comply with his legal and regulatory obligations towards a regulator. On the basis of his admissions of the evidence presented, the Tribunal was satisfied beyond reasonable doubt that the Respondent was in breach of Principles 2, 6 and 7 of the Principles.
- 30.2 The Tribunal again considered the allegation of dishonesty by applying the test set out in Twinsectra. The Tribunal considered the objective test.
- 30.3 The Tribunal found that the production of a detailed and lengthy false document, drawn from and cross-referenced with 17 fake bills would be regarded as dishonest by the ordinary standards of reasonable and honest people.
- 30.4 The Tribunal considered the subjective test. The Respondent had told the Tribunal that he spent between two and three days preparing this document. This was not a ‘moment of madness’ or an impulsive reaction to a situation and the Tribunal rejected the suggestion that the Respondent had been merely reckless. He had put care and effort into ensuring that the spreadsheet reflected the fake bills. The Tribunal was satisfied that the reason he had done so was to deceive the SRA in order to conceal his wrongdoing in respect of the misappropriation. Over the course of the days that he spent preparing this document the Respondent had had ample opportunity to reflect on his actions. The Tribunal had listened carefully to the evidence given by the Respondent about his personal circumstances at the time, including his ill-health. The Respondent had not produced any medical evidence and there was none that suggested that this was the reason for his actions. The Tribunal was satisfied beyond reasonable doubt that he had reflected and that he knew at the time that he was acting dishonestly by the ordinary standards of reasonable and honest people. The Tribunal was satisfied beyond reasonable doubt that both limbs of the test for dishonesty had been met. Allegation 1.2 was found proved in full beyond reasonable doubt.
31. **Allegation 1.3: That on 16 July 2013 he provided false documents, namely bills in relation to the matter of the Estate of Mr BD, Deceased, which purported to have been, but were not, raised in respect of his costs of that matter, to a solicitor representing an executor and a beneficiary of that estate and thereby breached any or all of:**

**1.3.1 Principle 2 of the Principles****1.3.2 Principle 6 of the Principles**

- 31.1 The Respondent had admitted lacking integrity and failing to behave in a way which maintained the trust the public placed in him and in the provision of legal services on the same basis as his admission to allegation 1.2, namely that he had been reckless but not dishonest.
- 31.2 The Tribunal again considered the allegation of dishonesty by applying the test set out in Twinsectra. The Tribunal considered the objective test.
- 31.3 The Tribunal found that the production of 17 fake bills would be regarded as dishonest by the ordinary standards of reasonable and honest people, indeed the Respondent himself had accepted this in the course of his evidence.
- 31.4 The Tribunal considered the subjective test. The Tribunal again rejected the suggestion that the Respondent had been reckless. While the preparation of the bills may have taken less time than the spreadsheet, this was not a single document but numerous bills completed by hand. The only reason the Respondent did this was because he intended that DC would rely on the information contained within them. This was part of the Respondent's attempt to conceal the misappropriations referred to in Allegation 1.1. The Respondent had an opportunity, a year later, to come clean about the fake bills when approached by the SRA. Instead he had chosen to continue the deception by seeking to prove the veracity of the bills by creating a fictitious spreadsheet.
- 31.5 The Tribunal was satisfied beyond reasonable doubt that he knew at the time that he was acting dishonestly by the ordinary standards of reasonable and honest people. The Tribunal was satisfied beyond reasonable doubt that both limbs of the test for dishonesty had been met. Allegation 1.3 was found proved in full beyond reasonable doubt.
32. **Allegation 1.4: That between 2007 and 16 September 2014 he withdrew the sum of £69,311.45 otherwise than in the circumstances permitted by Rule 19(1) SAR 1998 and Rule 22.1 SAR 2011 in breach of those Rules.**
- 32.1 The Tribunal noted that the Applicant's evidence on this matter had not been challenged. There were either no bills on the relevant files or the bills did not reflect the monies drawn from the client accounts. The Respondent had been unable to explain why the FIO would not have been able to find the bills that he said matched the sums that had been withdrawn. The Tribunal was satisfied that the reason the FIO could not find the bills was because they did not exist. The Tribunal did not regard any of the entries as duplicitous with Allegation 1.6 and 1.7 as those Allegations related to overcharging and this Allegation related to the failure to raise bills.
- 32.2 The absence of bills meant that any withdrawal from the client account was in breach of Rule 19 (1) SAR 1998 and Rule 22(1) SAR 2011 and the Tribunal therefore found this allegation proved beyond reasonable doubt.

33. **Allegation 1.5: That between January 2009 and November 2010 he made a claim for costs for work done in relation to the Estate of CR, Deceased, in the sum of £37,906.25 which he knew or should have known was excessive and thereby breached any or all of:**

**1.5.1 Rule 1.02 SCC 2007**

**1.5.2 Rule 1.04 SCC 2007**

**1.5.3 Rule 1.05 SCC 2007**

**1.5.4 Rule 1.06 SCC 2007**

- 33.1 This allegation was fully admitted by the Respondent and the Tribunal found the Allegation proved beyond reasonable doubt on the basis of that admission and the evidence. The exact quantum of overcharging was not relevant for the purposes of determining the allegation.

34. **Allegation 1.6: That between June 2014 and March 2015 he made a claim for costs for work done in relation to the Estate of DN, Deceased, in the sum of £19,200 which he knew or should have known was excessive and thereby breached any or all of:**

**1.6.1 Principle 2 of the Principles**

**1.6.2 Principle 4 of the Principles**

**1.6.3 Principle 5 of the Principles**

**1.6.4 Principle 6 of the Principles**

- 34.1 This allegation was fully admitted by the Respondent and the Tribunal found the Allegation proved beyond reasonable doubt on the basis of that admission and the evidence. The exact quantum of overcharging was not relevant for the purposes of determining the allegation.

35. **Allegation 1.7: That between June 2007 and 17 March 2015 he made a claim for costs for work done in relation to the Estate of JL-C, Deceased, in the sum of £47,758.90 which he knew or should have known was excessive and thereby breached any or all of:**

**1.7.1 Rule 1.02 SCC 2007**

**1.7.2 Rule 1.04 SCC 2007**

**1.7.3 Rule 1.05 SCC 2007**

**1.7.4 Rule 1.06 SCC 2007**

**1.7.5 Principle 2 of the Principles**

**1.7.6 Principle 4 of the Principles**

**1.7.7 Principle 5 of the Principles**

**1.7.8 Principle 6 of the Principles**

- 35.1 This allegation was fully admitted by the Respondent and the Tribunal found the Allegation proved beyond reasonable doubt on the basis of that admission and the evidence. The exact quantum of overcharging was not relevant for the purposes of determining the allegation.

### **Previous Disciplinary Matters**

36. None.

### **Mitigation**

37. The Respondent had raised much of his mitigation in the course of his evidence and his submissions in relation to the Allegations. He had decided to attend the hearing even though it would be a difficult day as he felt it was important to take responsibility for his errors. He recognised that the Tribunal was highly likely to strike him off, even if it had not found the allegations of dishonesty proved.
38. In addition to repaying the estate of BD, he had been trying to sell the Firm's former offices in order to raise the monies required to repay the other estates that were the subject of these Allegations. He was relieved that his business partner and his staff had not faced investigation by the SRA. This was quite right as they had been entirely blameless and the responsibility was his alone. The experience of appearing before the Tribunal had been a salutary one, but one that proved that the system worked. He had lost his way and even if the Tribunal were not to strike him off he had no intention of returning to the legal profession.

### **Sanction**

39. The Tribunal had regard to the Guidance Note on Sanctions (December 2015). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.
40. The Tribunal assessed the Respondent's culpability. Although the motivation for the initial misappropriations was not entirely clear, the motivation behind the generation of false documents was to conceal his wrongdoing in respect of those misappropriations by deceiving DC, the SRA and ultimately the beneficiary. The Respondent had a direct control and responsibility for the circumstances as he was the fee earner responsible for the files and he was the author of the fictitious ledger and the fake bills. In addition, the Respondent was solely responsible for the breaches of the Solicitors Accounts Rules and the overcharging of the other estates. The Respondent had acted in breach of the position of trust as he was a solicitor and an executor and one of the beneficiaries was a minor. He was a very experienced solicitor and was operating at partner level.
41. The level of harm caused to the estates and beneficiaries was significant. The sums involved were vast and although the estate of BD had been repaid by the Respondent, the others had not.
42. The reputation of the profession had been significantly damaged by the Respondent's actions. Any misconduct involving client money being misappropriated and the estates of deceased clients being overcharged was a matter of the utmost seriousness.
43. Matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

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

44. This was far from an isolated incident. The misconduct had taken place on an ongoing basis over a period of 12 years during which time estates had been repeatedly and deliberately overcharged, funds had been misappropriated and concealment had followed.
45. Matters were mitigated by the fact that the Respondent had no previous disciplinary matters before the Tribunal. He had paid some of the money back and had shown a genuine remorse and insight into his behaviour.
46. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.
47. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal had regard to the Respondent’s personal circumstances both at the material time and at the time of the hearing. The Tribunal was sympathetic to the difficulties that the Respondent faced both then and now. However, it had not been suggested that there were exceptional circumstances in this case and the Tribunal did not find there to be any. The Tribunal found there to be nothing that would justify a suspension. The only appropriate and proportionate sanction was that the Respondent be Struck Off the Roll.

### **Costs**

48. The parties had agreed that the Respondent would pay the Applicant’s costs in the sum of £32,763.50. The Tribunal was satisfied that this was an appropriate and proportionate level of costs. The Respondent had not served a Statement of Means and the Tribunal therefore ordered that costs be paid in the usual way.

### **Statement of Full Order**

49. The Tribunal Ordered that the Respondent, CHARLES EDWARD ROBERT CHRISTIAN RHODES 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 £32,763.50.

Dated this 12<sup>th</sup> day of October 2016

On behalf of the Tribunal

A. E. Banks  
Chairman

