SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11503-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MICHAEL JOHN ELSDON Respondent

Before:

Mr D. Glass (in the chair)
Mr M. Jackson
Mrs N. Chavda

Date of Hearing: 12 - 13 December 2016

Appearances

Rupert Allen counsel of Fountain Court Chambers**,** Fountain Court, Temple, London EC4Y 9DH (Instructed by James Dunn, solicitor of Devonshires Solicitors, 30 Finsbury Circus, London, EC2M 7DT), for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement dated 26 April 2016. The allegations were that:-

1. the Respondent transferred the sum of £39,962.03 from his client account to his office account on 30 November 2012 in respect of the estate of Mrs L (the "Estate") following an assessment by the court that the Respondent was only entitled to charge the Estate a total sum of £7,922.46, and thereby:

    1.1. failed to protect client monies and assets, contrary to Principle 10 of the SRA Principles 2011 ("the Principles"); and/or

    1.2. acted without integrity, contrary to Principle 2 of the Principles; and/or

    1.3. failed to act in the best interests of his client, contrary to Principle 4 of the Principles; and/or

    1.4. withdrew client money from his client account which was not properly required for a payment on behalf of the client, in breach of Rule 20.1(a) of the SRA Accounts Rules 2011 (the "SAR").

2. the Respondent failed to take any steps to repay the Estate the sum of £39,962.03 despite confirmation from the High Court on 31 July 2013 – per Roth J – and 15 November 2013 – per Peter Smith J - that the Respondent was only entitled to charge the Estate a total sum of £7,922.46, and thereby:

    2.1. failed to act in the best interests of his client, contrary to Principle 4 of the Principles; and/or

    2.2. acted without integrity, contrary to Principle 2 of the Principles; and/or

    2.3. failed to replace client monies improperly withdrawn from his client account promptly upon discovery, in breach of Rule 7.1 of the SAR.

3. from 19 January 2012 to 21 November 2012 the Respondent acted contrary to the instructions of his client and sought to adjust each beneficiary's share of the Estate to benefit himself, and thereby:

    3.1. acted where there was a conflict between himself and his client, contrary to outcome 3.4 of the Solicitors Code of Conduct 2011 ("SCC"); and/or

    3.2. acted without integrity, contrary to Principle 2 of the Principles.

4. from 30 November 2012 onwards the Respondent acted contrary to the instructions of his client and adjusted each beneficiary's share of the Estate to benefit himself following an assessment of the court that he was not entitled to do so, and thereby:

    4.1. acted where there was a conflict between himself and his client, contrary to outcome 3.4 of SCC; and/or

4.2. acted without integrity, contrary to Principle 2 of the Principles.

5. the Respondent, having transferred £1,962 from client account to office account in respect of an unpaid professional disbursement, failed by the end of the second working day following receipt of the sum into his office account, either to pay the unpaid professional disbursement or to transfer a sum for its settlement to a client account, and thereby breached SAR Rule 17.1(b).

6. the Respondent advised Mr N and Mrs M that payment of a disbursement had been made when he knew that it had not, and therefore acted without integrity, contrary to Principle 2 of the Principles.

7. the Respondent charged his client £1,962 for a professional disbursement when he knew that the disbursement had not been paid, and further that he did not intend to pay the disbursement, and thereby:

7.1. failed to protect client monies and assets, contrary to Principle 10 of the Principles; and/or

7.2. acted without integrity, contrary to Principle 2 of the Principles.

8. the Respondent charged his client for his own costs of his defence of the detailed assessment of his costs to be charged to the Estate, and thereby:

8.1. acted where there was a conflict between himself and his client, contrary to outcome 3.4 of SCC; and/or

8.2. failed to protect client monies and assets, contrary to Principle 10 of the Principles; and/or

8.3. acted without integrity, contrary to Principle 2 of the Principles.

9. between 7 April 2014 and 27 May 2014 the Respondent improperly withheld client monies when there was no legitimate reason to do so until his client agreed not to dispute his invoice dated 4 April 2014, and therefore:

9.1. acted without integrity, contrary to Principle 2 of the Principles; and/or

9.2. failed to act in the best interests of his client, contrary to Principle 4 of the Principles.

10. between 7 April 2014 and 27 May 2014 the Respondent failed to return client monies to his client promptly as soon as there was no longer any proper reason to retain those client monies, and thereby:

10.1. breached SAR Rule 14.3; and/or

10.2. acted without integrity, contrary to Principle 2 of the Principles; and/or

10.3. failed to act in the best interests of his client, contrary to Principle 4 of the Principles.

11. following receipt of a complaint from a beneficiary regarding delay in payment of a legacy, the Respondent entered into unnecessary and obstructive correspondence with that beneficiary which led to a further delay in payment of the legacy in circumstances where the Respondent originally had not foreseen any issue with payment of the legacy, and thereby acted without integrity, contrary to Principle 2 of the Principles.

12. between 17 February 2014 and 10 December 2014 the Respondent failed to pay any interest on client monies when it was fair and reasonable to do so in all the circumstances, and thereby breached SAR Rule 22.1.

13. from 23 December 2013 to 29 January 2014 the Respondent acted contrary to the instructions of his client and undertook work which he was not instructed to undertake in order to benefit himself, and thereby:

13.1. acted where there was a conflict between himself and his client, contrary to outcome 3.4 of SCC; and/or

13.2. acted without integrity, contrary to Principle 2 of the Principles.

14. from 23 December 2013 to 16 October 2014 the Respondent sought to charge his client for work which he was not instructed to undertake and improperly sought to exercise a lien over his client's documents in respect of those improper charges, and thereby acted without integrity, contrary to Principle 2 of the Principles.

15. in March 2014 the Respondent sought to prevent Hornbeam (the practices' accountants) from reporting breaches by the practices of the SAR to the SRA, and thereby:

15.1. acted contrary to outcome 10.7 of the SCC; and/or

15.2. failed to comply with his legal and regulatory obligations and deal with his regulators in an open, timely and co-operative manner, contrary to Principle 7 of the Principles.

16. Dishonesty was alleged with respect to allegations 1 to 4, 6 to 10, 13 and 14. Proof of dishonesty was not an essential ingredient for proof of any of the allegations.

Documents

17. The Tribunal considered all the documents in the case which included:

Applicant

- Application and Rule 5(2) Statement with exhibit JHRD dated 26 April 2016.
- Applicant's Skeleton Argument dated 6 December 2016
- Applicant's Chronology (undated)
- Cost Schedules dated 26 April 2016, 5 December 2016 and 13 December 2016.

- Volumes 1 and 2 of the Hearing Bundle

Respondent

- The Respondent had not provided an Answer. The Tribunal had before it a letter from Dr Hill, the Respondent's GP, dated 26 January 2016. Further historical information about the Respondent's health had been received by the Tribunal's administrative office attached to an email from the Respondent dated 31 October 2016. The Respondent had objected to the Applicant seeing this information and had been informed that if it could not be sent to the Applicant it could not be considered by the Tribunal. On 14 November 2016, the Respondent was asked to confirm whether he was relying on the medical evidence attached to his email of 31 October 2016 to support a further application for an adjournment of the substantive hearing. The Respondent was informed that if he was the medical evidence would need to be disclosed to the Applicant. On 1 December 2016, the Tribunal's administrative office reminded the Respondent that it was waiting for a response to its email of 14 November 2016. However, the Respondent did not respond on this point. Accordingly, neither the Applicant nor the Tribunal had seen the documents submitted by the Respondent on 31 October 2016.

Preliminary Matter - Application to proceed in the absence of the Respondent

18. On 12 December 2016 at 10:08 am the case was called. At that time the Respondent was not present. Immediately prior to that enquiries had been made of the Tribunal's administrative office as to whether the Respondent had contacted it that day. No such contact had been received by the Tribunal. The Applicant had also not heard from the Respondent. The Tribunal decided to adjourn until 10.30 am in case the Respondent was on his way. At 10.30 am the Respondent was still not present and had not made any contact with the Tribunal or the Applicant.

19. The last email that the Applicant had received from the Respondent was dated 6 December 2016 when the Respondent had emailed the Tribunal's administrative office seeking a response to his disclosure application and had copied this to the Applicant. An email advising the Respondent of the refusal of that application was sent on 7 December 2016.

20. The Applicant applied to proceed in the Respondent's absence under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rule 2007. The Tribunal had previously directed that the Respondent could be served by first class post and email. The Respondent had sent a number of emails from the email address that the Applicant had used for service. The Memorandum of the Case Management hearing held on 29 July 2016 had been sent to the Respondent on 1 August 2016. That included the dates of this hearing. On 27 September 2016 the Respondent referred to the December hearing and sought an adjournment until April 2017. The Respondent stated he was unable to travel and asked for the case to be decided without a hearing. The Respondent was advised on 26 October 2016 that his application had been refused and that the case remained listed for five days commencing on 12 December 2016 and a further email was sent by the Tribunal's administrative office later that day clarifying the listing was for six days.

21. In an email dated 31 October 2016 the Respondent asked the Tribunal to reconsider. On 31 October 2016 the Tribunal's administrative office advised the Respondent that the decision could not be reviewed and that if he was submitting a new application for an adjournment he would need to set out the new grounds and the Applicant's views would be sought. Further correspondence followed and on 14 November 2016 in an email from the Tribunal's administrative office there was further reference to the hearing on 12 December 2016 and the fact that if the Respondent wished to again apply to adjourn that hearing he would need to make a new application. No such application followed and the Respondent had not given permission for the Applicant to see the medical evidence attached to his email of 31 October 2016. The Applicant submitted that the Respondent had been properly served with notice of the hearing and was aware that it was taking place.

22. The Applicant referred the Tribunal to the case of General Medical Council v. Adeogba [2016] EWCA Civ 162 and submitted that the Adeogba case set out the test in respect of proceeding in the Respondent's absence in disciplinary proceedings based on the criminal case of R v. Hayward, Jones & Purvis QB 862 [2001]. Fairness to the Respondent was important but the Tribunal also needed to be fair to the Applicant. There was no power for the Tribunal to compel the Respondent to attend. If the hearing did not go ahead there would be significant costs incurred and delay before a six day hearing could be re-listed. It was in the public interest to proceed. The Respondent had not co-operated, the Applicant had had to obtain an order for alternative service, and the Respondent had not filed an Answer nor complied with an Unless Order. There was nothing to suggest that the Respondent would properly engage with the proceedings if the Tribunal decided not to proceed in his absence. It would not be in the interests of justice to adjourn.

23. The Applicant had made reference in its Skeleton Argument to the Respondent having issued a claim for judicial review challenging the Applicant's decision to refer the matter to the Tribunal. Piken J had refused permission on the basis that the claim for judicial review was "totally without merit". The Respondent had appealed against that decision and a decision on the appeal was awaited. There was no further update as to these proceedings, the position having been checked at the end of the previous week. Mr Allen submitted that as the judicial review application had already been dismissed as being "totally without merit" there was no reason to delay these proceedings. The Tribunal having certified that there was a Case to Answer it would be hard to see how the Administrative Court could now find that the decision to refer the matter to the Tribunal was unreasonable. The Respondent had not sought interim relief in those proceedings to stay these proceedings. The Respondent had referred to proceedings before the European Court. If such proceedings existed the Applicant was not aware of them.

24. The Tribunal considered its Policy and Practice Note on Adjournments (October 2002) and paragraphs 13 (3) to 13(5), paragraphs 17 to 20 and part of paragraph 23 of Adeogba which set out the principles it needed to consider when determining an application to proceed in absence in a regulatory context:

> "13. Assuming that service can be established within the Rules, it was not in dispute between the GMC and Dr Adeogba that the relevant Panel (as appropriately advised by its legal assessor) must approach the decision

under Rule 31 whether to proceed in the absence of the medical practitioner by reference to the principles developed by the criminal law in relation to trial in the absence of a defendant. Thus, the starting point is *R v Hayward, R v Jones, R v Purvis* QB 862 [2001], EWCA Crim 168 [2001] in which an experienced Court of Appeal (Rose LJ, Hooper and Goldring JJ) distilled the domestic and Convention authorities and set out guidance which, insofar as it is relevant to Rule 31 provides (at [22(3)-(5)]):

> "3. The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives.
>
> 4. That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
>
> 5. In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
> (ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings;
> (iii) the likely length of such an adjournment;
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
> (v) whether an absent defendant's legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence;
> (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
> (vii) the risk of the jury reaching an improper conclusion about the absence of the defendant;
> (viii) the seriousness of the offence, which affects defendant, victim and public;
> (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

(x) the effect of delay on the memories of witnesses;
(xi) where there is more than one defendant and not all have absconded, the undesirability of separate trials, and the prospects of a fair trial for the defendants who are present."

17. In my judgment, the principles set out in *Hayward*, as qualified and explained by Lord Bingham in *Jones*, provide a useful starting point for any direction that a legal assessor provides and any decision that a Panel makes under Rule 31 of the 2004 Rules. Having said that, however, it is important to bear in mind that there is a difference between continuing a criminal trial in the absence of the defendant and the decision under Rule 31 to continue a disciplinary hearing. This latter decision must also be guided by the context provided by the main statutory objective of the GMC, namely, the protection, promotion and maintenance of the health and safety of the public as set out in s. 1(1A) of the 1983 Act. In that regard, the fair, economical, expeditious and efficient disposal of allegations made against medical practitioners is of very real importance.

18. It goes without saying that fairness fully encompasses fairness to the affected medical practitioner (a feature of prime importance) but it also involves fairness to the GMC (described in this context as the prosecution in *Hayward* at [22(5)]). In that regard, it is important that the analogy between criminal prosecution and regulatory proceedings is not taken too far. Steps can be taken to enforce attendance by a defendant; he can be arrested and brought to court. No such remedy is available to a regulator.

19. There are other differences too. First, the GMC represent the public interest in relation to standards of healthcare. It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed.

20. Second, there is a burden on medical practitioners, as there is with all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.

23. ……Assuming that the Panel is satisfied about notice, discretion whether or not to proceed must then be exercised having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account; the criteria for

criminal cases must be considered in the context of the different circumstances and different responsibilities of both the GMC and the practitioner."

25. The Tribunal noted that the Respondent had acknowledged at least one email that notified him of the dates of this hearing. His application for an adjournment had referred to a December hearing. The Tribunal was satisfied that the Respondent had been served with notice of this hearing. The Respondent had referred to medical reasons for his inability to attend but had not provided the medical evidence directed citing financial reasons. Nor had he agreed to the Applicant having sight of the medical evidence that was available meaning that neither the Applicant nor Division had seen that documentation. The medical evidence dated 26 January 2016 had referred to a recommendation that the Respondent take certain medication for four to six months from December 2015 and the ongoing prognosis being uncertain. The Tribunal did not have a consultant's report despite the Tribunal order of 29 July 2016 that "If the Respondent wishes to make an application based on his medical conditions he must file and serve a report of an appropriately qualified medical consultant setting out a diagnosis and prognosis and indicating whether he is able to participate in these proceedings, whether he is able to comply with directions made and whether he is able to attend hearings and in each case, if not, when he is likely to be able to do so."

26. The Tribunal needed to be fair to both parties. The Tribunal did not consider that these proceedings were likely to muddy the waters of justice so far as any other proceedings of which they were aware were concerned. The Tribunal could not secure the Respondent's attendance and there was no evidence that if the Tribunal adjourned the hearing that the Respondent would attend a hearing at a later date. The Tribunal was satisfied that the Respondent had voluntarily absented himself and with great care and caution agreed to proceed in the absence of the Respondent.

Factual Background

27. The Respondent was born in 1947 and was admitted as a solicitor in January 1986. At the date of the Rule 5 Statement the Respondent's name remained on the Roll of Solicitors but he did not hold a current practicing certificate.

28. The Respondent had practised as a solicitor from 15 March 1989 until 28 February 2013 as a sole practitioner under the style of M J Elsdon and from some point in early to mid-March 2013 until 11 October 2013, in the firm of Woolacott & Co. From the beginning of March 2013 until the end of the relevant period, the Respondent also practised in Sai-Donne Limited. The allegations in this matter related to the Respondent's conduct whilst practising as a sole practitioner under the style of M J Elsdon and/or as director of Sai-Donne Limited (together the "Practices"). M J Elsdon ceased to exist as an entity on 28 February 2013 and Woolacott & Co ceased to exist as entity on 11 October 2013.

29. The Respondent purchased Woolacott & Co from its previous owners, Mr and Mrs Woolacott, by an agreement dated 26 February 2013. On 4 March 2013 Mr and Mrs Woolacott and the Respondent entered into various assignments which assigned to the Respondent the goodwill and all assets of Woolacotts and the benefit

of all wills where Mr Woolacott, Mrs Woolacott, or Woolacotts were named as Executor; and irrevocably appointed the Respondent to act for them and as their agent and appointed him to be their attorney in accordance with section 10 of the Powers of Attorney Act 1971.

30. On 18 June 2014 a duly authorised officer of the Applicant commenced an inspection of the books of account and other documents of the Practices. That inspection culminated in an interim report dated 19 November 2014 and a further report dated 1 June 2015.

31. On 10 December 2014 the Applicant served notice of an intervention and intervened into the Practices (the "Intervention"). Subsequently on 16 December 2014 the Respondent issued an application to set-aside the Intervention (the "Set-Aside Application"). The Set-Aside Application was rejected by Newey J on 12 May 2015. On 26 June 2015 the Respondent applied for permission to appeal the Judgment of Newey J. Permission to appeal was refused on 25 November 2015 by Patten L. Subsequently on 3 December 2015 the Respondent requested that his application for permission to appeal be considered at a hearing. The hearing was expedited at the Respondent's request and was heard on 1 February 2016. At that hearing Kitchin LJ also refused the Respondent's application for permission to appeal.

32. On 9 June 2015 the Applicant sent the Respondent a letter seeking an explanation of his conduct (the "EWW") and which enclosed a copy of the Interim Report and the Final Report. In response to the EWW the Respondent sent the Applicant a copy of the appeal bundle filed in support of his application for permission to appeal the Judgment of Newey J on 12 May 2015 regarding the Set-Aside Application. This bundle consisted of 875 pages of documents.

33. On 4 September 2015 a duly authorised officer of the Applicant decided to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal. The Respondent issued a claim for judicial review challenging the Applicant's decision to refer the matter to the Tribunal. Picken J refused permission on the basis that the claim for judicial review was "totally without merit". The Respondent appealed against this decision and a decision is awaited.

34. The Rule 5 Statement was dated 26 April 2016.

Witnesses

35. There was no oral evidence. The written evidence is quoted or summarised in the Findings of Fact and Law below. The evidence referred to below will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

36. 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.

37. **Allegation 1 - the Respondent transferred the sum of £39,962.03 from his client account to his office account on 30 November 2012 in respect of the estate of Mrs L following an assessment by the court that the Respondent was only entitled to charge the Estate a total sum of £7,922.46, and thereby:**

1.1 failed to protect client monies and assets, contrary to Principle 10 of the Principles; and/or

1.2 acted without integrity, contrary to Principle 2 of the Principles; and/or

1.3 failed to act in the best interests of his client, contrary to Principle 4 of the Principles; and/or

1.4 withdrew client money from his client account which was not properly required for a payment on behalf of the client, in breach of Rule 20.1(a) of the SAR.

37.1 Allegations 1 to 8 relate to Mrs L's Estate. The Applicant's case for allegation 1 sets out the background and factual matrix for all of these allegations.

The Applicant's Case

37.2 Mrs L died on 17 August 2008. Under her will the Estate was to be shared between her three children, being Mr L, Mr N and Mrs M. Mr L and the Respondent were named as co-executors of the Estate. Probate was granted on 20 April 2010. The assets of the Estate realised approximately £159,000, of which Mrs L's home, which was sold in January 2011, accounted for £157,000.

37.3 On 10 May 2011 the Respondent wrote to Nationwide Building Society regarding what he considered to be irregular withdrawals after Mrs L's death and asking for details of the transactions prior to 30 July 2008 so that he could investigate the previous history of cash withdrawals. On 18 May 2011 the Respondent wrote to Mrs M and Mr N and noted that they did not want to pursue the matter of the cash withdrawals by Mr L from Mrs L's Nationwide Building Society account. The Respondent asked them both to sign and return a letter to confirm that this was their position. Mrs M and Mr N both countersigned the letter as requested.

37.4 On the same day the Respondent wrote to Mr L about withdrawals that had been made from Mrs L's building society account before her death. In the letter the Respondent stated:

> "I understand that your late mother's needs were small with no more than £10 a week required for food. In the six months prior to the date of death £4,630 was withdrawn in cash. Allowing £260 for food in that time please let me know what the surplus £4,370 was used for (sic)"

37.5 Mr L replied the next day and provided a detailed estimate of the sums which were spent on Mrs L each week. However this matter, coupled with the allegations about the treatment of Mrs L prior to her death, continued to be an issue throughout the administration of the Estate.

37.6 On 2 June 2011 Mr L wrote to the Respondent asking for draft estate accounts for approval and a full breakdown of the work carried out by the Respondent. On 9 June 2011 the Respondent replied. He did not dispute that, as co-executor, Mr L was required to approve the Estate accounts. He explained that he had drafted accounts but before matters could be finalised he need to hear from the Department of Work and Pensions with confirmation of the final amount due to them.

37.7 By the end of July 2011 the Respondent had produced three invoices addressed to "Exors of [Mrs L] deceased" covering the period from 10 February 2009 to 22 July 2011 and which totalled £50,701.82 (inclusive of VAT). The first invoice (in respect of the period up to 11 July 2010) adopted a charging rate of £250 an hour, and the following bills were based on a charging rate of £275 an hour.

37.8 On 25 July 2011 the Respondent sent the provisional accounts to Mr L for his approval as co-executor. Mr L did not respond. On the same day the Respondent wrote to Mrs M and Mr N explaining that he was sending provisional accounts to Mr L together with a history of the administration of the Estate and the sale of the property. The Respondent told Mrs M and Mr N that the history showed that a great amount of additional work was caused by Mr L and it was open as to whether Mr L would approve the accounts or object to the additional costs. On 12 August 2011 the Respondent wrote to Mr L asking him to return the accounts sent to him on 25 July 2011 duly signed. The Respondent also stated that he had written to Mr L on 1 September 2011 chasing a response.

37.9 The Respondent rendered a fourth invoice for the period to 24 October 2011 in the amount of £3,300 (inclusive of VAT). The total charge to the Estate by the Respondent was £54,001.82 (inclusive of VAT). By letter dated 4 October 2011 marked "without prejudice save as to the costs of detailed assessment" the Respondent wrote to solicitors retained by Mr L seeking to agree the level of costs to be charged to the Estate. The Respondent stated that he had sent the interim accounts to Mr L and had not received a response. He said that he could not make any progress with the administration of the estate without the co-operation of Mr L or a court order.

37.10 Mr L continued to refuse to agree the Respondent's charges and his solicitors wrote to Mr N and Mrs M inviting them to challenge the Respondent's costs or to confirm they wished Mr L to approve the Respondent's costs. On 31 October 2011 the Respondent issued an application to the court for his bills to be charged to the Estate to be assessed. The Respondent subsequently emailed Mrs M and Mr N about the cost proceedings on 19 January 2012. The Respondent told them that Mr L was causing a great deal of trouble, that at the moment there was no end to this dispute and that all

the time more costs were being incurred. He acknowledged that Mrs M and Mr N had confirmed that they had no objection to his bills. The Respondent told them that as there were three residuary beneficiaries Mr L was in effect arguing about one-third of the costs and suggested he make an offer to Mr L through his Solicitors and further offers as necessary that would compel them to settle the dispute. The Respondent suggested that this would require an adjustment to the amount available for distribution by one-third of the amount of the offer but against that it would put an end to the dispute about the bills and there would be no more costs about the dispute. The Respondent did not advise Mr N or Mrs M, either on 19 January 2012 or subsequently, to obtain independent legal advice.

37.11 On 10 February 2012 Mr N emailed the Respondent in reply and confirmed that both he and Mrs M were willing to take the Respondent's advice and would offer Mr L, as the Respondent suggested, up to £5000 from each of their shares to resolve the matter. Mr N stated "Thank you for your offer to adjust your costs, we are very grateful."

37.12 On 14 February 2012 the Respondent put forward a Part 36 offer to Mr L via his solicitors. The Respondent stated:

> "I will agree to the claim being settled on a reduction of 30% of the profit costs and VAT in the invoices W.52, W.105, W.106 and X48 from a total of £53,909.51 to £37,736.66 (sic)"

37.13 In emails to Mr N and Mrs M, on the same date, the Respondent told them that:

> "I have sent an offer to [Mr L]'s Solicitors today. You have agreed that you would pay your one third of my fees and the offer I have made equates to a reduction of 30% in my fees for [Mr L] and includes £2,695.48 from the £5,000 you have agreed to contribute to pay off [Mr L] (sic)"

37.14 The consequence of this offer, if accepted, would have meant that, instead of £17,969.84 (being one third of £53,909.51 which was the sum for profit costs and excluded a disbursement in the sum of £92.31) being deducted in respect of each of the three beneficiaries' share of the Estate, Mrs M and Mr N would each pay £20,665.31 towards the Respondent's costs and Mr L £12,578.89. If this had been accepted the Respondent would have received a total payment in respect of his fees in the sum of £53,909.51. This meant that although the Respondent's legal costs were effectively being assessed and reduced by agreement with Mr L, the Respondent would still receive the same amount as he had invoiced.

37.15 By email dated 10 April 2012 the Respondent made another offer along the same lines, but on the basis that Mr L's "share" of the bills would fall by 40% instead of 30%. The Respondent noted in his email to Mr L's solicitors that:

> "This further offer is made as [Mr N] and [Mrs M] have agreed that my fees should be paid in full and have offered further support in order to assist (sic)"

37.16 The consequence of this further offer, if accepted, would have meant that Mr N and Mrs M each paid £21,563.80 and Mr L £10,781.91 being a total payment to the Respondent in respect of his fees in the sum of £53,909.51. The Respondent was not reducing his fees to be charged to the Estate at all.

37.17 The Respondent and Mr L were unable to agree to a settlement of the Respondent's invoices. Accordingly the Respondent applied for a detailed assessment of his four invoices by the court pursuant to section 70 of the Solicitors Act 1974. On 22 November 2012 Master Gordon-Saker delivered judgment. He assessed the Respondent's bills in the sum of £7,922.46, including VAT. In the course of his judgment Master Gordon-Saker remarked that the work "involved no real complexities" and stated:

> "[I]t seems to me that the hourly rate charged by the [Respondent] is excessive for this work and the cost of the work has been increased significantly by the fact that all of the work has been done at the [Respondent]'s rate and none of the work has been delegated. It seems to me that the time spent is also excessive even allowing for the wrinkles to which I have referred."

37.18 Master Gordon-Saker allowed an hourly rate of £175 as opposed to the Respondent's charged hourly rate of £250 or £275. The order made following the hearing before Master Gordon-Saker provided that the Bills rendered by the Respondent that were the subject of the proceedings were assessed in the total sum of £7,922.46 including VAT. The Respondent was ordered to pay Mr L's costs of the proceedings, assessed in the sum of £14,492.12 (including VAT and court fees).

37.19 On 23 November 2012 the Respondent sent a long email of complaint to the barrister (Miss B) whom he had hoped would represent him at the hearing before Master Gordon-Saker (but had not done so) about the previous day's hearing. The Respondent stated:

> "For bills totalling £54,001.82 I have been allowed £7,922.46 which is an incredible loss of £46,079.36
>
> In addition I am ordered to pay [Mr L]'s Costs of £14,449.12 as well as paying my own Costs. Therefore for years of work I have a net loss of £30,554.82.
>
> With the loss on my bills my total loss is £84,556.64
> All that I have done is to do the work that was necessary and charge for it in accordance with my Terms of Business as I do in every other case I undertake (sic)"

37.20 The Respondent recognised in his email to the barrister that he suffered a loss of £46,079.36 and therefore recognised that he was not entitled to charge the Estate - and that included the shares of Mr N and Mrs M – anything more than £7,992.46. This would have been obvious to any lay person let alone an experienced solicitor.

37.21 On the same day the Respondent sent both Mr N and Mrs M an email incorporating the majority of the email he had sent to the barrister, but excluding from each email the above quotation. Therefore there was no mention to either Mr N or Mrs M of the figure at which the Respondent's costs had been assessed or that the sum assessed by Master Gordon-Saker was the total amount that the Respondent was entitled to charge the Estate.

37.22 Despite the court's assessment, and the Respondent's understanding, on 30 November 2012 (which was eight days after the assessment hearing) the Respondent transferred the sum of £39,962.03 to his office account, of which £38,642.03 was for his legal fees and £1,320 was in respect of disbursements (as against the assessed sum of £7,922.46). The Respondent calculated the sum of £39,962.03 as being the aggregate of two thirds of the gross amount of the bills that Master Gordon-Saker had assessed (which the Respondent calculated as £36,001.21), one third of the £7,922.46 at which he had assessed them (£2,640.82), and £1,320 in respect of certain disbursements. The Respondent did not advise Mr N or Mrs M, either before, on 30 November 2012 or subsequently, to obtain independent legal advice. From the Respondent's notes it appeared that his calculation was based on Mr N and Mrs M being obliged to pay one third each of the original invoices whereas Mr L had to pay one third of the assessed amount. However, the Estate not the beneficiaries were the client and the assessed costs were all that the Respondent was lawfully entitled to charge the Estate before distributing the residue.

37.23 In January 2013 the Respondent prepared a further invoice, again addressed to "Exors of [Mrs L] deceased". This invoice related to the period from 25 October 2011 to 9 January 2013 and was for a total of £20,658.44 (including VAT). Despite the comments of Master Gordon-Saker at the detailed assessment hearing on 22 November 2012, this invoice again used a charging rate of £275 an hour. The bill was provided to Mr N and Mrs M shortly after it was raised on 14 January 2013, but it was not provided to Mr L until 7 November 2013. Subsequently on 27 February 2013 the Respondent transferred £10,329.22 from client account to office account. This represented half of the £20,658.44 billed in January 2013. It is not clear why the Respondent chose to transfer only 50%.

37.24 On 21 February 2013 the Respondent prepared the Estate accounts as at that date and sent them to Mr N and Mrs M by email the same day. He asked them to check them carefully to make sure everything was in order. If it was, he asked them to confirm that the amount shown in the accounts to be due to them following adjustments was the final amount due to them. At least until 4 December 2013 and potentially beyond, the Respondent did not send the Estate accounts prepared on 21 February 2013 to Mr L, despite Mr L still being a co-executor of the Estate.

37.25 On 25 and 27 February 2013 respectively Mr N and Mrs M each stated in an email to the Respondent that they were sure that he had prepared the accounts with a lot of care and agreed that these were the final amounts due to them. Subsequently on 27 February 2013 the Respondent made distributions of £25,580.20 by way of cheque each to Mr N and Mrs M, but not to Mr L. These cheques cleared through the client account on 11 March 2013.

37.26 The total costs charged by the Respondent in respect of Mr N's and Mrs M's share of the Estate amounted to £29,063.05 each. The total costs to be charged by the Respondent in respect of Mr L's share was never finalised. As at 4 December 2013 and potentially beyond, the Respondent had not advised Mr L that he had made distributions from the Estate to Mr N and Mrs M in February 2013.

37.27 Neither in February 2013, nor subsequently, up until the Respondent was replaced as executor by Court Order dated 18 December 2014 did Mr L receive any of his mother's Estate, even though she had died in 2008.

37.28 The fact that Mr N and Mrs M appeared to have been content for the additional amounts to be deducted from their shares of the estate did not justify the Respondent's actions. Mr N and Mrs M were heavily reliant upon and trusted the Respondent who did not provide them with full information.

37.29 In acting as he did the Respondent failed to protect his client's money, acted without integrity, failed to act in his client's best interests and breached Rule 20.1 (a) of the SAR by withdrawing money from his client account which was not properly required for payment on behalf of a client.

The Respondent's Case

37.30 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

The Tribunal's Findings

37.31 The Tribunal was required to reach its findings on the documentation before it and the submissions it had heard. The Applicant had served a Civil Evidence Act Notice on the Respondent on 23 June 2016. The Tribunal had not heard any oral witness evidence as the Respondent has not served a Counter-Notice in respect of the written evidence.

37.32 Factually the Tribunal was satisfied that the Respondent transferred the sum of £39,962.03 from his client account to his office account on 30 November 2012 in respect of the Estate of Mrs L following an assessment by the court that the Respondent was only entitled to charge the Estate a total sum of £7,922.46. The Tribunal had no information before it as to whether or not this had ever been put right. The transfer took place after the Order of Master Gordon-Saker and was unjustified.

37.33 Principle 10 required the Respondent to protect client money and assets. The Respondent had transferred monies he was not entitled to from client to office account. This was not acting in a way that protected client money and assets. Nor was it acting in the best interests of each client as required by Principle 4. Mr N and Mrs M should have been given a full explanation of what had happened. In particular, the client was the Estate and Mr L was the co-executor of the Estate and he had challenged the costs on behalf of the Estate. It was not acting in the Estate's best interests nor protecting its monies to transfer more costs than the court had said the Respondent was entitled to charge. The Respondent was not entitled to the monies

and therefore the transfer was not properly required for a payment on behalf of a client.

37.34 Principle 2 requires that a solicitor must act with integrity. Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal by reference to the facts of a particular case. The Respondent knew he was not entitled to the costs and he took them anyway. The Respondent's email to Miss B was clear evidence that he knew that the costs he had been awarded were £7,922.46. He was outraged at the decision. The Respondent was clearly not acting with integrity when he transferred the costs in the sum of £39,962.03 because he knew he was not entitled to costs in this sum.

37.35 The Tribunal was satisfied that allegation 1 had been proved beyond reasonable doubt. The Respondent had failed to protect client monies and assets contrary to Principle 10; acted without integrity contrary to Principle 2; failed to act in the best interests of his client contrary to Principle 4 and withdrawn client money from his client account which was not properly required for a payment on behalf of the client, in breach of Rule 20.1(a) of the SAR.

38. **Allegation 2 - the Respondent failed to take any steps to repay the Estate the sum of £39,962.03 despite confirmation from the High Court on 31 July 2013 – per Roth J – and 15 November 2013 – per Peter Smith J - that the Respondent was only entitled to charge the Estate a total sum of £7,922.46, and thereby:**

2.1 failed to act in the best interests of his client, contrary to Principle 4 of the Principles; and/or

2.2 acted without integrity, contrary to Principle 2 of the Principles; and/or

2.3 failed to replace client monies improperly withdrawn from his client account promptly upon discovery, in breach of Rule 7.1 of the SAR.

<u>The Applicant's Case</u>

38.1 The Respondent applied for permission to appeal against Master Gordon-Saker's judgment. On 31 July 2013 Roth J granted limited permission as regards one of the six proposed grounds of appeal. In giving limited permission to appeal Roth J stated:

> "The fact that the other two beneficiaries did not dispute the bills is of little relevance. [Mr L] as an executor was entitled to dispute the bills and once an assessment is carried out the court is required to determine the fair and reasonable charge. The argument that the dispute concerned only [Mr L's] one third share is wholly misconceived: the bills were a charge on the estate."

38.2 It was confirmed to the Respondent following the decision of Roth J on 31 July 2013 that he had not been entitled to charge the Estate in the way that he had previously done. Despite this, the Respondent did not refund the additional monies (or any part of them) charged to Mr N's or Mrs M's "share" of the Estate. The Respondent never advised Mr N or Mrs M that Roth J had stated that the Respondent's argument that the

detailed assessment of his fees related only to Mr L's "share" of the fees was "wholly misconceived". Nor did the Respondent take any steps to repay those additional monies to Mr N's or Mrs M's share of the Estate.

38.3 On 15 November 2013 the Respondent's appeal against Master Gordon-Saker's judgment was either dismissed by the Judge or withdrawn by the Respondent, and the Respondent was ordered to pay Mr L's costs in the sum of £8,184. The Respondent did not take any steps to repay the additional monies charged to Mr N's or Mrs M's share of the Estate at any time following the dismissal of his appeal on 15 November 2013.

38.4 The Respondent's retention of the £39,962.03 was a continuing and consistent breach of his duty to Mrs L's Estate. He ought to have returned the money to the client account but did not do so. Had Mr L known about the Respondent's approach he would no doubt have objected to it. However the Respondent did not send Mr L the interim accounts or advise him that he had made an interim distribution to Mr N and Mrs M so Mr L was unaware of what had happened.

38.5 In acting as he did the Respondent acted without integrity, failed to act in his client's best interests and breached Rule 7.1 of the SAR by failing to remedy the initial accounts rule breach promptly upon discovery by replacing the money that he had improperly withdrawn from the client account.

The Respondent's Case

38.6 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

The Tribunal's Findings

38.7 The Respondent had not repaid the Estate the difference between the sum charged and the assessed costs when his appeals failed and he knew without doubt that he was only entitled to charge the Estate a total sum of £7,922.46. The Respondent could have rectified the position but he did not do so. By 15 November 2013 at the very latest he knew he could not charge the whole £39,962.03. It could not be in the best interests of his client not to repay them monies that had been transferred to which the Respondent was not entitled. In not repaying the Estate the Respondent was clearly acting without integrity. There was also a breach of Rule 7.1 of the SAR.

38.8 The Tribunal was satisfied beyond reasonable doubt that allegation 2 was proved. The Respondent had failed to take any steps to repay the Estate the sum of £39,962.03 despite confirmation from the High Court on 31 July 2013 – per Roth J – and 15 November 2013 – per Peter Smith J - that the Respondent was only entitled to charge the Estate a total sum of £7,922.46, and thereby he failed to act in the best interests of his client contrary to Principle 4; acted without integrity contrary to Principle 2 and failed to replace client monies improperly withdrawn from his client account promptly upon discovery, in breach of Rule 7.1 of the SAR.

39. **Allegation 3 - from 19 January 2012 to 21 November 2012 the Respondent acted contrary to the instructions of his client and sought to adjust each beneficiary's share of the Estate to benefit himself, and thereby:**

3.1 acted where there was a conflict between himself and his client, contrary to outcome 3.4 of the SCC; and/or

3.2 acted without integrity, contrary to Principle 2 of the Principles.

The Applicant's Case

39.1 The Respondent's client was Mrs L's estate. The Respondent was therefore required to distribute the estate in accordance with the terms of the will. However, the Respondent was involved in a dispute about the fees that were properly chargeable to the estate. This immediately created the potential for an own-interest conflict. The Respondent's conduct allowed that conflict to crystallise. To try to settle the dispute, the Respondent proposed a mechanism to Mr N and Mrs M whereby for every pound he had to spend to satisfy Mr L, he recovered an additional pound from the share of the estate due to Mr N and Mrs M. Put another way, the Respondent used his position as the estate's solicitor to fund expenses he incurred as the estate's opponent in a dispute. As a result, he created a situation where the pursuit of his own interests (i.e., recovering the full amount of his invoices) resulted in a failure to comply with his duty to the estate (i.e., failing to ensure an equal distribution to all three beneficiaries as required by the terms of the will).

39.2 The Respondent thus acted where he had an own interest conflict contrary to outcome 3.4 of the SCC and acted without integrity. It was no answer to say that Mr N and Mrs M gave their consent. The Respondent's duty was to the estate as his client, not to Mr N and Mrs M. Second, it was not clear that Mr N and Mrs M really knew what the Respondent was doing. The Respondent's email of 19 January 2012 was opaque. Mr N's email of 10 February 2012 suggested that he thought that the Respondent had agreed to *"adjust"* his costs when that was not in fact the case. In his email of 24 February 2012, the Respondent told them that he was using their entitlements to "*pay off*" Mr L, not that the money would end up in the Respondent's pocket. Mr N and Mrs M also ended up paying significantly more than the additional £5,000 that they had agreed to contribute on 10 February 2012. Thirdly, a solicitor is not permitted to act where there is an own interest conflict or a significant risk of an own interest conflict even where the client consents.

The Respondent's Case

39.3 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

The Tribunal's Findings

39.4 Allegation 3 was another aspect of allegation 1. The Respondent was clearly trying to get Mr N and Mrs M to carry the burden of the fact that Mr L was disputing the fees charged to the Estate. It was Mr N and Mrs M who paid more costs and received a reduced entitlement. The will stated that the three residuary beneficiaries should

receive equal shares but this did not happen and would not have happened if the Respondent's costs proposals to Mr L had been accepted without the detailed assessment. Mr N and Mrs M were grateful to the Respondent and thought that he had adjusted his costs when he had not done so. Between them Mr N and Mrs M had agreed to contribute £10,000 to settling the costs dispute. They had given a limited agreement and the Respondent had gone beyond that agreement.

39.5 The Tribunal was satisfied that from 19 January 2012 to 21 November 2012 the Respondent acted contrary to the instructions of his client and sought to adjust each beneficiary's share of the Estate to benefit himself. The Respondent did not advise Mr N or Mrs M to seek independent legal advice. He was adjusting figures in a way that was detrimental to them. The Respondent clearly acted where there was a conflict between him and his clients contrary to outcome 3.4 of the SCC. In acting in this way the Respondent acted without integrity contrary to Principle 2. The Respondent was clearly not acting with integrity when he acted contrary to his client's instructions and sought to adjust each beneficiary's share of the Estate to benefit himself. The Tribunal was satisfied that allegation 3 had been proved beyond reasonable doubt.

40. **Allegation 4 - from 30 November 2012 onwards the Respondent acted contrary to the instructions of his client and adjusted each beneficiary's share of the Estate to benefit himself following an assessment of the court that he was not entitled to do so, and thereby:**

4.1 acted where there was a conflict between himself and his client, contrary to outcome 3.4 of SCC; and/or

4.2 acted without integrity, contrary to Principle 2 of the Principles.

The Applicant's Case

40.1 Following the assessment of the court on 22 November 2012 the Respondent continued to charge the Estate 100% of his original bills in respect of Mr N's and Mrs M's interests in the Estate, and only reduced Mr L's "share" of his costs. In the circumstances the Respondent charged monies to the Estate and transferred monies from client account to office account in respect to which he knew he was not entitled. The Respondent did not advise Mr N or Mrs M, either before or on 30 November 2012 – when he transferred payment of his fees to his office account - or subsequently, to obtain independent legal advice regarding this matter, despite the fact that Mr N and Mrs M were equal residuary beneficiaries of the Estate and the Respondent was seeking to impose on their interests in the Estate charges which had not been accepted by the court as being properly chargeable. Had the Respondent advised them to obtain independent legal advice Mr N and Mrs M would have become aware that the Respondent had a personal conflict of interest.

40.2 Further, the Respondent did not advise Mr N or Mrs M that Roth J had stated that the Respondent's argument that the detailed assessment of his fees related only to Mr L's "share" of the fees was "wholly misconceived". Had he done so Mr N and Mrs M would have become aware that on 30 November 2012 the Respondent had charged to

their interests in the Estate sums which the court had assessed were not properly chargeable.

40.3 Since the Respondent's client was the estate, the benefit of Master Gordon-Saker's order should have accrued to the estate as a whole. When calculating the amount of £39,962.03, the Respondent effectively allowed the benefit of the order to accrue to no one other than Mr L. Mr N and Mrs M continued to pay their 'share' of the original (pre-assessment) amounts, contrary to the obvious intention of the order. In seeking to rely upon his agreement with Mr N and Mrs M that their interests in the Estate would be adjusted to ensure that the Respondent received payment of all of his fees, the Respondent had a conflict of interest. The Respondent was under a duty to act as instructed by the will, in this case to pay one third of the residual Estate to each of the three beneficiaries. The Respondent was seeking to act contrary to those instructions and in his personal interests by seeking to reduce the share of two of the beneficiaries to ensure that he received full payment of his fees.

40.4 For the reasons set out above in relation to allegation 3 the Respondent acted where he had an own-interest conflict contrary to outcome 3.4 of the SCC and he acted without integrity.

The Respondent's Case

40.5 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

The Tribunal's Findings

40.6 The Respondent moved the money from client to office account on 30 November 2012. Allegation 4 was framed in similar terms to allegation 3 but related to a different time period. By 30 November 2012 the court had made its order in respect of the Respondent's entitlement to costs and he transferred sums he was not entitled to despite the court order. This had the effect of altering both Mr N and Mrs M's entitlement to their share of the residuary estate. Mr L had not given any instructions. He had disputed the Respondent's fees and this had led to the detailed assessment. After 30 November 2012 Mr N and Mrs M had not given any instructions in respect of the costs aspect. The Tribunal could not be sure that the facts fitted the allegation. The Applicant appeared to be trying to cover every possible option, leading to repetitive allegations with some duplication. The Tribunal did not find allegation 4 proved beyond reasonable doubt.

41. **Allegation 5 - the Respondent, having transferred £1,962 from client account to office account in respect of an unpaid professional disbursement, failed by the end of the second working day following receipt of the sum into his office account, either to pay the unpaid professional disbursement or to transfer a sum for its settlement to a client account, and thereby breached SAR Rule 17.1(b).**

The Applicant's Case

41.1 On 7 June 2012 the Respondent instructed a Professor H to prepare a report to explain certain medical words and phrases contained in Mrs L's medical notes and the Post Mortem Report, and to provide answers to further queries raised by the Respondent. On 11 June 2012 Professor H sent his report together with an invoice for £1,962 in respect of his report and explained: "I am sorry the fees are so high but it took a long time to consider so many questions". The Respondent made arrangements to pay Professor H's invoice by way of a letter dated 25 June 2012 which, had it been sent, would have enclosed a cheque in Professor H's favour. However, the Respondent did not send the letter dated 25 June 2012 and made no other payment to Professor H.

41.2 Having made arrangements to pay Professor H's fees but then not sending payment to Professor H, on 10 July 2012 – some 15 days after the letter of payment was drawn up but not sent – the Respondent withdrew the sum of £1,962 from the client bank account in respect of Professor H's fees and transferred it to the office bank account.

41.3 On or about 17 July 2012 the Respondent received a written Advice from Mr T-S (Counsel instructed by the Respondent). The Advice, in part, commented on the report provided by Professor H and stated that the report was not compliant with CPR Part 35, Practice Direction 6.1. Mr T-S advised that there needed to be a clear Letter of Instruction including the purpose of the report, the report produced, then subsequently written questions should have been put.

41.4 The Respondent did not send the letter to Professor H with payment of his fees because it occurred to the Respondent that counsel had said Professor H's report was non-compliant and required correction but Professor H would not correct it; and Professor H had not dealt with the matter as instructed and his charges were misleading and excessive. It did not appear to the Respondent fair that the Estate should have to pay for a report that could not be used as required. The Respondent never transferred the sum of £1,962 back to the client account despite his decision not to pay this disbursement.

41.5 On 3 June 2015 Professor H obtained Judgment against the Respondent for the sum of £1,962 plus court costs of £245.

41.6 Rule 17.1(b) of the SAR provides that, where a solicitor receives money into an office account in respect of an unpaid professional disbursement, he or she must by the end of the second working day following receipt either pay the disbursement or transfer the sum to a client account. The Respondent transferred £1,962 into his office account in respect of Professor H's fees, but never paid Professor H or returned the money to his client account. This was a clear and unequivocal breach of the Rule.

The Respondent's Case

41.7 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal. In an email dated 27 September 2016 from the Respondent to the Tribunal's administrative office the Respondent stated:

> "If for example the SRA wish to allege that I stole money due to a medical expert I can then explain that the fees to pay the expert were transferred from the designated clients account and a letter prepared to the expert enclosing the cheque but before it was sent Counsel sent an email saying that the expert's report was defective and required correction and that was why the cheque was not posted. I wrote to the expert explaining what Counsel had said and asked him to correct his report. It is not sensible to pay someone and then ask them to correct a report and this was correct as the expert refused to assist and the correspondence continued for almost a year. During that time the money was in Office Account as initially I thought that the expert would correct his report and then it was overlooked. It is entirely correct that technically the money should have been transferred back to the designated clients account but it was not and there is nothing I can do about that except apologise."

The Tribunal's Findings

41.8 This allegation related to a breach of Rule 17.1(b) SAR, namely that the Respondent, having transferred £1,962 from client account to office account in respect of an unpaid professional disbursement, failed by the end of the second working day following receipt of the sum into his office account, either to pay the unpaid professional disbursement or to transfer a sum for its settlement to a client account. The Respondent had transferred the monies from client to office account and then did not pay the disbursement or transfer the monies back to client account. The Respondent did not deal with these monies as required. Allegation 5 was proved beyond reasonable doubt.

42. **Allegation 6 - the Respondent advised Mr N and Mrs M that payment of a disbursement had been made when he knew that it had not, and therefore acted without integrity, contrary to Principle 2 of the Principles.**

The Applicant's Case

42.1 Despite knowing that he had not paid the fees to Professor H but that he had transferred them into his office bank account, by email dated 14 January 2013 the Respondent told Mr N that payment had "been made" in respect of, among other things, "Professor [H] £1962.00." In addition, when calculating the amounts to be distributed to Mr N and Mrs M in February 2013, the Respondent charged half of the £1,962 (i.e. £981) to each of Mr N and Mrs M. No charge was made to Mr L's share and he was not notified of these fees by the Respondent. It appeared that the Respondent decided not to pay Professor H's invoice six months earlier in or about July 2012 after receiving advice from counsel which criticised Professor H's report. The Respondent thus acted without integrity.

The Respondent's Case

42.2 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

The Tribunal's Findings

42.3 The Respondent had advised Mr N and Mrs M that he had paid Professor H's fees when he had not. This was a false statement. He did not tell them that he had put the monies to one side in case he had to pay Professor H at a later date and he did not retain the monies in client account as a contingency in case payment was needed. Instead he said that Professor H had been paid and transferred the monies to his office account. No solicitor acting with integrity would tell their client that they had paid something that they had not paid. The Respondent acted without integrity contrary to Principle 2 and allegation 6 was proved beyond reasonable doubt.

43. **Allegation 7 - the Respondent charged his client £1,962 for a professional disbursement when he knew that the disbursement had not been paid, and further that he did not intend to pay the disbursement, and thereby:**

7.1 failed to protect client monies and assets, contrary to Principle 10 of the Principles; and/or

7.2 acted without integrity, contrary to Principle 2 of the Principles.

The Applicant's Case

43.1 The Applicant's case is set out in respect of allegation 6 above. Even though the Respondent had not paid Professor H's fee, the Respondent charged his client for the disbursement. In doing so, the Respondent failed to protect his client's money and acted without integrity.

The Respondent's Case

43.2 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

The Tribunal's Findings

43.3 In respect of allegation 6 the Tribunal had already found factually that the Respondent had advised Mr N and Mrs M that he had paid Professor H's fees when he had not. However due to Counsel's advice regarding perceived deficiencies with Professor H's report the Respondent had decided not to pay Professor H. Having made that decision he did not tell his clients that he had put the monies to one side in case he had to pay Professor H at a later date and he did not retain the monies in client account as a contingency in case payment was needed. Instead he said that Professor H had been paid and transferred the monies to his office account. It was unclear as to why costs relating to Professor H would have fallen to the Estate in any event. The report had been commissioned in respect of the Respondent's concerns about Mr L's treatment of Mrs L rather than the administration of the Estate.

43.4 In charging his client £1,962 for a professional disbursement the Respondent knew that he had not been paid and did not intend to pay the disbursement the Respondent failed to protect client monies and assets contrary to Principle 10 and acted without integrity contrary to Principle 2. If he had been making future provision in case he had

to pay Professor H the money should have been transferred back to client account. Instead it remained in office account and had not been held in accordance with the SAR. If he had kept it in his client account the Respondent would have had a good argument that he was retaining the funds in case payment was required but that is not what happened here. He told the clients the disbursement had been paid when it had not and he retained the monies in his office account when they were not needed for the payment of the disbursement. In doing so the Respondent acted without integrity. Allegation 7 was proved beyond reasonable doubt.

44. **Allegation 8 - the Respondent charged his client for his own costs of his defence of the detailed assessment of his costs to be charged to the Estate, and thereby:**

8.1 acted where there was a conflict between himself and his client, contrary to outcome 3.4 of SCC; and/or

8.2 failed to protect client monies and assets, contrary to Principle 10 of the Principles; and/or

8.3 acted without integrity, contrary to Principle 2 of the Principles.

The Applicant's Case

44.1 On 19 January 2012 Miss A (Counsel) represented the Respondent at a hearing before Master Gordon-Saker following an application by Mr L for inspection of the Respondent's files. This was in the costs assessment proceedings to assess the Respondent's bills charged to the Estate. At the Hearing Master Gordon-Saker ordered the Respondent to allow Mr L (or his costs draftsman) to inspect the Respondent's files so that Mr L could prepare Points of Dispute in relation to the Respondent's fees. Costs were ordered "in the detailed assessment". Miss A advised the Respondent that this meant whichever party succeeded in the detailed assessment proceedings would be awarded the costs of 19 January 2012.

44.2 On or about 10 February 2012 Miss A's chambers sent the Respondent a fee note for £1,800. The Respondent objected to the amount and the fee note was subsequently reduced to £900 (including VAT). On 25 April 2012 the Respondent sent Miss A's clerk a cheque for the £900, and the Respondent transferred this amount from the client bank account to the office bank account. On 25 May 2012 the Respondent transferred £1,582.50. This was £900 for Miss A's fees and £682.50 for Mr T-S' fees. These costs related to the assessment of the Respondent's costs and should have been paid by the Respondent and not the Estate.

44.3 On 22 November 2012 Master Gordon-Saker ordered the Respondent to pay the costs of the detailed assessment, which included the fees of Miss A. Despite the Order from Master Gordon-Saker on 22 November 2012, by email on 14 January 2013 the Respondent advised Mr N and Mrs M that the Estate had paid Miss A's fees but told Mr N. incorrectly, that Miss A's fees did not relate to the dispute with Mr L that at that time was in the process of appeal. The Respondent did not advise Mr N or Mrs M, either on 14 January 2013 or subsequently, to obtain independent legal advice regarding the payment of Miss A's fees. Subsequently, when calculating the amounts to be distributed to Mr N and Mrs M in February 2013, the Respondent charged half

of Miss A's fees of £900 (i.e. £450) to each of them. No charge was made to Mr L's share and he was not notified of these fees.

44.4 In paying the sum of £900 from the Estate on 25 May 2012 the Respondent had a conflict of interest between his personal interests (i.e. in his defence in the assessment of his own costs to be charged to the Estate) and the interests of the Estate (i.e. which was paying for his defence of those assessment proceedings). The Respondent did not advise Mr N or Mrs M, either on 14 January 2013 or subsequently, to obtain independent legal advice regarding the payment of Miss A's fees. Had he done so Mr N and Mrs M would have become aware that the Respondent had a personal conflict of interest in that he had charged his client for his own costs of his defence in the detailed assessment of his costs to be charged to the Estate.

44.5 The Respondent's opponent in the costs proceedings was the Estate acting by Mr L. By charging Miss A's fees to the Estate, the Respondent effectively made his opponent fund his own litigation expenses. In doing so, the Respondent acted both "for and against" the Estate, and acted where he had an own-interest conflict contrary to outcome 3.4 of the SCC. The Respondent failed to protect his client's money and acted without integrity.

The Respondent's Case

44.6 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

The Tribunal's Findings

44.7 On the evidence before the Tribunal it was clear that the Respondent had charged his client for his own costs of his defence of the detailed assessment of his costs to be charged to the Estate. There was a clear conflict between the Respondent and the Estate and the Tribunal was sure that the Respondent had acted where there was a conflict between himself and his client contrary to outcome 3.4 of SCC. In using client monies to fund his own costs the Respondent had failed to protect client monies and assets contrary to Principle 10. These were not the actions of a solicitor acting with integrity and the Tribunal was sure that the Respondent had acted without integrity contrary to Principle 2. Allegation 8 was proved beyond reasonable doubt.

45. **Allegation 9 - between 7 April 2014 and 27 May 2014 the Respondent improperly withheld client monies when there was no legitimate reason to do so until his client agreed not to dispute his invoice dated 4 April 2014, and therefore:**

9.1 acted without integrity, contrary to Principle 2 of the Principles; and/or

9.2 failed to act in the best interests of his client, contrary to Principle 4 of the Principles.

The Applicant's Case

45.1 On 4 April 2014 the Respondent completed on the sale of the freehold of a commercial property on behalf of his client, Mr M (and his former spouse, Mrs M, who was not a client of the Respondent but was a joint owner of the property and entitled to a share of the net proceeds of sale). The net proceeds of the sale except for costs were £10,194.18, received into the Respondent's client account on 4 April 2014. Also on 4 April 2014 the Respondent raised an invoice for £2,658.45 (inclusive of VAT) in respect of the sale and transferred payment for the same.

45.2 By email dated 7 April 2014 the Respondent provided Mr M with a Transfer document for Mr M's signature together with the invoice for £2,658.45 dated 4 April 2014. The Respondent asked Mr M to return the document as quickly as possible as he was not permitted to release any funds until he had the signed Transfer in his possession. By response that day Mr M queried the amount of the invoice and stated:

> "I feel I have been badly treated and not kept up to date by all concerned. Could you please send me a copy of the original agreement in regards of your costs in dealing with the sale."

45.3 Having received no response to his email of 7 April 2014, by email dated 15 April 2014 Mr M advised the Respondent:

> "According to the solicitors (sic) Regulation Authority, solicitors have a duty in the solicitors code of conduct, sub heading 2.03 to give their client the best information possible about the likely overall cost of a matter both at the outset and, when appropriate, as the matter progresses. The client should be given relevant cost information in writing and be regularly updated.
>
> I have asked you for the a (sic) copy of the original agreement and do not think an email mentioning that the cost is likely to go above this figure due to Mr [B] (sic) Solicitors to be very professional. I may have replied to that email by saying that's fine but I assumed it would be only another £150 or so, I was desperate to get the matter sorted out.
>
> The same goes for the £450 bill for a small amount of advice you gave me for looking at Miss [A]'s court papers. I only had to pay her £650 back for her deposit and yet you have billed me £450 without advising me of costs from the outset.
>
> I will be dropping in the signed document from me and [Mrs M] tomorrow and expect the [sale proceeds] to be transferred as quick (sic) as possible.
>
> I would like it to be made clear that at this stage I'm not paying your bill as I understand this makes it impossible for me to challenge it if I do so.

> I will be expecting a rapid response to my concerns as this is a very large amount of money to me and I can't afford for this to drag on another 14 months!"

45.4 In reply by email dated 16 April 2014 the Respondent stated:

> "The fees charged for the sale are at the level we charged a year ago…All fees are of course subject to a case being straightforward but the additional fees charged are those after you specifically agreed in December following the further unreasonable requests by Mr [B]' Solicitors. There has been no charge for all the additional work prior to 16 December 2013".

45.5 The Respondent did not provide a copy of the original fee structure. Mr M continued to object to the Respondent's invoice dated 4 April 2014, and by email dated 24 April 2014 the Respondent stated:

> "I wish to settle this matter amicably but I cannot do this if you will not accept the facts as they are. If you wish to object to fees the proper course is for the issue to be dealt with by the Court (sic)"

45.6 By the same email the Respondent also noted the urgency of the matter. He stated:

> "Please return the Transfer as requested on 7 April as this is now extremely urgent…
>
> In August you said that you needed the sale proceeds to catch up on your missed mortgage payments due to lack of work so it is really it is (sic) not the fees charged but your financial circumstances that are causing you to object. I am sorry if you have a lack of work but it is not fair to object to my fees because you have financial problems (sic)"

45.7 In response by email that day Mr M advised the Respondent that he had missed the point again, that the Respondent was obliged to tell him what the costs were and not just tell him that there would be extra costs. Mr M said he would never have accepted such high costs and would have sought another solicitor. Mr M advised the Respondent that he wished to make a formal complaint and asked for the complaints procedure. He also told the Respondent that he would make contact with the appropriate body. Finally, he informed the Respondent that he had returned the paperwork that morning to the Lancing office. He noted that he had had hoped to see the Respondent but there no chance of that and that he expected the funds to be transferred as soon as possible. He instructed the Respondent that Mrs M was due £1,000 and the balance was to come to him.

45.8 On 29 April 2014, the sale proceeds still not having been transferred and no explanation having been provided to him for the delay, Mr M again wrote to the Respondent chasing his money. Mr M visited Woolacotts on 30 April 2014 but the Respondent was not there. Mr M then emailed the Respondent again on 1 May 2015 asking for news of the sale proceeds, but again the Respondent failed to transfer the sale proceeds to Mr M. On 2 May 2014 (page 253) the Respondent wrote to Mr M and advised that he could not send any funds until he had the further information he

required and asked for confirmation that Mr M had no objection to the Respondent discussing matters with Mrs M given that as co-owner she was entitled to all the information. It was unclear what "further information" the Respondent required in order to send the sale proceeds to Mr M, given that the only information the Respondent had requested was the signed Transfer, which he had received on 24 April 2014.

45.9 As a result of the continuing delay in sending the sale proceeds, on 6 May 2014 Mr M telephoned the Respondent. The Respondent's secretary confirmed to the Respondent that Mr M had rung as the Respondent had not answered his emails. Mr M had said he was arguing his bill but did not want it to hold up the payment due to him. By email dated 7 May 2014 Mr M again wrote to the Respondent. He confirmed that the Respondent had permission to deal with Mrs M and stated that he expected to receive the funds from the sale, less the Respondent's invoice by 12 May 2014 at the latest. On 8 May 2014 the Respondent wrote to Mrs M and requested confirmation that she was due £1,000 rather than 50% of the sale proceeds as originally agreed. Subsequently on 9 May 2014 the Respondent wrote to Mr M. He stated:

> "If you had not made an objection the funds would have been sent to you as soon as I received the signed Transfer. Therefore it is not reasonable for you to object to funds not yet being sent to you when the only reason they have not is because of a situation you have created (sic)"

45.10 This referred to the objection by Mr M to the total costs which the Respondent had invoiced to Mr M on 4 April 2014.

45.11 By email on 12 May 2014 Mrs M confirmed to the Respondent her agreement to receiving £1,000 but added that if was easier to leave it as the statement set out, he could do so and Mr and Mrs M would sort it out themselves. Mrs M said she thought that this needed to be done as quickly and simply as possible. On 14 May 2014 Mr M chased the Respondent again for the sale proceeds. By email dated 15 May 2014 the Respondent replied:

> "As you know I have heard from [Mrs M] who now says that she will accept £1,000. This is contrary to what both of you stated was agreed previously and constitutes yet more additional work…
>
> Clearly the only reason why she now says that she will accept £1,000 instead of 50% of the net proceeds as previously agreed is that you have made an arrangement and the only reason for that can be because previously I pointed out to you that your objection to paying Costs related to your half of the proceeds.
>
> However, whatever subsequent agreement you have now made between yourselves does not alter the fact that at the time of the Completion of the sale your entitlement was to one half of the net proceeds and therefore any objection you make about Costs is limited to one half of the them (sic)"

45.12 By the same email the Respondent also stated:

> "When I asked you in June about the net proceeds you said 'The money is to be split 50/50 if there is anything left over'. This shows the agreed division but also that you were not aware that that (sic) there would be any surplus. Now that you are aware that there is a surplus you are endeavouring to obtain more for yourself at my expense and prima facie your former wife… with all the objections you have been making I am having to repeatedly check the whole file (sic)"

45.13 The Respondent further stated:

> "The bill sent was on the basis that there would be no dispute and therefore necessarily include reductions for goodwill. With regard to the thousand (sic) pounds of work for which I have not billed I reserve the right to charge for these as it is completely unfair for me to do thousands of pounds of work free of charge and then be subject to this correspondence about additional fees (sic)"

45.14 The Respondent had not previously advised Mr M that the invoice dated 4 April 2014 had been issued on the basis that 'it would not be disputed' or that it contained any reductions for "goodwill". This was the first time the Respondent made this assertion. On 20 May 2014 the Respondent advised Mr M:

> "At the moment in order to end this I am prepared to waive the charges for the additional work for which you have not been billed even though there is obviously now no goodwill…
>
> If not then I must prepare bills for the work that would have been waived (sic)"

45.15 Further, on 20 May 2014, the Respondent also wrote to Mrs M asking for her current address and an explanation as why she was now willing to accept £1,000 instead of 50% of the net proceeds. Mrs M responded on the same day with her address (which the Respondent had on record) and querying why the Respondent needed to know why Mr and Mr M had chosen to split the proceeds of sale as they had but explaining that she owed Mr M some money and this seemed a simple solution. Following receipt of this information, the Respondent sent a cheque for £1,000 to Mrs M on 21 May 2014.

45.16 The Respondent continued to withhold the balance of the sale proceeds from Mr M. As a result, by email dated 23 May 2014 Mr M advised the Respondent that if he did not have the money by the end of that day he would drive to Barnstaple as he felt the Respondent was avoiding him. Mr M also stated that he wanted the balance transferred into his account and that the Respondent could keep the invoice amount. In response by email the same day the Respondent asked for confirmation that what Mr M was saying was that he wished to accept the invoice rendered to him and that on receipt of the balance the matter would end there. The Respondent also said that if that was the case he would not prepare additional bills and would also let the matter rest there. Mr M responded "*I am*" almost immediately and payment of £9,194.18 was then arranged to be sent by the Respondent on 27 May 2014.

45.17 Between 7 April 2014 and 27 May 2014 the Respondent deliberately held onto excess client monies in order to force Mr M to agree to pay the Respondent's invoice dated 4 April 2014 in circumstances where the Respondent knew the invoice was disputed. In seeking approval from Mr M on 2 May 2014 to contact Mrs M the Respondent was delaying matters further, as the Respondent had already been requested by Mr M to contact Mrs M on 24 April 2014 more than one week previously; and dealt with Mrs M regarding the split of the sale proceeds previously and therefore did not need permission from Mr M to contact Mrs M. When the Respondent wrote to Mrs M on 20 May 2014 there was no reason for the Respondent to ask why Mrs M only wanted £1,000 rather than 50% of the net proceeds. It was only when Mr M agreed not to dispute the invoice that the Respondent paid the monies to Mr M. The Respondent stated in his email to Mr M on 9 May 2014 that had Mr M not objected to the Respondent's invoice then the Respondent would have sent the sale proceeds to Mr M as soon as the Respondent had received the signed Transfer. In acting in this way, the Respondent acted without integrity and failed to act in the best interests of his client.

The Respondent's Case

45.18 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

The Tribunal's Findings

45.19 Completion took place on 4 April 2014. The Respondent sent Mr M an invoice dated 4 April 2014 on 7 April 2014 together with a Transfer for signature. Mr M disputed the invoice. The Tribunal considered that the Respondent was quite right to retain the funds until he had received the signed Transfer. He had a legitimate reason to retain the funds until he received this document. However once he had received the signed Transfer the Respondent had no reason to retain the monies. He could have sent Mr M the balance of the monies less the amount of the disputed invoice until the issue about the invoice was resolved. He knew that Mr M was in financial difficulties and it was not acting in his best interests to retain the monies. In doing so the Respondent failed to act in the best interests of his client contrary to Principle 4.

45.20 The Respondent retained the monies in order to force the client to pay his bill. He used the fact that the Respondent needed the money quickly as a lever to make him pay the full amount of the invoice which Mr M did not want to pay. A solicitor acting with integrity would not treat their client in this way. The Respondent had no legitimate reason once he had received the Transfer not to pay the sale proceeds less the amount of the invoice to Mr M whilst the issue about the invoice was resolved. Instead he did not pay any of the monies due to Mr M to him until Mr M agreed not to dispute his invoice. In acting in this way the Respondent acted without integrity contrary to Principle 2. The Tribunal found allegation 9 proved beyond reasonable doubt.

46. **Allegation 10 - between 7 April 2014 and 27 May 2014 the Respondent failed to return client monies to his client promptly as soon as there was no longer any proper reason to retain those client monies, and thereby:**

10.1 breached SAR Rule 14.3; and/or

10.2 acted without integrity, contrary to Principle 2 of the Principles; and/or

10.3 failed to act in the best interests of his client, contrary to Principle 4 of the Principles.

The Applicant's Case

46.1 For almost two months, the Respondent kept a client out of his money without any proper justification. For these reasons, the Respondent acted without integrity, failed to act in the best interests of his client and failed to return client monies to his client promptly as soon as there was no longer any proper reason to retain them, contrary to Rule 14.3 of the SAR.

The Respondent's Case

46.2 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

The Tribunal's Findings

46.3 The Tribunal found that, from receipt of the signed Transfer until payment was made to Mr M, the Respondent failed to return client monies to his client promptly as soon as there was no longer any proper reason to retain those client monies and that in doing so he acted without integrity contrary to Principle 2 and failed to act in the best interests of his client, contrary to Principle 4 for the reasons set out above.

46.4 Rule 14.3 of the SAR requires that client money must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds. Once the Transfer was received the Respondent did not promptly pay the monies due to Mr M in breach of Rule 14.3.

46.5 Allegation 10 was proved beyond reasonable doubt.

47. **Allegation 11 - following receipt of a complaint from a beneficiary regarding delay in payment of a legacy, the Respondent entered into unnecessary and obstructive correspondence with that beneficiary which led to a further delay in payment of the legacy in circumstances where the Respondent originally had not foreseen any issue with payment of the legacy, and thereby acted without integrity, contrary to Principle 2 of the Principles.**

The Applicant's Case

47.1 Mr G died on 5 August 2012. His will appointed as executors the partners of Woolacott & Co. Probate was granted on 23 October 2012, From about March 2013, the Respondent acted as the executor of the estate.

47.2 By his will Mr G gave to the Cats Protection League (the "CPL") a legacy of £10,000. He also expressed a *"wish"* that the CPL look after his cats until a new home could be found for them. He accordingly gave the CPL a further £5,000 "towards the care and well being of my cats while awaiting rehousing".

47.3 Mr G's son, Mr DG, was able to re-house the cats without their going via the CPL. Mr DG's financial adviser told the Respondent about this on 3 December 2013, and asked what the legal effect of this was on the CPL bequests. On 9 December 2013, the Respondent emailed Mr DG stating (among other things) that the gift of the further £5,000 to the CPL was "not affected".

47.4 On 13 December 2013, the CPL wrote to the Respondent requesting an update on the payment of its legacy and referring to the fact that statutory interest would be payable on the legacy from the anniversary of Mr G's death. By an email of 3 February 2014, the Respondent indicated to the CPL that, once Mr G's home had been sold, he would proceed to distribution. The sale of Mr G's home was completed on 17 February 2014, and £332,500 was paid into the Respondent's client account on the same date. There was then no reason for the Respondent to withhold payment from the CPL. Despite this, the Respondent engaged in a pattern of obstructive behaviour which led to the CPL's receiving nothing for many months.

47.5 On 4 February 2014, the Respondent told the CPL that he was "surprised at the attitude of your charity to a gift". The Respondent's only objection appeared to be that the CPL had said it would seek statutory interest on late payments (as it was legally entitled, and indeed required as a charity, to do). On 11 February 2014, the Respondent told the CPL that it had incurred "wasted time and expense" in raising the matter of interest, and that he had "never before experienced a charity making such a mercenary request". In the same email, the Respondent told the CPL that its decision to raise the matter of interest had "cost the charity a substantial legacy that would otherwise have been left to it". Worried by this comment, the CPL wrote to Mr and Mrs Woolacott to complain about the "hostile emails" that it had received from the Respondent.

47.6 On 21 February 2014, the Respondent wrote to the new owner of Mr G's cats, Ms NH, and asked her how the cats had been rehomed; he said that this information was important because it affected payments under the will. On 24 February 2014, the Respondent wrote to the CPL in similar terms. This was directly contrary to the advice that the Respondent had previously given to Mr DG on 9 December 2013. The Respondent appeared to have changed his mind as a result of the statutory interest incident. On 26 February 2014, the Respondent repeated his assertions to the CPL that its attitude was "mercenary", that he had "never before experienced" such behaviour, and that the CPL was "causing unnecessary Costs". To this he added that his contact at the CPL was "incorrect" about the law which applied to statutory interest to unpaid bequests, and told her, "clearly you are not a Solicitor and do not understand such matters". On 27 February 2014, the Respondent told the CPL that the rehousing of the cats raised "complex legal issues". Again this was directly contrary to the advice he had previously given to Mr DG.

47.7 On 1 April 2014, the CPL wrote to the Respondent requesting certain information about the legacy to enable it to decide whether to make a claim in respect of the £5,000 bequest. The Respondent met these straightforward requests with a lengthy digression about the construction of the will and the possibility of seeking counsel's opinion. There was a further unconstructive exchange with the CPL on 4 April 2014. On 8 April 2014, the CPL wrote a letter to the Respondent setting out its position in

detail. The Respondent did not respond to this letter. The CPL chased a response by email on 30 May 2014 explaining:

> "The cost to the estate of obtaining counsel's opinion is disproportionate to the amount of the legacy in question and so we have advised [Mr DG] that we are happy for you to distribute the legacy of £5,000 to him straight away and we shall resolve matters between ourselves. In the meantime, we require the information which we requested from you in our last letter so we can decide whether to deal with the matter on an ex gratia basis. If we decide to resolve matters on this basis in accordance with charity law and practice, we will need to provide the Charity Commission with the requested information. This is a sensible proposal for resolution of this matter which preserves the assets of the estate in accordance with your clients' legal obligations in this respect and so we look forward to receiving the requisite information without further delay."

47.8 The CPL also asked the Respondent to treat the email of 30 May 2014 as "a formal complaint", noting also that "we now have absolutely no trust and confidence in your administration of this estate and must formally ask you to account to the Charity for its entitlement under the terms of the will in accordance with the testator's wishes without any further delay together with the statutory interest to which it is entitled as a consequence of the delay to date." However the Respondent did not accept the CPL's sensible suggestion to resolve the issue. Instead in an email of 3 June 2014 the Respondent accused the CPL of tampering with a witness and taking unfair advantage of Mr DG. The Respondent again repeated his (entirely unjustified) assertions that the CPL's behaviour had been "mercenary and uncooperative".

47.9 This pattern of behaviour was totally unwarranted, and entirely at odds with the Respondent's original position in December 2013, which was that the gift of the £5,000 was "not affected" by the rehousing of the cats. Indeed, ultimately, notwithstanding the many issues raised by him in correspondence with the CPL, the Respondent actually paid both legacies—the £10,000 and the £5,000—to the CPL on 30 October 2014, more than 2 years after the grant of probate.

47.10 The sale of Mr G's home was completed on 17 February 2014, and £332,500 was paid into the Respondent's client account. On 28 February 2014, Mr DG expressed disappointment that the sale proceeds had not been yet transferred to him, and demanded immediate payment. When the Applicant intervened into the Respondent's practice on 10 December 2014, the Respondent still held £128,907 in respect of Mr G's estate.

47.11 The Respondent delayed the CPL's receipt of its legacy for over eight months after the sale of Mr G's home. His purported reasons for doing so were specious at best and contrary to the advice that he had previously given to Mr DG. Indeed it appears from his eventual decision to pay the money that the Respondent never really had any doubts about the validity of the gift of £5,000 to the CPL. However, even if he did, there was never any dispute about the gift of £10,000. The Respondent nonetheless withheld the £10,000 along with the £5,000. Both in starting a futile argument about the £5,000 and engaging in unnecessary and obstructive correspondence with the CPL and also in delaying payment of the gifts for no good reason, the Respondent acted without integrity.

47.12 The Respondent's initial advice to Mr DG on 9 December 2013 was that payment of the £5,000 legacy to CPL was not affected since it was not the fault of the CPL that Mr DG had re-housed Mr G's cats. At the time he gave this advice the Respondent was aware of all the relevant facts and matters he needed to reach his conclusion. Subsequently on 21 February 2014 the Respondent wrote to the recipient of the re-homed cats stating that he needed further information from her as the fact she had received the cats from Mr DG affected the payment of the £5,000 legacy to the CPL; and on 24 February 2014 the Respondent also wrote to the CPL stating that he needed further information as the fact that the CPL had not re-homed Mr G's cats affected the payment of the £5,000 legacy to the CPL. The Respondent's statements on 21 February 2014 and 24 February 2014 were entirely contrary to the advice he had given to Mr DG on 9 December 2013, despite the fact that the Respondent knew of no additional material fact or matter which could have affected the advice he had given to Mr DG on 9 December 2013.

47.13 The only additional matter which had occurred between 9 December 2013 and 21/24 February 2014 was that the CPL had complained to the Respondent about the length of time he was taking to distribute the legacy. The Respondent only questioned the payment of the £5,000 legacy after he was in receipt of the sale proceeds of Mr G's house, at which time the Respondent knew that he was required to distribute the £5,000 legacy to the CPL. The Respondent's correspondence following the CPL's complaint was unnecessary and obstructive, and its effect was to delay the payment of the £5,000 legacy which was eventually paid on 30 October 2014.

The Respondent's Case

47.14 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

The Tribunal's Findings

47.15 The Tribunal found that following receipt of a complaint from a beneficiary regarding delay in payment of a legacy, the Respondent entered into unnecessary and obstructive correspondence with that beneficiary which led to a further delay in payment of the legacy in circumstances where the Respondent originally had not foreseen any issue with payment of the legacy. The Respondent should not have behaved in that way and should have behaved in a more professional manner. It was not at all clear to the Tribunal why the Respondent behaved as he did. However, the Tribunal could not be sure that in behaving in this way the Respondent had acted without integrity. Whilst in no way endorsing the Respondent's actions this meant that allegation 11 was not proved beyond reasonable doubt.

48. **Allegation 12 - between 17 February 2014 and 10 December 2014 the Respondent failed to pay any interest on client monies when it was fair and reasonable to do so in all the circumstances, and thereby breached SAR Rule 22.1.**

The Applicant's Case

48.1 Rule 22.1 of the SAR provides that when a solicitor holds money for a client, the solicitor "must account to the client… for interest when it is fair and reasonable to do

so in all the circumstances". In the present case, the Respondent held a six-figure amount for the client for over eight months Moreover, the client specifically asked about interest. In all the circumstances, it would have been fair and reasonable for the Respondent to pay interest on the client money held, and in not doing so breached Rule 22.1 of the SAR.

48.2 On 4 June 2014 Mr DG emailed the Respondent and asked when the estate would be finalised and who would receive the interest on the sale proceeds. On 6 June 2014 the Respondent replied:

> "The tone of the email sent on 4 June and similar emails I have received in your name previously is quite different from your usual emails and the hostility is unpleasant and unnecessary.
>
> The funds from the sale of the property are in Clients (sic) Account awaiting outstanding matters to be dealt with. There is no interest earned in that account and there is no obligation to transfer funds to an interest bearing account where distribution can be made quickly if people deal with matters properly and promptly. The costs of transferring funds to an interest earning account for a short period far outweigh any interest that would be earned (sic)"

48.3 At this time there was £143,979.00 on client account for this matter. Following payment of £15,000 to the Cats Protection League on 30 October 2014 there remained £128,907 on client account and which was still on the client account ledger at the time of the intervention.

48.4 From 17 February 2014 to the intervention, the Respondent paid no interest on the sums held in his client account in respect of Mr G's estate, even though Mr DG had specifically asked about interest. The Respondent's only explanation for his failure to pay was that "the costs of transferring funds to an interest earning account for a short period far outweigh any interest that would be earned". The maximum amount held by the Respondent during this period was £240,020.09 from 17.2.14 until 26.2.14; and the minimum amount was £128,907 from 30 October 2014 to 10 December 2014.

<u>The Respondent's Case</u>

48.5 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

<u>The Tribunal's Findings</u>

48.6 Rule 22.1 of the SAR provides that when a solicitor holds money for a client, the solicitor "must account to the client… for interest when it is fair and reasonable to do so in all the circumstances". The Respondent held a six-figure amount for Mr DG for over eight months and did not pay interest. Although the amount that would have been paid in interest would have been a fairly small amount it was not trivial. The Tribunal was sure that in respect of Mr DG that between 17 February 2014 and 10 December 2014 the Respondent failed to pay any interest on client monies when it was fair and reasonable to do so in all the circumstances and thereby breached SAR Rule 22.1. Allegation 12 was proved beyond reasonable doubt.

49. **Allegation 13 – from 23 December 2013 to 29 January 2014 the Respondent acted contrary to the instructions of his client and undertook work which he was not instructed to undertake in order to benefit himself, and thereby:**

13.1 acted where there was a conflict between himself and his client, contrary to outcome 3.4 of SCC; and/or

13.2 acted without integrity, contrary to Principle 2 of the Principles.

The Applicant's Case

49.1 On 20 November 2013 the deceased's nephew (Mr BR) contacted Woolacotts to advise that his aunt, Mrs R, had died. Mr BR (a beneficiary of Mrs R's will – the "R-Will") was advised that the Respondent could assist. On 22 November 2013 the Respondent sent out a client care letter which did not include terms of business. These were subsequently sent to Mr BR on or about 29 November 2013 but they were never signed and returned to the Respondent.

49.2 On 2 December 2013 Mrs LP (the niece of Mrs R and another beneficiary) contacted the Respondent to advise that Mr Woolacott had been appointed in his personal capacity to act as executor and trustee, but that since he had retired she wanted her solicitors, Stevensdrake solicitors ("Stevensdrake"), to carry out the probate work. By email the same day the Respondent replied explaining that when he acquired Woolacotts Mr and Mrs Woolacott confirmed that they would do all that is necessary in connection with existing wills to ensure that Probate was granted and all matters administered in accordance with the wills and that it would not be necessary for her solicitors to be involved.

49.3 By letter dated 23 December 2013 Stevensdrake, now acting for Mr BR and Mrs LP, sent the Respondent a certified copy of Mrs R's death certificate and a certified copy of Mr Woolacott's Deed of Renunciation as executor, and advised that Mr BR wanted to collect all deeds and documents held by the Respondent, including the original of the R-Will. On 2 January 2014 the Respondent e-mailed his assistant asking for the correspondence on the file so that he could ascertain the present situation. On 7 January 2014 the assistant advised the Respondent that, as of 20 December 2013, they were waiting for client care and terms of business to come back signed. In the circumstances, by the time the Respondent received the letter from Stevensdrake dated 23 December 2013 instructing the Respondent to transfer everything to them, very little work, if any, had been undertaken, because the firm was still waiting for the return of a signed retainer letter.

49.4 On 20 January 2014 (Mr BR having been unable to collect the documents from the Lancing Office), Stevensdrake wrote to the Respondent (via Woolacotts) and stated:

> "we now enclose a letter of authority signed by [Mr BR] (one of the residual beneficiaries) authorizing (sic) you to release the Will of the late [Mrs R] to this firm.
>
> As you are no doubt aware, in the Will [Mrs R] appointed Graham John Woolacott personally to be the sole executor. Mr Woolacott has renounced his

> role and you have been furnished with a certified copy of the renunciation. Therefore you have no authority to retain the Will as it is now only the residuary beneficiaries who are able to apply for a Grant of Letters of Administration with Will annexed."

49.5 On 22 January 2014 the Respondent wrote to Mr Woolacott stating:

> "In breach of the Agreement [by which Woolacott & Co became part of the Practices] by signing a Renunciation of Probate you have knowingly committed an act to deprive me of the benefit of the fees earned in acting on the estate (sic)"

49.6 Accordingly, the Respondent was clearly aware of the effect of the Deed of Renunciation and that as such he had no authority to administer the estate of Mrs R. In addition, this letter was clearly written as part of a dispute between the Respondent and Mr Woolacott and had no bearing on the position of the estate itself, or Mr BR. Despite this, the Respondent refused to accept that he was not instructed to administer the estate and subsequently on 24 January 2014 he emailed Stevensdrake and stated that the purported Renunciation was in breach of the agreement between Mr Woolacott and the Respondent and consequently was a matter of law invalid.

49.7 In response by email dated 27 January 2014 Stevensdrake stated that Mr Woolacott was contacted by this firm to obtain his agreement to renounce his position [as sole executor] and he agreed. Stevensdrake stated that they had been instructed by two of the residuary beneficiaries to administer the estate and that it was their clients' choice to appoint them and they were perfectly entitled to do so. Stevensdrake requested the original will to be sent by return and, in any event, no later than 31 January 2014, failing which they would make an application to court and seek the costs of doing so from you. Further, they also said that they would make a complaint to the SRA against the Respondent for asserting a legal position that he knew to be incorrect, thereby delaying matters, and seeking to interfere with their clients' free choice of legal representation. That should have been the end of the dispute between the Respondent and Stevensdrake. The Respondent should have provided the R-Will (and any other documents) to Stevensdrake as requested and then, if he thought appropriate, pursued Mr Woolacott for a breach of the agreement between Mr and Mrs Woolacott and the Respondent.

49.8 Instead however, on 29 January 2014 the Respondent issued an invoice to Mr BR for £412.50. The invoice stated that it was for profession charges:

> "in connection with the estate of [Mrs R] from November 2013 to January 20134 (sic) including taking instructions, perusing Will and correspondence and telephone conversations with [Mrs LP], Stevens Drake, Mr G Woolacott, the Solicitors Regulation Authority, the Probate Registry and with you"

49.9 The covering letter to Mr BR stated:

> "Our view is that as Mr Woolacott was wrong in signing a Renunciation knowingly in breach of an Agreement he made the Renunciation must be invalid as it is tainted. We are seeking further advice and will abide with

whatever information is given to us…

If the further advice we have sought indicates that despite Mr Woolacott signing a Renunciation in breach of his Agreement with me the Renunciation is valid then we will immediately release the Will following payment of the enclosed account. We will also need to obtain advice as to receipt of an Authority signed by all the residuary beneficiaries

Until the enclosed account is paid we will exercise our lien (sic)"

49.10 On 31 January 2014 the Respondent advised Stevensdrake that he was seeking a Direction from the Probate Registry and would abide by whatever decision was made. By letter dated 7 February 2014 the Brighton District Probate Registry advised the Respondent:

> "In terms of the Probate Registries (sic) role and remit, we will accept a duly executed deed of renunciation from an executor who claims to have not intermeddled in the estate that is being renounced.
> If you are of the opinion that the renouncing executor has breached a prior agreement that you had with them, that is a matter for you to pursue through the appropriate channels."

49.11 Despite his assertion to Mr BR and Stevensdrake that he would abide by the decision of the Probate Registry, the Respondent did not immediately release the R-Will. In addition, by email dated 7 February 2014 to Stevensdrake the Respondent stated that he had received no authority from them signed by Mr BR and at no time had Mr BR actually informed the Respondent that he did not want him to act. However, the Respondent had received a copy of Mr BR's authority under cover of the letter from Stevensdrake dated 20 January 2014. As a result of Stevensdrake purporting to serve a subpoena on the Respondent demanding delivery up of the R-Will by email dated 24 February 2014 the Respondent advised Stevensdrake:

> "I have now received a Direction from the Brighton Probate Registry that they will accept a Renunciation that appears to be valid and suggesting that I obtain Counsel's Opinion as to my remedies against Mr Woolacott.
>
> In the circumstances the Will is available to you on receipt of your Undertaking to let me know on final distribution of the estate funds the fees you have incurred as a result of acting on the estate so that I may claim against Mr Woolacott for my loss, and, payment by Mr BR of the bill rendered to him for the work we have done prior to the termination of our retainer" (sic)

49.12 By email also dated 24 February 2014 the Respondent sought advice from the Winchester Probate Registry as follows:

> "I shall be grateful if you will let me know whether you consider that a subpoena has been validly served
> In addition if the firm is validly served with a requirement to send the Will to you please let me know whether it is the requirement from you or our prior lien for unpaid fees that takes precedence (sic)"

49.13 By letter dated 25 February 2014 the Winchester District Probate Registrar confirmed that the renunciation signed by Graham Woolacott was valid. Subsequently the Winchester District confirmed by email dated 20 March 2014 that:

> "The Registrar directs that a subpoena issued by the High Court would take precedence over a lien especially given that every subpoena carries a penal notice."

49.14 Rather than releasing the R-Will as previously indicated, instead the Respondent then sent a lengthy letter to the Winchester District Probate Registry (dated 20 March 2014) reciting the background of the matter and asking for confirmation as to whether the subpoena had been validly served. By letter dated 28 March 2014 the Winchester District Probate Registrar responded:

> "The reason the Registrar offered or agreed to write [the letter of 25 February 2014] was to try to clarify the situation with [the Respondent] with a view to him agreeing to release the original will without a subpoena (the lien issue notwithstanding).
>
> The Registrar cannot assist any further with this matter. She has set out what she sees as the legal position on both issues which both Stevens Drake and [Woolacotts] are aware of and she refuses to be drawn any further into a seemingly escalating dispute between those firms."

49.15 Subsequently on or around 28 March 2014 the Respondent finally released the original of the R-Will to the District Probate Registry.

49.16 Stevensdrake confirmed that once the grant of probate had been obtained the estate needed to proceed with selling Mrs R's property. The property was unregistered and the deeds were believed to be held by the Respondent. By emails dated 1 and 13 October 2014 Stevensdrake wrote to the Respondent requesting the deeds or confirmation that they were in the Respondent (or the Practices') possession. In response by email dated 14 October 2014 the Respondent refused to release the deeds, claiming a lien in respect of his unpaid invoice. Ultimately, by email dated 16 October 2014 the Respondent reluctantly agreed to release the deeds, albeit only on the basis that it would not be cost effective for him to challenge a court application.

49.17 By performing work in relation to the estate until 29 January 2014, the Respondent acted contrary to instructions. It was clear from Stevensdrake's letter of 23 December 2013 that, even if the Respondent had previously been instructed, he was not instructed now. (In fact, as explained above, Mr BR never signed a copy of the Respondent's engagement letter.) In any event, the invoice appears to relate principally to work done by the Respondent to establish his own authority to act and his own personal claim against Mr Woolacott which he had not been instructed to carry out and which was not for Mr BR's benefit.

49.18 The Respondent knew that Mr Woolacott had been personally appointed as the executor of Mrs R's estate. The Respondent therefore sought instructions from Mr BR that the Respondent be appointed as executor of Mrs R's estate. From his letter and

invoice to Mr BR dated 29 January 2014 it is clear the Respondent believed that Mr BR (and not Mrs R's estate) was his client. By the letter from Stevensdrake dated 23 December 2013 the Respondent was advised that Mr BR wished to take out a Grant of Representation and to collect all the deeds and documents from the Respondent. In other words, the Respondent's client wished to terminate the Respondent's retainer. Despite notice of the termination of his retainer the Respondent engaged in further work as set out in his invoice dated 29 January 2014. Accordingly the Respondent acted contrary to his instructions and in his personal interests by seeking to undertake work for which he intended to charge his client but which he was not (and knew he was not) instructed to undertake. Further, the invoice narrative included "correspondence and telephone conversations with…Mr G Woolacott". The evidence of this on the file relates to a personal dispute between the Respondent and Mr Woolacott, in relation to which the Respondent was not entitled to charge Mr BR.

49.19 All this indicated that none of what the Respondent did was for his client's benefit, but rather for his own. He acted purely with a view of his own profit, and against the stated wishes of his purported client. He therefore acted where he had an own interest conflict contrary to outcome 3.4 of the SCC and acted without integrity.

The Respondent's Case

49.20 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

The Tribunal's Findings

49.21 On 23 December 2013 Stevensdrake wrote to the Respondent. At that point Stevensdrake were instructed by Mr BR and Mrs LP in respect of the estate of Mrs R. The Respondent had previously been instructed by Mr BR in respect of Mrs R's estate but no terms of engagement had been returned to the Respondent signed by Mr BR. It appeared that the Respondent had acted as he had in order to try and retain the administration of Mrs R's estate, presumably so that he could benefit from the fees. The Respondent had certainly taken various steps between 23 December 2013 and 29 January 2014. However the Tribunal was not satisfied that after 23 December 2013 Mr BR was the Respondent's client (if indeed he ever was given that the estate would have been the client) and accordingly was not sure that from 23 December 2013 to 29 January 2014 the Respondent acted contrary to the instructions of his client although he did undertake work which he was not instructed to undertake in order to benefit himself. Accordingly, the factual basis of allegation 13 was not proved beyond reasonable doubt and the Tribunal did not proceed to consider the alleged breaches of outcome 3.4 of the SCC and of Principle 2.

50. **Allegation 14 - from 23 December 2013 to 16 October 2014 the Respondent sought to charge his client for work which he was not instructed to undertake and improperly sought to exercise a lien over his client's documents in respect of those improper charges, and thereby acted without integrity, contrary to Principle 2 of the Principles.**

The Applicant's Case

50.1 The Respondent improperly sought to charge Mr BR for work that he had not been instructed to undertake. By improperly seeking to exercise a lien over documents until 29 October 2014, the Respondent hampered the efforts of his purported clients and his fellow professionals to administer Mrs R's estate. In both these ways, the Respondent acted without integrity.

The Respondent's Case

50.2 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

The Tribunal's Findings

50.3 The Tribunal was satisfied that the Respondent had sought to charge for work that he was not instructed to undertaken and that he had improperly sought to exercise a lien over the will and the deeds to the property. The executors of Mrs R's estate were entitled to the documents. However for the reasons set out above the Tribunal was not certain that Mr BR was the Respondent's client after 23 December 2013 (if at all) and Mrs LP was never his client. The Respondent's conduct was improper and distasteful. However, allegation 14 was not proved beyond reasonable doubt. Although irrelevant to its findings, the Tribunal noted that had allegations 13 and 14 been drafted in a way that did not refer to "client" with reference to the period from 23 December 2013 then it may well have reached different findings.

51. **Allegation 15 – in March 2014 the Respondent sought to prevent Hornbeam from reporting breaches by the Practices of the SAR to the SRA, and thereby:**

15.1 acted contrary to outcome 10.7 of the SCC; and/or

15.2 failed to comply with his legal and regulatory obligations and deal with his regulators in an open, timely and co-operative manner, contrary to Principle 7 of the Principles.

The Applicant's Case

51.1 The Respondent engaged Hornbeam Accountancy Services Limited ("Hornbeam") to prepare his accounts for the period ending 28 February 2013. On 24 March 2014, Hornbeam queried an irregularity in the accounts. The Respondent answered the query by making it very clear that he did not want Hornbeam to report the irregularity to the SRA. On 26 March 2014, he wrote in an email, "I do not want the SRA to be told that I have breached the Rules and they then make an investigation", and "I do not want a Report criticising me sent to the SRA but simply the completed form as have been submitted in the past 25 years". Hornbeam responded that they had identified "a clear and substantial breach" which "cannot be ignored". The Respondent replied that he was "not asking you not to report breaches" and "it is not for me to tell you what to put in a Report" even though his email did just that. He concluded: "I do not want to risk getting in trouble with the SRA".

51.2 Outcome 10.7 of the SCC provides that solicitors "must not attempt to prevent anyone from providing information to the SRA". The Respondent's emails constituted a straightforward failure to meet this outcome. The Respondent also thereby failed to deal with his regulator (the Applicant) in an open, timely and cooperative manner, contrary to Principle 7.

The Respondent's Case

51.3 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal.

The Tribunal's Findings

51.4 The allegation was that in March 2014 the Respondent sought to prevent Hornbeam from reporting breaches by the Practices of the SAR to the SRA, and thereby acted contrary to outcome 10.7 of the SCC; and/or failed to comply with his legal and regulatory obligations and deal with his regulators in an open, timely and co-operative manner, contrary to Principle 7 of the Principles. There was no evidence before the Tribunal that the Respondent had succeeded in preventing Hornbeam from reporting the breaches of the SAR to the SRA. Hornbeam had continued to deal with the Practices' finances until the end of May. Given this there was no evidence that the Respondent had failed to comply with his legal and regulatory obligations and that he had not dealt with his regulators in an open, timely and co-operative manner, contrary to Principle 7. Allegation 15.2 was not proved beyond reasonable doubt.

51.5 Outcome 10.7 of the SCC provides that solicitors must not attempt to prevent anyone from providing information to the SRA. The Tribunal was satisfied that the Respondent had clearly tried to prevent his accountants from providing information to the SRA. Allegation 15.1 was proved beyond reasonable doubt.

51.6 Given that allegation 15 was worded as and/or in respect of allegations 15.1 and 15.2 allegation 15 was proved beyond reasonable doubt on the basis of allegation 15.1 only.

52. **Allegation 16 - Dishonesty was alleged with respect to allegations 1 to 4, 6 to 10, 13 and 14. Proof of dishonesty was not an essential ingredient for proof of any of the allegations.**

52.1 Allegations 4, 13 and 14 had not been proved and therefore the allegations of dishonesty in respect of those three allegations fell away. Dishonesty had been alleged in respect of allegations 1,2,3,6,7,8,9 and 10 which had been found proved. The Tribunal only considered the question of dishonesty in respect of these eight allegations.

The Applicant's Case

52.2 The Applicant submitted that the Tribunal should find proved all of the allegations against the Respondent and that the Respondent acted dishonestly in relation to Allegations 1-4, 6-10 and 13-14.

52.3 The Respondent's actions were dishonest in accordance with the test for dishonesty accepted in Bultitude v Law Society [2004] EWCA Civ 1853 as applying in the context of solicitors disciplinary proceedings, i.e. the combined test laid down in Twinsectra Ltd v Yardley and Others [2012] UKHL 12, namely 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.

52.4 In acting as set out above within the specific allegations, in respect of the allegations referred to below the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. Not only was his conduct dishonest by the ordinary standards of reasonable and honest people but the Respondent must also have been aware that it was dishonest by those standards for the following reasons:-

Allegation 1

52.5 The Respondent transferred the sum of £39,962.03 to his office account eight days after the court had assessed his fees in the sum of £7,992.46. The Respondent knew that he was only entitled to transfer the sum of £7,992.46 in respect of his invoices. The Respondent did not advise Mr N or Mrs M that the total amount that he was entitled to charge the Estate was £7,992.46 and not £39,962.03 which he subsequently transferred to his office account. Further, the Respondent did not advise Mr N and Mrs M to take independent legal advice regarding the fact that he had charged the Estate professional fees which had not been accepted by the Court as being properly chargeable.

52.6 The Respondent did not provide Mr N and Mrs M with full information. In particular, the Respondent's emails to Mr N and Mrs M in which he set out his email of complaint *in extenso* omitted the part of that email which referred to the outcome of the hearing before Master Gordon-Saker or the fact that the Respondent recognised that he was required to bear a "loss" of £46,079.36. It is to be inferred from the Respondent's failure to be open and transparent with Mr N and Mrs M as well that he realised that his conduct was dishonest.

52.7 Despite being aware of his obligation to do so, the Respondent did not send the interim accounts prepared on 21 February 2013 to Mr L because had he done so Mr L would have become aware that the Respondent had charged the Estate the sum of £39,962.03 which the Court had assessed in the sum of £7,992.46. The Respondent was aware of his obligation to advise Mr L that he had paid interim distributions to Mr N and Mrs M but he did not do so because had he done so Mr L would have required a copy of the most up-to-date Estate accounts showing the calculations for the interim distributions, with the result that Mr L would have become aware that the Respondent had charged the Estate the sum of £39,962.03 which the Court had assessed in the sum of £7,992.46.

Allegation 2

52.8 The Respondent knew that he had only been entitled to transfer the sum of £7,992.46 in respect of his invoices. The Respondent did not advise Mr N or Mrs M that Roth J had confirmed the total amount that the Respondent was entitled to charge the Estate was £7,992.46 and not £39,962.03. Nor did the Respondent advise Mr N or Mrs M

that Roth J (in allowing limited permission to appeal the costs assessment) (i) described the Respondent's assertion that the costs assessment related only to Mr L's "share" of his costs as "wholly misconceived" or (ii) stated that the fact that Mr N and Mrs M did not dispute the Respondent's bills was "of little relevance".

52.9 Further, the Respondent did not advise Mr N and Mrs M to take independent legal advice regarding the fact that he had not taken steps to repay fees charged to the Estate which Roth J had confirmed were not properly chargeable. Despite being aware of his obligation to do so, the Respondent did not send the interim accounts prepared on 21 February 2013 to Mr L because had he done so Mr L would have become aware that the Respondent had charged the Estate the sum of £39,962.03 which the Court had assessed in the sum of £7,992.46. Again, despite being aware of his obligation to do so, the Respondent did not advise Mr L that he had paid interim distributions to Mr N and Mrs M because had he done so Mr L would have required a copy of the most up-to-date Estate accounts showing the calculations for the interim distributions, with the result that Mr L would have become aware that the Respondent had charged the Estate the sum of £39,962.03 which the Court had assessed in the sum of £7,992.46.

52.10 Mr L would no doubt have objected to the Respondent's approach if he had known about it, but the Respondent chose to deny him the opportunity to do so by failing to send him the interim accounts or to advise him that he had made an interim distribution to Mr N and Mrs M in February 2013.61 The Respondent's actions were plainly dishonest, and the Respondent knew it; otherwise, he would have been transparent with Mr L.

Allegation 3

52.11 The Respondent did not advise Mr N or Mrs M to obtain independent legal advice regarding the fact that he was seeking to charge the Estate the professional fees, because the consequence of such advice would have been that Mr N and Mrs M would have become aware that the Respondent had a personal conflict of interest. The Respondent did not advise Mr N or Mrs M to obtain independent legal advice regarding the fact that he was seeking to charge the Estate professional fees which had been disputed by the co-executor, because the consequence of such advice would have been that Mr N and Mrs M would have become aware that the Respondent was not entitled to seek their agreement to alter their share of the residual Estate.

52.12 The Respondent must have known that he was not acting in accordance with the unambiguous wishes of Mrs L as expressed in her will. There can be little doubt that this was objectively dishonest and that the Respondent knew it; otherwise, he would have been more straightforward with Mr N and Mrs M and/or he would have advised them to obtain independent legal advice on his proposal.

Allegation 6 and 7

52.13 The Respondent transferred payment for Professor H's fees from the office account fifteen days after he had made arrangements to pay Professor H's fees but then not paid them. On 17 July 2012 the Respondent received the written advice from Mr NT-S which advised that Professor H's report was not compliant with the Civil

Procedure Rules. It was partly this Advice which caused the Respondent to consider that the Estate should not have to pay for Professor H's report so certainly as at 17 July 2012 the Respondent knew that he was not going to pay the fees of Professor H. Subsequently the Respondent retained payment for the fees in his office account knowing that he was not going to pay the fees of Professor H. The Respondent did not pay Professor H's fees to the extent that Professor H had to obtain judgment against the Respondent.

52.14 In January 2013 the Respondent untruthfully told Mr N and Mrs M that payment of Professor H's fees had been made when he knew it had not. In February 2013 the Respondent adjusted the distributions to be made to Mr N and Mrs M to include payment of Professor H's fees when he knew they had not been paid and that he did not intend to pay them. Had the Respondent honestly believed that he was entitled to charge the Estate Professor H's costs he would have charged each of the three beneficiaries an equal share of Professor H's costs. The Respondent did not do so, but charged Mr N and Mrs M half each, because he knew that Mr L would rightly object to the Estate paying these fees if made aware of them.

52.15 The Respondent's conduct was clearly dishonest. The Respondent's email of 14 January 2013 and the interim accounts provided to Mr N and Mrs M (but not Mr L) in February 2013 showed the payment of Professor H's fees despite the fact that he must have known that he had not and did not intend to pay him.

Allegation 8

52.16 The Respondent did not advise Mr N or Mrs M, either on 14 January 2013 or subsequently, to obtain independent legal advice regarding payment by the Estate of Miss A's fees, because the consequence of such advice would have been that Mr N and Mrs M would have become aware that the Respondent was not entitled to seek their agreement for the Estate to pay him the costs of defending the costs proceedings. Despite being aware of his obligation to do so, the Respondent did not send the interim accounts prepared on 21 February 2013 to Mr L, because had he done so Mr L would have become aware that the Respondent had charged the Estate the costs of defending the costs proceedings to assess the Respondent's own costs.

52.17 Again, despite being aware of his obligation to do so, the Respondent did not advise Mr L that he had paid interim distributions to Mr N and Mrs M, because had he done so Mr L would have required a copy of the most up-to-date Estate accounts showing the calculations for the interim distributions, with the result that Mr L would have become aware that the Respondent had charged the Estate the costs of defending the costs proceedings to assess the Respondent's own costs. Had the Respondent honestly believed that he was entitled to charge the Estate his own costs of the costs proceedings he would have charged each of the three beneficiaries an equal share of Miss A's fees. The Respondent did not do so, but charged Mr N and Mrs M half each, because he knew that Mr L would rightly object to the Estate paying these fees if made aware of them.

52.18 This conduct was dishonest. The Respondent must have known that he was not entitled to charge the estate for the costs of defending the costs proceedings. In this regard, it is telling that the Respondent charged them to Mr N and Mrs M only, and

that he did not send the interim accounts to Mr L or advise him of the interim distribution to Mr N and Mrs M in February 2013, so that in this way the charges escaped the notice of the more vigilant Mr L.

Allegations 9 and 10

52.19 By his email dated 2 May 2014 the Respondent advised Mr M that he could not send any funds to Mr M until he had received "further information" in circumstances where the Respondent did not require any further information to release the funds to Mr M. Accordingly, the Respondent held onto the excess sale proceeds where he was not entitled to do so in order to force Mr M to agree to the Respondent's invoice, in circumstances where the Respondent knew that his invoice was disputed. By his email dated 9 May 2014 the Respondent told Mr M that Mr M would have received the net sale proceeds as soon as the Respondent had received the signed Transfer if he had not disputed the invoice. Accordingly, the Respondent only withheld the excess net proceeds in order to force Mr M to agree to the Respondent's invoice, in circumstances where the Respondent knew that his invoice was disputed. By his emails dated 15 and 20 May 2014 the Respondent stated that he would raise further invoices for work in the event that Mr M did not agree to pay his invoice.

52.20 Mr M had complained to the level of the Respondent's fees and the costs information that had been provided. The Respondent's actions were designed to put pressure on Mr M to pay the Respondent's fees and to withdraw or not pursue his complaint. They apparently had their desired effect, very likely because of Mr M's financial circumstances. Use of a client's vulnerabilities in this way by a solicitor for his personal benefit can only be regarded as dishonest practice. The Respondent cannot have honestly believed that the spurious obstacles he threw in Mr M's way were legitimate given his acknowledgement on 9 May 2014 that the funds would have been transferred upon receipt of the signed Transfer had it not been for Mr M's objection to his fees.

The Respondent's Case

52.21 The Respondent had not filed an Answer. The allegation was treated as being denied by the Tribunal. The Tribunal noted that in his email of 27 September 2016 the Respondent had stated "I am not dishonest".

The Tribunal's Findings

Allegation 1

52.22 The Respondent had transferred the sum of £39,962.03 from his client account to his office account on 30 November 2012 in respect of the Estate of Mrs L following an assessment by the court that the Respondent was only entitled to charge the Estate a total sum of £7,922.46. In transferring the additional monies the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people. He had taken monies to which he was not entitled. The objective limb of the test laid down in Twinsectra was satisfied.

52.23 The Respondent had omitted a crucial part of his email to Miss A in the emails he sent to Mr N and Mrs M. He had not told them that the court had ordered that he was only entitled to £7,922.46. This was so important that the omission of this information from the email must have been deliberate. The Respondent had withheld the truth from Mr N and Mrs M. If the Respondent had not realised that he was acting dishonestly by the standards of reasonable and honest people he would not have concealed the truth. The Respondent had referred to sustaining a loss and there could be no argument that he was under a misapprehension that he was entitled to the £39,962.03. He knew he was not entitled to more than £7,922.46 but transferred the greater amount in contravention of the court order which he deliberately flouted. The Tribunal was sure that the subjective limb of Twinsectra was satisfied. Dishonesty was proved beyond reasonable doubt in respect of allegation 1.

Allegation 2

52.24 The Respondent failed to take any steps to repay the Estate the difference between the sum of £39,962.03 and the assessed costs despite confirmation from the High Court on 31 July 2013 – per Roth J – and 15 November 2013 – per Peter Smith J - that the Respondent was only entitled to charge the Estate a total sum of £7,922.46. In failing to take any steps to repay the Estate the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people. He had retained monies to which he was not entitled. The objective limb of the test laid down in Twinsectra was satisfied. The Respondent knew from the decision of Roth J and Peter Smith J that he was not entitled to the monies and he did not seek to repay the Estate. The Respondent must have realised that by the standards of reasonable and honest people he was acting dishonestly. He was not complying with a court order and he cannot have helped but know that that was dishonest. The Tribunal was sure that the subjective limb of Twinsectra was satisfied. Dishonesty was proved beyond reasonable doubt in respect of allegation 2.

Allegation 3

52.25 The Tribunal had found that from 19 January 2012 to 21 November 2012 the Respondent acted contrary to the instructions of his client and sought to adjust each beneficiary's share of the Estate to benefit himself. The Respondent had made proposals to settle the costs dispute. The only person that these proposals favoured was the Respondent. Mr N had thought that the Respondent was adjusting his costs when this was not the case. The Respondent did nothing to rectify Mr N's misunderstanding. Both Mr N and Mrs M ended up paying far more than the £5,000 they had agreed to contribute to resolve the costs issue. By seeking and obtaining Mr N and Mrs M's agreement to make the contribution from their share of the costs Mr N and Mrs M did not receive the full one third each share of the residual Estate to which they were entitled. The Respondent had acted dishonestly by the ordinary standards of reasonable and honest people and the objective limb of the test laid down in Twinsectra was satisfied.

52.26 The Respondent must have realised that by the standards of reasonable and honest people he was acting dishonestly. He was not complying with the terms of the will and he did not correct Mr N's statement that the Respondent was adjusting his costs when he knew that he was not adjusting his costs but adjusting the beneficiaries'

entitlement. The Tribunal was sure that the subjective limb of Twinsectra was satisfied. Dishonesty was proved beyond reasonable doubt in respect of allegation 3.

Allegations 6 and 7

52.27 The Tribunal found that the Respondent advised Mr N and Mrs M that payment of a disbursement had been made when he knew that it had not and charged his client £1,962 for a professional disbursement when he knew that the disbursement had not been paid, and further that he did not intend to pay the disbursement.

52.28 In telling Mr N and Mrs M that the payment had been made when the Respondent knew it had not been made the Respondent told a clear lie. By lying to Mr N and Mrs M, the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people and the objective limb of the test laid down in Twinsectra was satisfied. The Respondent must have realised that by the standards of reasonable and honest people he was acting dishonestly. He knew he had not paid the disbursement but said that he had. The Respondent must have realised that this was dishonest by anybody's standards. The Tribunal was sure that the subjective limb of Twinsectra was satisfied.

52.29 Having transferred the money from client account to office account the Respondent retained the money in the office account and did not transfer it back to client account. The Respondent had acted dishonestly by the ordinary standards of reasonable and honest people and the objective limb of the test laid down in Twinsectra was satisfied. The Respondent must have realised that by the standards of reasonable and honest people he was acting dishonestly. He had effectively taken the money as if it was his. The Tribunal was sure that the subjective limb of Twinsectra was satisfied. Dishonesty was proved beyond reasonable doubt in respect of allegations 6 and 7.

Allegation 8

52.30 The Tribunal found that the Respondent charged his client for his own costs of his defence of the detailed assessment of his costs to be charged to the Estate. This was clearly not something that he should have been doing. The Respondent would have known that this was not something he should be doing. There cannot be any basis on which the Respondent could have thought it was appropriate to charge two of the beneficiaries of the Estate the costs of defending the detailed assessment of the costs he was charging to the Estate. The Respondent had acted dishonestly by the ordinary standards of reasonable and honest people and the objective limb of the test laid down in Twinsectra was satisfied. The Respondent must have realised that by the standards of reasonable and honest people he was acting dishonestly. The Tribunal was sure that the subjective limb of Twinsectra was satisfied. Dishonesty was proved beyond reasonable doubt in respect of allegation 8.

Allegations 9 and 10

52.31 The Tribunal found that between 7 April 2014 and 27 May 2014 the Respondent improperly withheld client monies when there was no legitimate reason to do so until his client agreed not to dispute his invoice dated 4 April 2014 and that between those

dates the Respondent failed to return client monies to his client promptly as soon as there was no longer any proper reason to retain those client monies.

52.32 The Respondent knew that Mr M was experiencing financial difficulties and used the retention of the monies as a bargaining point. This was clearly bad and sharp practice on behalf of the Respondent. It was blatant manipulation of his client. However, the Tribunal could not be sure that the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people and the objective limb of the test laid down in Twinsectra was not satisfied. Given this the Tribunal did not go on to consider whether the subjective limb of the test was satisfied. Dishonesty was not proved beyond reasonable doubt in respect of allegations 9 and 10.

Consideration of whether the Tribunal should adjourn prior to Sanction

53. The Tribunal had decided to proceed in the absence of the Respondent. Having announced its findings the Tribunal considered whether or not it should adjourn to inform the Respondent of its findings in order for him to be able to make representations as to mitigation. The Tribunal's normal practice was to announce its findings and then proceed to consider sanction. If a respondent was present that respondent had an opportunity to address the Tribunal as to mitigation at this stage.

54. The Tribunal was mindful of the case of Lawrence v General Medical Council [2015] EWHC 586 (Admin). In that case Collins J had said that the panel ought to have considered before imposing any sanction whether attempts should be made to contact the respondent to enable her to put forward any mitigation.

55. Mr Allen submitted that Lawrence was quite a specific case on its facts. The respondent in Lawrence had participated in the proceedings and had initially attended the hearing. The hearing had been adjourned overnight for her to obtain legal representation. She had been unable to secure legal representation, had felt unable to cross examine witnesses, and prior to leaving had told the panel she considered it unjust and unfair for the hearing to continue and that she had nothing further to say. The respondent then left. In these proceedings the Respondent had not played any part or co-operated. There was no evidence that if the Tribunal adjourned to allow him to make representations in respect of sanction he would attend. The respondent in Lawrence had been facing erasure and relevant considerations were patient safety and the likelihood of her actions being repeated. The case was from a different regulatory sphere and was based on its facts. The Applicant opposed any adjournment to enable the Respondent an opportunity to attend to make representations in mitigation and asked the Tribunal to proceed to consider sanction and costs in the usual manner.

56. The Tribunal considered the judgment in Lawrence, the Applicant's submissions and the fact that the Respondent had failed to file an Answer or any evidence. The Respondent had not participated in any hearings in these proceedings. He had not complied with directions. He had failed to substantively engage with the proceedings. His only engagement had been to make applications for adjournments and disclosure. In an email of 27 September 2016 the Respondent had stated he was unable to travel and asked for the case to be adjourned for six months and then decided without a hearing. The Tribunal was not satisfied that if it adjourned to enable the Respondent to attend to make submissions as to mitigation in light of its findings that he would

attend. The circumstances of the two cases were not the same and the present case could be distinguished from Lawrence. Accordingly, the Tribunal decided to proceed to consider sanction without adjourning to inform the Respondent of its findings and afford him an opportunity to attend to make submissions in mitigation.

Previous Disciplinary Matters

57. None.

Mitigation

58. There was no information before the Tribunal in respect either of mitigation or the Respondent's financial circumstances. The Tribunal was aware from correspondence received from the Respondent that he had had a number of health issues. The Tribunal had had sight of a letter dated 26 January 2016 from the Respondent's GP.

Sanction

59. The Tribunal referred to its Guidance Note on Sanctions (4th Edition) when considering sanction. In determining sanction the Tribunal only considered the allegations found proved. In approaching sanction the Tribunal noted that a number of the allegations were repetitive and the Tribunal took a holistic approach to sanction rather than considering each proved allegation individually.

60. The Respondent's culpability was very high. The motivation for the misconduct appeared to be, in respect of the majority of the allegations found proved, personal financial gain with an undercurrent of greed. The misconduct was planned, the Respondent had acted in breach of a position of trust, especially in the administration of the Estate, and had had direct control and responsibility for the circumstances giving rise to the misconduct. The Respondent was an experienced solicitor but in any event a solicitor did not need to be experienced to know that conduct such as the Respondent's was unacceptable. The harm caused to the individuals concerned was unknown but was likely to be significant. Mr N had died before the Estate was finalised, Mr M had not received funds when he was due to receive them and a substantial amount of the monies from Mr G estate remained in the Respondent's client account at the time of the Intervention despite the proceeds of sale of the property being received several months earlier. Even if the harm was not intended it was reasonably foreseeable that the Respondent's conduct would cause significant harm. The impact of that misconduct upon the public and the reputation of the legal profession was significant. In terms of the administration of Mrs L and Mr G's estates the behaviour was so appalling that it could not help but harm the reputation of the profession.

61. Dishonesty had been alleged and proved. The misconduct was deliberate, calculated and repeated and continued over a period of time. The Respondent had concealed his wrong doing. This was particularly demonstrated by his email to Mr N and Mrs M which omitted to advise them of the outcome of the costs hearing. The Respondent knew or ought reasonably to have known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the legal profession. These were all aggravating factors. There were no mitigating factors.

62. The Tribunal considered the range of sanctions available to it commencing with No Order. Given the extent of its findings the Tribunal moved quickly through the range of available sanctions. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off save in exceptional circumstances. In this case there had been six findings of dishonesty. The Tribunal considered that the seriousness of the misconduct was very high and the need to protect the public and the reputation of the legal profession was so great that a suspension was insufficient. The Tribunal therefore considered that the appropriate sanction was for the Respondent's name to be struck off the Roll of Solicitors.

63. Before finalising sanction the Tribunal considered whether there were any exceptional circumstances and considered the guidance as set out in SRA v Sharma [2010] EWHC 2022 (Admin). The Tribunal was satisfied that there were no exceptional circumstances that meant that the case fell into the very small residual category of dishonesty cases where striking off was not appropriate. Finally, the Tribunal considered the Respondent's personal circumstances. The only evidence it had about his health was the letter from the GP. There were no personal circumstances that meant that a lesser sanction should be imposed. The appropriate sanction in all of the circumstances was for the Respondent's name to be struck off the Roll of Solicitors.

Costs

64. The Applicant applied for its costs, supported by a costs schedule in the sum of £103,742.44. The Applicant invited the Tribunal to assess the costs. Mr Allen informed the Tribunal that the Respondent had been declared bankrupt in March 2016. As the proceedings were issued after the bankruptcy any costs ordered would not fall into it. The Respondent had maintained to the Applicant that he was a man of substantial means and he owned two properties. If there were monies remaining at the end of the bankruptcy the Applicant could seek to enforce any costs order. The Applicant did not seek an order that costs should not be enforced without leave of the Tribunal.

65. The Tribunal was mindful that the purpose of an order for costs was not to serve as an additional punishment for the Respondent but to compensate the Applicant for the costs incurred by it in bringing the proceedings. The proceedings had been properly brought. The Respondent had increased the costs incurred by the way in which he had conducted himself.

66. The Tribunal considered all of the factors set out in its Guidance Note on Sanctions (4th Edition) including paragraph 68. In considering the costs that the Respondent should pay the Tribunal bore in mind that allegations 4,11, 13 and 14 had not been proved and dishonesty had not been proved in respect of allegations 9 and 10. Allegations 1 to 8 related to the Estate, allegations 9 and 10 to Mr M's transaction, allegations 11 and 12 to Mr G's estate and allegations 13 and 14 to Mr R. The Tribunal did not consider that any significant extra time or costs had been incurred in respect of the unsuccessful allegations. The only matter where no allegations had been proved was the Mr R matter and this had been due to the drafting of the allegations. Very little time had been spent by Mr Allen in submissions on these allegations and consideration of the allegations had not substantially increased the time the Tribunal took to reach its findings. The Respondent had not filed and served an Answer so had

not incurred additional costs in defending the allegations. The Applicant had been reasonable in pursuing the allegations on which it was unsuccessful and the allegations had been reasonable in all the circumstances.

67. The Tribunal had no information as to the Respondent's means other than what Mr Allen had said. The Tribunal carefully considered the Applicant's schedule of costs. The Tribunal considered that the time spent in preparing and reviewing the Rule 5 Statement was excessive. Both Mr Dunn and Mr Ames had claimed significant time in this regard. The Tribunal considered that a deduction should be made in this respect, reducing Mr Ames' time by approximately half and Mr Dunn's by approximately forty percent.. The matter itself was not overly complicated albeit there was quite a lot of legal work involved.

68. The Tribunal considered whether there should be detailed assessment of costs. This would incur additional costs and the Tribunal was an expert Tribunal that routinely assessed costs. The Tribunal decided to assess the costs and assessed them at £96,916.24. Before finalising the cost order the Tribunal considered whether there should be an order that costs could not be enforced without leave of the Tribunal. The Tribunal had insufficient financial information to establish that the Respondent could not pay costs at this time and nor did it have any information that if it ordered costs not to be enforced without leave of the Tribunal that there was any realistic prospect that his financial situation would change in the foreseeable future. If an order was made in the terms sought by the Applicant, then if there were monies left after the bankruptcy had been completed, the Applicant could consider enforcing the costs order but this would be a matter for it. The Tribunal ordered that the Respondent do pay the costs of and incidental to this application and enquiry fixed in the sum of £96,916.24.

Statement of Full Order

69. The Tribunal Ordered that the Respondent, MICHAEL JOHN ELSDON, 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 £96,916.24.

Dated this 17th day of January 2016
On behalf of the Tribunal

D. Glass
Chairman