

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11612-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

PETER CHARLES DAVIES

Respondent

Before:

Mr L. N. Gilford (in the chair)

Mr P. Lewis

Mr S. Marquez

Date of Hearing: 30 June 2017

Appearances

Mark Gibson, solicitor of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1 On 12 January 2016 and 15 January 2016, the Respondent received payment in cash from clients in respect of bills of costs, totalling £380.00, failed to account for this money to his firm and misappropriated the money and thereby breached all, or any, of the following:

1.1.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 (“Principles”);

1.1.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

1.2 On 28 April 2015 the Respondent improperly paid £5,000.00 from the estate of a client, Mrs E, to the personal bank account of another client, Mr AW, who was not entitled to the money and thereafter misappropriated £5,000.00 from Mr AW’s bank account for his own personal use and thereby breached all, or any of the following:

1.2.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 (“Principles”);

1.2.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

1.3 On 15 January 2016 the Respondent improperly paid £1,072 for a council tax bill for Mr AW from money belonging to another client, Mrs M, and thereby breached all, or any of the following:

1.3.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 (“Principles”);

1.3.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

1.4 On 30 January 2015 the Respondent improperly paid £6,439.17 out of the estate of a client, Mrs W, to the personal bank account of Mr AW who was not a beneficiary of the estate and not entitled to the money and thereafter misappropriated £5,950.00 from Mr AW’s bank account for his own personal use and thereby breached all, or any, of the following:

1.4.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 (“Principles”);

1.4.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

1.5 On 24 July 2015 the Respondent improperly made payments of £50,000.00 and £20,000.00 to third parties from an estate of a client where the third parties were not beneficiaries of the estate and were not entitled to the payments and thereby breached all, or any, of the following:

1.5.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 (“Principles”);

1.5.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

1.6 Between 27 February 2014 and 8 June 2015 the Respondent misappropriated £37,150.00 from the estate of a client, Mr D, and paid it to the personal bank account of Mr AW who was not a true beneficiary of the estate and was not entitled to the payments and thereby breached all, or any, of the following:

1.6.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 (“Principles”);

1.6.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

1.7 Between 1 June 2010 and 1 October 2014 the Respondent misappropriated approximately £223,499.01 from Halifax personal bank accounts belonging to Mr AW for whom he held a power of attorney for his own personal use and thereby breached all, or any of the following:

1.7.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 (“Principles”) and prior to 6 October 2011 in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 (“Code”);

1.7.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles and prior to 6 October 2011 in breach of Rule 1.06 of the Code.

It was alleged the Respondent had acted dishonestly.

1.8 The Respondent misappropriated approximately £20,000.00 from the estate of a client, Mr AW, and used this money for his own purposes and thereby breached all, or any, of the following:

1.8.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 (“Principles”);

1.8.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

1.9 The Respondent fraudulently created two Wills, one of which was created on or around 5 November 2009 and the other of which’s creation date was unknown and he named third parties as beneficiaries within both Wills when they were not true beneficiaries of the estates and thereby breached all, or any, of the following:

1.9.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 (“Principles”);

1.9.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

The Respondent admitted all the allegations.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 15 February 2017 together with attached Rule 5 Statement and all exhibits
- Email from the Applicant to the Respondent dated 28 June 2017
- Applicant’s Statement of Costs dated 15 February 2017 and 6 June 2017

Respondent:

- The Respondent’s Answer dated 10 April 2017
- Email from the Respondent to the Applicant and the Tribunal dated 30 June 2017

Service and Proceeding in the Respondent’s Absence

3. Mr Gibson, on behalf of the Applicant, submitted the Respondent had been served with notice of the hearing by a letter dated 21 February 2017 from the Tribunal to the Respondent. That letter had attached the Rule 5 Statement together with exhibits and various documents, which included the Tribunal’s Standard Directions containing the date of the final hearing.

4. Mr Gibson referred the Tribunal to an email from the Respondent to the Applicant and the Tribunal dated 30 June 2017. In this email the Respondent had confirmed he would not be attending the hearing and he would not be represented. In light of this Mr Gibson submitted the Tribunal should proceed in the Respondent's absence.
5. The Tribunal noted a letter had been sent by the Tribunal to the Respondent dated 21 February 2017 by recorded delivery. That letter enclosed a number of documents relating to these proceedings and informed the Respondent of the date of the final hearing. The Tribunal had been provided with a copy of a proof of delivery document from the Royal Mail confirming the letter was delivered and signed for on 22 February 2017. The Tribunal also had an email from the Respondent dated 30 June 2017 sent at 08:15am stating he would not be attending the hearing so he was clearly aware of it. The Tribunal was satisfied there had been proper service of the documents and hearing date on the Respondent.
6. The Tribunal then considered whether to proceed in the Respondent's absence. He had confirmed he would not be attending the hearing nor would he be represented. The Respondent had not requested an adjournment and there was no indication that he would attend on a future date if the hearing was adjourned. He had filed an Answer dated 10 April 2017, containing his response to the allegations which the Tribunal could take into account. The Tribunal concluded the Respondent had voluntarily absented himself and was unlikely to attend on a future date. These were serious matters, which included several allegations of dishonesty that needed to be dealt with expeditiously. The Tribunal was satisfied that it was in the public interest to proceed with the hearing in the Respondent's absence.

Factual Background

7. The Respondent, born in 1957, was admitted to the Roll on 3 January 1995 and his name remained on the Roll. He did not hold a current practising certificate.
8. At the material time, the Respondent was an assistant solicitor at Parry Davies Clnwyd Jones & Lloyd LLP ("the firm") at 123 High Street, Bangor, Gwynedd, LL57 1NT. He was dismissed from the firm on 11 March 2016 as a result of an investigation into his conduct in relation to the allegations.
9. On 29 March 2016 a Forensic Investigation Officer ("FIO") from the Solicitors Regulation Authority ("SRA") commenced an investigation of the firm which resulted in a Forensic Investigation Report ("FIR") dated 5 July 2016.

Allegation 1.1

Mr and Mrs B

10. Mr and Mrs B instructed the firm in January 2016 to prepare new Wills for them. A client care letter was sent to them on 14 January 2016 from the Respondent and under the heading "PRIVATE COSTS" it stated "receipted invoice herewith".

11. Mrs D, a partner of the firm, noted that the client care letter stated “received invoice herewith” when there was no evidence on the file that the firm had received £180.00 or any other amount.
12. On 31 March 2016 Mrs D spoke with Mr B and he confirmed that he had made payment by cash to the Respondent on 12 January 2016 in settlement of his bill.
13. During an interview with the FIO on 25 May 2016 the Respondent admitted taking £180.00 in cash from Mr B and keeping it himself.

Mr M

14. Mr M instructed the firm in January 2016 to deal with the sale of his property at E Street. The Respondent dealt with the matter.
15. Mrs L, the firm’s practice manager, noted that £200.00 was recorded on the completion statement as being received but it had not been credited to the client ledger.
16. Mrs L telephoned Mr M and asked for confirmation that he had paid £200.00 in January 2016. He confirmed that he had. Mr M subsequently provided a copy of a receipt given to him by the Respondent for £200.00 cash paid on 15 January 2016.
17. Mrs L confirmed to the FIO on 30 March 2016 that the signature on the receipt was that of the Respondent signing as Elwyn Jones & Co (the trading name of the firm’s Bangor office).
18. In an interview with the FIO on 25 May 2016 the Respondent confirmed that he had prepared and signed the receipt and had kept the £200.00 for himself.

Allegations 1.2 and 1.9

19. The firm was instructed to act in the administration of the estate of Mrs E who died on 21 December 2009. The Respondent dealt with the matter.
20. According to the client file, in her Will dated 5 November 2009 Mrs E bequeathed £5,000.00 to “Mr [AW]”. The firm subsequently discovered that the Will dated 5 November 2009 had been fraudulently created by the Respondent to include Mr AW as a beneficiary of the estate.
21. In her email to the FIO dated 3 June 2016 Mrs L, the firm’s practice manager, explained that following the firm’s enquiries of the Probate Registry it was revealed that the Will submitted and proved in relation to the Grant of Probate was dated 21 December 2005. The copy Will found on the file in relation to the estate of Mrs E was dated 5 November 2009 and the firm believed this was likely to be a forgery.
22. The sum of £5,000.00 was paid from the estate of Mrs E to Mr AW on 28 April 2015. The money was credited to an account held with the Halifax Bank in the name of Mr Peter C Davies Poa (Power of Attorney) For Mr AW.

23. The Respondent paid to himself 16 payments of £300.00 and 1 payment of £200.00 until Mr AW's bank account was left with a credit balance of £3.34.
24. During an interview with the FIO on 25 May 2016 the Respondent admitted that he had created a fraudulent Will in relation to the estate of Mrs E and admitted that he withdrew the £5,000.00 for his own benefit.

Allegation 1.3

25. On 15 January 2016 the Respondent paid £1,072 from the firm's Lloyds client bank account in respect of a council tax bill on Mr AW's matter and recorded the debit on the ledger for the client, M.
26. The Respondent completed and signed a client account debit slip on 15 January 2016 in respect of the sum payable to Gwynedd Council. The firm's Lloyd's client bank account statement recorded the cheque being cashed on 22 January 2016.
27. During an interview with the FIO on 25 May 2016 the Respondent admitted that he completed and signed the debit slip and recorded the debit on the ledger for client, M, when the council tax bill was for the Mr AW matter. He admitted that he paid £1,072.00 from the firm's Lloyd's client bank account. In interview he said there were insufficient funds in Mr AW's ledger and Gwynedd Council were threatening proceedings which is why he debited the ledger for M.

Allegation 1.4

28. Mrs W died on 11 December 2007 and the Respondent was the fee earner responsible for winding up her estate under the Intestacy Rules.
29. The client ledger recorded that a share of the estate of £6,439.17 was paid to "1/4 SHARE OF ESTATE [AW]" on 30 January 2015. The funds were paid to a Halifax account number in the name of Mr AW C/O Peter C Davies.
30. From the £6,439.17 the Respondent withdrew 19 payments of £300.00 from various cash machines in Bangor and one cash withdrawal of £250.00 from a machine in Llanfairechan. The total withdrawals amounted to £5,950.00.
31. The FIO noted that Mr AW's name did not appear on the list of beneficiaries of Mrs W's estate from a copy of the draft estate accounts and details of family members.
32. In interview on 25 May 2016 with the FIO the Respondent admitted misappropriating the sum of £6,439.17 and making cash withdrawals totalling £5,950.00.

Allegations 1.5 and 1.9

33. The Respondent dealt with the administration of the estate of Mrs P-D.

34. Following the Respondent's dismissal from the firm, a partner of the firm requested a copy of the Will from the Probate Registry. The Will received from the Probate Registry was different to the one held on the client file. It appeared that the Respondent had created a fraudulent Will so that he could add the beneficiaries from the estate of Mr AW.
35. The client ledger recorded that all the beneficiaries from the fraudulent Will had been paid. However, when the practice manager asked the Respondent about the cheques that had been written, the Respondent said he had not sent the cheques out, with the exception of the cheque to PB and GB for £50,000.00 and the sum of £20,000.00 paid to Mr AW by telegraphic transfer on 24 July 2015. Neither PB and GB nor Mr AW were beneficiaries of the estate of Mrs P-D.
36. In an interview with the FIO on 25 May 2016 the Respondent admitted creating a fraudulent Will and accepted that he had misappropriated £50,000.00 and £20,000.00.

Allegation 1.6

37. The Respondent dealt with the estate of Mr D who died intestate on 15 April 2008 and letters of Administration to his Estate were obtained by Mr D's widow, Mrs D, on 24 February 2009.
38. The administration of Mr D's estate had not been completed when Mrs D died on 11 February 2010 and the Respondent dealt with the winding up of Mrs D's estate.
39. The balance of client funds held on Mr D's matter of £26,013.86 were transferred to Mrs D's ledger on 14 September 2015 and there was no activity on Mr D's estate after this date.
40. Prior to the transfer of the £26,013.86 the Respondent had misappropriated £37,150.00 from Mr D's estate as follows:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>
27/2/14	Legacy AW	£9,650.00
3/6/14	Distribution AW	£10,000.00
8/8/14	Distribution AW	£5,000.00
23/10/14	Distribution AW	£10,000.00
8/6/15	Distribution AW	£2,500.00
Total		£37,150.00

41. The draft estate accounts for Mr D and Mrs D show that AW was not a beneficiary of either estate.
42. In an interview with the FIO on 25 May 2016 the Respondent accepted that he had misappropriated the funds.

Allegation 1.7

43. The Respondent was appointed as Attorney for Mr AW under a lasting power of attorney in respect of property and financial affairs only. Mr AW signed the power of attorney on 5 February 2010 and it was registered on 5 May 2010.
44. The Respondent changed the name on accounts held by Mr AW with Halifax PLC to "Mr Peter C Davies Poa For Mr [AW]". The bank statements also record "MR [AW] C/O MR PETER C DAVIES 123 HIGH STREET BANGOR GWYNEDD LL57 1NT." Mr AW died on 30 May 2010 at which time the power of attorney ceased to have legal effect.
45. Bank statements for Mr AW's account for the period 1 June 2010 to 12 September 2011 recorded money paid out of £11,578.91. This comprised of a few direct debits going out of the account. For the period 31 January 2012 to 19 October 2015 the bank statements recorded that regular sums of cash, usually £200 or £300 on most days, were withdrawn from this account from ATM cash machines.
46. The total withdrawn from the account during the period 1 June 2010 to 19 October 2015 was £158,005.19 which was in the main withdrawals made by the Respondent which he kept for himself. The FIO noted that £57,500.00 of this sum had been transferred to another of Mr AW's bank accounts and a total of £19,765.18 (£10,000.00 and £9,765.18) was transferred to an account which was an account formerly used by the firm although this account was closed when the firm became an LLP.
47. The transfers totalling £19,765.18 were credited to the client account in respect of JW who was a beneficiary of AW's deceased estate. The net sum misappropriated from this bank account by the Respondent was £80,740.01 plus the funds withdrawn by him during the period 1 June 2010 to 12 September 2011.
48. The FIO noted that the Halifax bank account received eight credits totalling £68,589.17 from the firm's client account.
49. Bank statements for Mr AW's account for the period 1 June 2010 until 1 October 2014 recorded funds withdrawn by the Respondent from this account from ATM cash machines totalling approximately £142,759.00 which he kept for himself.
50. The total amount misappropriated was therefore approximately £223,499.01 (£158,005.19 - £57,500.00 - £19,765.18 + £142,759 = £223,499.01) and the improper withdrawals were made over a period of approximately 5 years and 4 months.
51. In an interview with the FIO on 25 May 2016 the Respondent admitted misappropriating over £200,000.00 from Mr AW's Halifax bank accounts following the death of Mr AW.

Allegation 1.8

52. The Respondent dealt with the winding up of Mr AW's estate. In an interview with two of the partners of the firm on 9 March 2016 the Respondent said that he "had

been helping himself to some of the money from Mr AW's estate" but could not put a precise figure on how much he had taken.

53. In an interview with one of the partners of the firm on 11 March 2016 the Respondent informed the partner "that the figure was £20,000.00, may be more".

Witnesses

54. No witnesses gave evidence.

Findings of Fact and Law

55. The Tribunal had carefully considered all the documents provided, and the Applicant's submissions. 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.

56. **Allegation 1.1: On 12 January 2016 and 15 January 2016, the Respondent received payment in cash from clients in respect of bills of costs, totalling £380.00, failed to account for this money to his firm and misappropriated the money and thereby breached all, or any, of the following:**

1.1.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("Principles");

1.1.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

- 56.1 In his Response dated 10 April 2017, the Respondent admitted Allegation 1.1.
- 56.2 Mr Gibson, on behalf of the Applicant, confirmed a Civil Evidence Act Notice had been served on the Respondent in accordance with the Tribunal's directions and there had been no response from the Respondent.
- 56.3 The Tribunal having considered the report from the Forensic Investigation Officer ("FIO") together with the documents from the files for Mr and Mrs B and Mr M was satisfied they had paid the sums of £180 and £200 respectively to the Respondent and that these sums had not been credited to the firm's bank accounts. The Tribunal also noted the Respondent had admitted to the FIO that he had kept these sums for himself. The Tribunal was satisfied that in doing so the Respondent had acted with a lack of integrity and he had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services.

- 56.4 In relation to the issue of dishonesty, the Tribunal had been referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest.
- 56.5 The Tribunal was satisfied that the Respondent's conduct in taking funds from clients, which were in payment of sums due to the firm, and not paying those funds into the firm's bank accounts but instead using them for his own purposes, would be regarded as dishonest by the ordinary standards of reasonable and honest people.
- 56.6 The Tribunal was also satisfied that the Respondent knew the funds being paid to him belonged to the firm as he had made reference to receiving them as such in the client care letter he had sent to Mr and Mrs B and in the receipt he gave to Mr M. Despite this the Respondent had then used those funds for his own purposes without informing the clients he had done so and whilst knowing they did not belong to him. The Tribunal concluded that by allowing clients to believe they were paying funds to the firm, and concealing from them that he had used their funds for his own purposes, the Respondent must have known that his conduct was dishonest by the ordinary standards of reasonable and honest people.
- 56.7 The Tribunal found Allegation 1.1 proved both on the Respondent's admissions and on the documents provided.
57. **Allegation 1.2: On 28 April 2015 the Respondent improperly paid £5,000.00 from the estate of a client, Mrs E, to the personal bank account of another client, Mr AW, who was not entitled to the money and thereafter misappropriated £5,000.00 from Mr AW's bank account for his own personal use and thereby breached all, or any of the following:**

1.2.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("Principles");

1.2.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

- 57.1 In his Response dated 10 April 2017, the Respondent admitted Allegation 1.2.
- 57.2 The Tribunal was satisfied, having considered the documents relating to Mrs E and Mr AW, that the Respondent had paid the sum of £5,000 from Mrs E's estate to a bank account for Mr AW under the guise of Mr AW being a beneficiary for Mr E's fraudulent Will. Having transferred that sum to Mr AW, the Respondent had then withdrawn the sum of £5,000 from that account under his authority as power of attorney for Mr AW and had used the money for his own benefit. The Tribunal was satisfied he had breached Principles 2 and 6 of the Principles.

57.3 The Tribunal was also satisfied that this was conduct that would be regarded as dishonest by the ordinary standards of honest and reasonable people. The Tribunal was further satisfied the Respondent must have known his conduct was dishonest by those standards as he had admitted to the FIO that he had created a fraudulent Will in relation to the estate of Mrs E. This had enabled him to transfer funds from her estate to Mr AW, which he knew were not properly due to Mr AW. He had also admitted to the FIO withdrawing the sum of £5,000 for his own benefit. He had used his status, as Mr AW's power of attorney, to allow him to access and withdraw the funds for his own personal use. He knew those funds did not belong to him but yet had taken them for his own benefit.

57.4 The Tribunal was satisfied that Allegation 1.2 was proved both on the Respondent's admissions and on the documents provided.

58. **Allegation 1.3: On 15 January 2016 the Respondent improperly paid £1,072 for a council tax bill for Mr AW from money belonging to another client, Mrs M, and thereby breached all, or any of the following:**

1.3.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("Principles");

1.3.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

58.1 In his Response dated 10 April 2017, the Respondent admitted Allegation 1.3.

58.2 The Tribunal, having considered the documents provided, was satisfied the Respondent had improperly withdrawn the sum of £1,072 from the client account for Mrs M and then used that money to pay the council tax bill for Mr AW, without Mrs M's knowledge or consent. The Tribunal was satisfied this conduct was in breach of Principles 2 and 6 of the Principles.

58.3 The Tribunal was also satisfied that this conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Respondent had admitted to the FIO, during his interview on 25 May 2016 that he had completed and signed the debit slip on Mrs M's file, then recorded a debit on the ledger for that file. He also admitted he had paid the sum of £1,072 from the firm's client account to Gwynedd Council as there were insufficient funds in Mr AW's client account to meet this liability. The Respondent knew that the money he had utilised to pay Mr AW's council tax did not belong to Mr AW and he did not inform Mrs M, who had not known or consented, to the use of the money in this way. He had also taken steps to record this debit on Mrs M's file when he knew the debit related to Mr AW's file thereby concealing the true purpose of the payment. He therefore knew that his conduct was dishonest by the ordinary standards of reasonable and honest people.

58.4 The Tribunal found Allegation 1.3 proved both on the Respondent's admissions and on the documents provided.

59. **Allegation 1.4: On 30 January 2015 the Respondent improperly paid £6,439.17 out of the estate of a client, Mrs W, to the personal bank account of Mr AW who was not a beneficiary of the estate and not entitled to the money and thereafter misappropriated £5,950.00 from Mr AW's bank account for his own personal use and thereby breached all, or any, of the following:**

1.4.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("Principles");

1.4.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

59.1 In his Response dated 10 April 2017, the Respondent admitted Allegation 1.4.

59.2 The Tribunal, having considered all the documents relating to Mrs W and Mr AW's files, was satisfied that the Respondent had paid the sum of £6,439.17 from the client ledger of Mrs W to a bank account in the name of Mr AW c/o Peter C Davies. The Respondent had then withdrawn various payments from those funds from cash machines in the total sum of £5,950. Mr AW was not a beneficiary of Mrs W's estate. The Respondent admitted to the FIO during interview that he had misappropriated the sum of £6,439.17 and made these cash withdrawals himself. The Tribunal was satisfied that this conduct breached Principles 2 and 6 of the Principles.

59.3 In relation to the issue of dishonesty, the Tribunal was satisfied that withdrawing and transferring funds from one client account to another client account without proper authority, then withdrawing those funds from the second client account for the Respondent's personal use would be regarded as dishonest by the ordinary standards of reasonable and honest people.

59.4 Furthermore, the Tribunal was satisfied the Respondent knew his conduct was dishonest by those standards because he had deliberately withdrawn money from the estate of Mrs W, who was a deceased client, and transferred it to Mr AW's account, for whom he held a power of attorney, knowing that Mr AW was not a beneficiary under Mrs W's estate. He had then used his status as the attorney for Mr AW to allow him to access funds he had improperly transferred to his account. He had made these transfers knowing they would be difficult to detect as both clients had passed away.

59.5 The Tribunal found Allegation 1.4 proved both on the Respondent's admissions and on the documents provided.

60. **Allegation 1.5: On 24 July 2015 the Respondent improperly made payments of £50,000.00 and £20,000.00 to third parties from an estate of a client where the third parties were not beneficiaries of the estate and were not entitled to the payments and thereby breached all, or any, of the following:**

1.5.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("Principles");

1.5.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

- 60.1 In his Response dated 10 April 2017, the Respondent admitted Allegation 1.5.
- 60.2 Having considered the documents relating to Mrs P-D and Mr AW carefully, the Tribunal was satisfied that the Respondent, who had dealt with the administration of the estate of Mrs P-D, had paid the total sums of £70,000 from Mrs P-D's estate to PB and GB, and to Mr AW under the guise of them being beneficiaries under Mrs P-D's fraudulent Will, which he had created. The Tribunal was satisfied that this was conduct that breached Principles 2 and 6 of the Principles.
- 60.3 The Tribunal was also satisfied that making improper payments from the estate of a deceased client, to third parties who were not beneficiaries would be regarded as dishonest conduct by the ordinary standards of honest and reasonable people.
- 60.4 The Tribunal was further satisfied the Respondent must have known his conduct was dishonest by those standards. He knew PB and GB, and Mr AW, were not beneficiaries under Mrs P-D's estate. He had created a fraudulent Will for Mrs P-D adding PB, GB and Mr AW as beneficiaries as he knew this would conceal the true position. He had then made payments to them. Furthermore, the Respondent had admitted to the FIO that PB and GB were beneficiaries of Mr AW's estate. They had been chasing him in relation to the distribution of Mr AW's estate. He had therefore taken the sum of £50,000 belonging to Mrs P-D's estate and paid this direct to PB and GB knowing they were not Mrs P-D's beneficiaries. He had also paid a further sum of £20,000 to Mr AW knowing he was not a beneficiary of Mrs P-D and admitted to the FIO that he had "misappropriated a large part of that".
- 60.5 The Tribunal was satisfied that Allegation 1.5 was proved both on the Respondent's admissions and on the documents provided.
61. **Allegation 1.6: Between 27 February 2014 and 8 June 2015 the Respondent misappropriated £37,150.00 from the estate of a client, Mr D, and paid it to the personal bank account of Mr AW who was not a true beneficiary of the estate and was not entitled to the payments and thereby breached all, or any, of the following:**
- 1.6.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("Principles");**
- 1.6.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.**

It was alleged the Respondent had acted dishonestly.

- 61.1 In his Response dated 10 April 2017, the Respondent admitted Allegation 1.6.
- 61.2 The Tribunal was satisfied from the documents relating to Mr D and Mr AW that the Respondent had taken the total sum of £37,150 from Mr D's estate and transferred these sums to Mr AW who was not a beneficiary. The Tribunal was satisfied this conduct breached Principles 2 and 6 of the Principles.
- 61.3 The Respondent had admitted to the FIO during his interview on 25 May 2016 that he had misappropriated these funds. The Tribunal was satisfied that improperly transferring money from a deceased client's estate to another deceased client who was not a beneficiary of that estate would be regarded as conduct which was dishonest by the ordinary standards of reasonable and honest people. Furthermore, the Respondent knew Mr AW was not a beneficiary of Mr D's estate when he transferred the funds and he therefore knew Mr AW was not entitled to them. He also knew both clients had passed away so his conduct would be more difficult to detect. The Tribunal was satisfied the Respondent knew his conduct was dishonest by those standards.
- 61.4 The Tribunal found Allegation 1.6 proved both on the Respondent's admissions and on the documents provided.
62. **Allegation 1.7: Between 1 June 2010 and 1 October 2014 the Respondent misappropriated approximately £223,499.01 from Halifax personal bank accounts belonging to Mr AW for whom he held a power of attorney for his own personal use and thereby breached all, or any of the following:**
- 1.7.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("Principles") and prior to 6 October 2011 in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("Code");**
- 1.7.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles and prior to 6 October 2011 in breach of Rule 1.06 of the Code.**

It was alleged the Respondent had acted dishonestly.

- 62.1 In his Response dated 10 April 2017, the Respondent admitted Allegation 1.7.
- 62.2 The Tribunal was satisfied, having considered the documents relating to Mr AW, that the Respondent had used his authority as Mr AW's power of attorney to withdraw the sum of £223,499.01 from Mr AW's account after Mr AW had passed away on 30 May 2010. Payments had been taken out of Mr AW's bank account from ATM cash machines on a regular basis which the Respondent had then used for his own personal benefit. In addition, he had transferred sums from one of Mr AW's accounts to another of Mr AW's accounts, as well as transferring sums to an account formerly used by the firm whilst making it appear they had been transferred to one of Mr AW's beneficiaries. Monies were then taken from these accounts and used for the Respondent's personal benefit. The Tribunal was satisfied that this conduct breached Principles 2 and 6 of the Principles, as well as Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007.

62.3 The Tribunal was also satisfied that the Respondent's conduct in taking monies from Mr AW's accounts without proper authority and for his personal benefit would be regarded as dishonest by the ordinary standards of reasonable and honest people. Furthermore, the Respondent had admitted to the FIO that he had misappropriated over £200,000 from Mr AW's bank accounts following his death. The Respondent knew Mr AW had passed away on 30 May 2010 and must have known that on Mr AW's death the power of attorney in the Respondent's favour would cease to have legal effect. Despite this, he continued to use that authority to transfer funds from Mr AW's accounts, even using an old account of the firm, to enable him to withdraw funds for his own benefit. The Tribunal was satisfied the Respondent must have known that his conduct was dishonest by those standards as he had clearly concealed from the bank the fact that Mr AW had passed away and that the power of attorney was no longer valid as this enabled him to make payments to himself without raising any suspicion.

62.4 The Tribunal found Allegation 1.7 proved both on the Respondent's admissions and on the documents provided.

63. **Allegation 1.8: The Respondent misappropriated approximately £20,000.00 from the estate of a client, Mr AW, and used this money for his own purposes and thereby breached all, or any, of the following:**

1.8.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("Principles");

1.8.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

63.1 In his Response dated 10 April 2017, the Respondent admitted Allegation 1.8.

63.2 The Tribunal noted that the Respondent had admitted to 2 of the partners of the firm on 9 March 2016 that he had been "helping himself to some of the money from Mr [AW]'s estate". He thought the figure was about £20,000 but he could not put a precise figure on the amount he had taken. The Tribunal was satisfied that taking this money from a deceased's client's estate was conduct which breached Principles 2 and 6 of the Principles.

63.3 The Tribunal was also satisfied that taking money from a deceased client's estate without proper authority and using it for personal purposes was conduct that would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Respondent knew Mr AW had passed away, he knew he was not a beneficiary under that estate and he knew that the money did not belong to him, yet he proceeded to take it for himself. The Tribunal was satisfied the Respondent knew that his conduct was dishonest by the ordinary standards of reasonable and honest people.

63.4 The Tribunal found Allegation 1.8 proved both on the Respondent's admissions and on the documents provided.

64. **Allegation 1.9: The Respondent fraudulently created two Wills, one of which was created on or around 5 November 2009 and the other of which's creation date was unknown and he named third parties as beneficiaries within both Wills when they were not true beneficiaries of the estates and thereby breached all, or any, of the following:**

1.9.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("Principles");

1.9.2 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

It was alleged the Respondent had acted dishonestly.

The Respondent admitted all the allegations.

- 64.1 In his Response dated 10 April 2017, the Respondent admitted Allegation 1.9.
- 64.2 The Respondent had admitted to the FIO that he had created fraudulent Wills in relation to Mrs E and Mrs P-D. This was supported by the documents on those files.
- 64.3 In the fraudulent Will for Mrs E created on 5 November 2009, the Respondent had bequeathed the sum of £5,000 to Mr AW and having made that payment to Mr AW's account on 28 April 2015, after Mr AW had passed away, the Respondent used those funds for his own benefit. It subsequently transpired after enquiries were made with the Probate Registry that the Grant of Probate related to a Will for Mrs E which was dated 21 December 2009 and which was the correct Will. A copy of this was not on Mrs E's file.
- 64.4 In the fraudulent Will for Mrs P-D, the Respondent had added PB and GB who were actually beneficiaries of Mr AW's estate and then had made payments to them which should have been paid from Mr AW's estate.
- 64.5 The Tribunal was satisfied that the Respondent's conduct in relation to both of these Wills breached Principles 2 and 6 of the Principles.
- 64.6 The Tribunal was also satisfied that creating fraudulent Wills to allow transfers to be made from the estate of the deceased clients to third parties who were not beneficiaries of those Wills would be regarded as dishonest by the ordinary standards of reasonable and honest people.
- 64.7 The Respondent had admitted to the FIO that he had created a fraudulent Will in relation to the estate of Mrs P-D in order to add the beneficiaries PB and GB. The reason he had given was as follows:

“.. [PB and GB] were beneficiaries of the [AW] estate and they were hassling me to distribute.. um... and I gave in by doing that ...”.

- 64.8 It was clear the Respondent knew that Mr AW was not a beneficiary of Mrs E or indeed Mrs P-D. He also knew PB and GB were not beneficiaries of Mrs P-D. He had gone to considerable lengths to create false Wills to conceal the true position and to allow him to make transfers of funds which should not have been made. The Tribunal was therefore satisfied the Respondent knew that his conduct was dishonest by the ordinary standards of reasonable and honest people.
- 64.9 The Tribunal found Allegation 1.9 proved both on the Respondent's admissions and on the documents provided.

Previous Disciplinary Matters

65. None.

Mitigation

66. There was no mitigation from the Respondent.

Sanction

67. The Tribunal had considered carefully the documents before it and referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.
68. This was a case where the Respondent was entirely culpable for his actions. They had been planned over a long period of time. His motivation had been to obtain access to client funds which did not belong to him, which he subsequently used for his own personal gain. He had acted in breach of his positions of trust and had had direct control of his conduct. He was an experienced solicitor, having qualified in 1995, and his conduct had caused a great deal of harm directly on those whose funds had been exploited by him as well as on the reputation of the legal profession.
69. The Tribunal had found the Respondent had acted dishonestly on nine occasions. His conduct had been deliberate, calculated and repeated over a period of over five years. He had taken advantage of his position as a probate solicitor entrusted with dealing with the estates of deceased clients. He had abused the power of attorney granted to him by Mr AW long after Mr AW passed away and he had taken steps to conceal his wrongdoing by making a series of improper transfers, creating fraudulent Wills and thereafter moving funds between various deceased client accounts so that he could gain access to those funds without suspicion being raised.
70. The only mitigating factors that the Tribunal could identify were that the Respondent had made open and frank admissions at an early stage and he had co-operated with the investigating body. He also had a previously unblemished record.
71. Nevertheless, the Respondent's conduct had been disgraceful. He had plundered the estates of deceased clients for his own personal purposes causing losses to the beneficiaries. The Respondent had demonstrated a shocking abuse of the trust placed in him and was not fit to be a solicitor. He was a risk to members of the public and could not be trusted with client funds at all.

72. The conduct was so serious in this case that the Tribunal determined a Reprimand, Fine or Restriction Order would be wholly inappropriate to mark that conduct. The Tribunal did give consideration to whether the Respondent should be suspended but concluded that his conduct was at the highest level of seriousness and that a suspension would not ensure the protection of the public in the future. The Tribunal was also mindful of the case of The SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

“Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll”

73. The Tribunal was satisfied that there were no exceptional circumstances in this case. The appropriate sanction was to remove the Respondent’s ability to practise as a solicitor permanently. This was necessary not only to reflect the gravity of the Respondent’s conduct but also to protect the public and the reputation of the legal profession. Accordingly, the Tribunal made an Order the Respondent’s name be removed from the Roll of Solicitors.

Costs

74. Mr Gibson requested an Order for the Applicant’s costs in the total sum of £17,624.47. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. Mr Gibson accepted that there would need to be some reduction to the amount of time claimed for attending the hearing as the actual hearing had not taken as long as estimated on the Statement of Costs.
75. Mr Gibson reminded the Tribunal that the Respondent had not filed any Statement of Means and therefore there was no information about his current financial position. Mr Gibson informed the Tribunal that the firm’s professional indemnity insurers had paid claims made for the Respondent’s misappropriation of funds as he had been an employee of the firm. There were also criminal proceedings ongoing.
76. The Tribunal considered carefully the Applicant’s Statement of Cost. There had clearly been a detailed and complex forensic investigation into the Respondent’s conduct and the Tribunal was satisfied the costs appeared to be reasonable. However, the amount of time claimed for preparing and attending the Tribunal hearing was a little high. The hearing had not taken 5 hours as claimed. The Tribunal made a deduction to the costs to reflect this and summarily assessed the total costs at £17,000. The Respondent was ordered to pay this amount to the Applicant.
77. In relation to enforcement of those costs, the Tribunal had particular regard for the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

“If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive.”

78. The Tribunal was also mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs. As the Respondent had not provided any evidence of his income, expenditure, capital or assets, it was difficult for the Tribunal to take a view of his financial circumstances. In such circumstances, the Tribunal did not consider this was a case where there should be any deferment of the costs order.

Statement of Full Order

79. The Tribunal Ordered that the Respondent, PETER CHARLES DAVIES, 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 £17,000.00.

Dated this 15th day of August 2017
On behalf of the Tribunal



L. N. Gilford
Chairman

Judgment filed
with the Law Society
on 15 AUG 2017