SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11719-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JOHN RICHARD KILLINGTON Respondent

Before:

Ms T. Cullen (in the chair)
Mr M. Jackson
Mrs L. McMahon-Hathway

Date of Hearing: 24 April 2018

Appearances

Chloe Carpenter, Counsel of Fountain Court Chambers, Temple, London, EC4Y 9DH instructed by Alastair Willcox 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:

1.1 The Respondent made unsecured loans on 27 February 2014 and 11 March 2014, together totalling £370,383.01, from funds the firm was holding on trust for the beneficiaries of the Estate of the late Mrs GP, to two other unrelated clients of the firm in circumstances in which he had no authority to do so and in breach of all or alternatively any of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and in breach of Rules 6.1 and 20.1(b) of the SRA Accounts Rules 2011.

1.2 The Respondent failed to disclose to the beneficiaries of the Estate of the late Mrs GP the fact that he had made unsecured loans on 27 February 2014 and 11 March 2014, together totalling £370,383.01, from the funds the firm was holding on trust for the beneficiaries of the Estate of the late Mrs GP, to two other unrelated clients of the firm, in breach of all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

1.3 Between October 2013 and February 2017, the Respondent unreasonably delayed in administering the Estate of the late Mrs GP in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011.

1.4 The Respondent continued to act as Executor of the Estate of the late Mrs GP when aware that his actions may give rise to a claim in negligence and he should report the matter to his firm's insurers, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011.

1.5 In his capacity as COLP and COFA of the firm, the Respondent did not report the material failures of the SRA Accounts Rules 2011 and the SRA Principles 2011 to the SRA, in breach of Rule 8.5 of the Authorisation Rules 2011 and in breach of all or alternatively any of Principles 2, 7 and 8 of the SRA Principles 2011 and thereby failed to achieve Outcome 10.3 of the SRA Code of Conduct 2011.

1.6 In relation to allegations 1.1 - 1.3, it was further alleged that the conduct of the Respondent was dishonest.

Documents

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

Applicant:

- Application dated 22 September 2017 together with attached Rule 5 Statement and all exhibits

- 5 lever arch files containing various documents

- Witness Statement of Matthew Glaze (Senior Legacy Officer at the People's Dispensary for Sick Animals ("PDSA")) dated 21 March 2018 together with all exhibits

- Witness Statement of Lisa Bridges (Forensic Investigation Officer at the SRA) dated 29 March 2018 together with all exhibits

- Witness Statement of Katherine Ellis (Solicitor and Legacy Manager at the British Heart Foundation) dated 21 March 2018 together with all exhibits

- Witness Statement of Katherine Woolf (Legacy Administration Manager at the RSPCA) dated 26 March 2018 together with all exhibits

- Witness Statement of Stephen Richards (Solicitor at W Solicitors) dated 22 March 2018 together with all exhibits

- Letter dated 9 April 2018 from the Applicant to the Respondent

- Skeleton Argument for the SRA dated 17 April 2018

- Chronology for the SRA

- Authorities Bundle for the SRA

- Applicant's Schedules of Costs dated 20 September 2017 and 12 April 2018

- Letter dated 23 April 2018 from the Applicant to the Respondent

- Land Registry Office Copy of a property in Hertfordshire

Respondent

- Letter dated 20 April 2018 from the Respondent to the Tribunal

- Letter dated 20 April 2018 from the Respondent to the Applicant

- The Respondent's Personal Financial Statement

Service of Proceedings

3. Ms Carpenter, on behalf of the Applicant submitted the Respondent had been served with notice of the hearing on 20 October 2017 when the Tribunal's Standard Directions were sent to him containing details of the hearing date. The Standard Directions also contained various other directions including a direction for the Respondent to file his Response to the allegations by 27 November 2017. Ms Carpenter confirmed that on 24 November 2017 the Respondent had filed his defence in accordance with the Standard Directions. She submitted that this confirmed he had received the directions and had complied with them.

4. Ms Carpenter also confirmed the Applicant had written to the Respondent on 3 April 2018 and 6 April 2018. Both of those letters had contained details of the date for the substantive hearing. She referred the Tribunal to the Respondent's letter dated 20 April 2018 to the Tribunal in which the Respondent confirmed he would not be attending the hearing.

5. The Tribunal was satisfied that the Respondent had been served with notice of the hearing in accordance with Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2007. He had in fact confirmed he was aware of the substantive hearing by the fact that he had informed the Tribunal he would not attend it.

Proceeding in Absence

6. Ms Carpenter confirmed the Respondent had filed a defence on 24 November 2017 but had not engaged further with the proceedings until his two letters of 20 April 2018 to the Applicant and the Tribunal respectively. Those letters had been handwritten and were very difficult to read. The Applicant had therefore arranged to transcribe the manuscript as best it could and had sent a copy of the transcription to the Respondent on 23 April 2018 to ensure he had no objections to the typed transcripts. In that letter, the Applicant had provided the Respondent with a contact telephone number but there had been no further contact from the Respondent[1]. He had not provided the Applicant with a telephone number or an email address so could only be contacted by postal correspondence.

7. Ms Carpenter referred the Tribunal to the Respondent's letter dated 20 April 2018 to the Tribunal in which the Respondent had stated "I accept formal responsibility for my failings" but had also stated "I had no personal dishonest intent." She also referred the Tribunal to the Respondent's letter dated 20 April 2018 to the SRA in which he had stated:

> "If further evidence can be avoided and Tribunal time spared I am prepared to concede to the matters set out in your skeleton argument and for my striking from the roll accordingly".

Ms Carpenter submitted the Respondent had voluntarily absented himself from the hearing and had thereby waived his right to attend. She submitted that an adjournment would serve no purpose as the Respondent had no intention of attending the hearing. It also appeared he was making admissions to some of the allegations.

The Tribunal's Decision

8. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Tribunal also took into account the criteria set out in the case of R v Hayward and Jones [2001] QB 862 when considering whether it was appropriate to proceed in the Respondent's absence.

9. The Tribunal took into account the content of the Respondent's letter dated 20 April 2018 to the Tribunal in which he had stated:

[1] The Respondent subsequently confirmed during the course of the hearing that the transcripts were accurate.

> "…….I accept formal responsibility for my failings.
>
> In view of the above I will not be attending the hearing in expectation that the concessions made shall be sufficient. No disrespect is intended by non-attendance or this late submission as I have only just had a chance to respond to the skeleton argument that was only recently received."

10. The Tribunal concluded that the Respondent had voluntarily absented himself from the hearing and indeed was unlikely to attend at a future hearing if the matter were to be adjourned. He had provided the Tribunal with his Response and comments on the allegations and the Tribunal also had a transcript of his responses in the interview with the FI Officer during the investigation which would be taken into account.

11. The Tribunal also took into account the serious nature of the allegations which had been made against the Respondent. These involved allegations of dishonesty. It was therefore in the public interest that matters should be concluded expeditiously. In all the circumstances, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence.

Factual Background

12. The Respondent, born in 1956, was admitted to the Roll of Solicitors on 15 January 1983.

13. At the material time the Respondent was the sole practitioner of Brown and Emery Solicitors, 153 The Parade, High Street, Watford, Hertfordshire, WD17 1BNA ("the firm").

14. The Respondent was the Compliance Officer for Legal Practice ("COLP") and he was also the Compliance Officer for Finance and Administration ("COFA") for the firm.

15. Following an inspection of the firm's books of account and other documents by a SRA Forensic Investigation Officer ("FI Officer"), a Forensic Investigation Report ("the FI Report") was produced dated 27 February 2017.

16. A Solicitors Regulation Authority ("SRA") Adjudication Panel sitting on 17 April 2017 resolved to intervene into the firm. As a result of the intervention, the Respondent's practising certificate had been suspended.

17. On 23 September 2015, the SRA received a report from Ms Katherine Ellis, solicitor and Legacy Officer at the People's Dispensary for Sick Animals ("the PDSA").

18. The Respondent was the sole Executor of the Estate of the late Mrs GP. His former business partner, Mr JS, who had been named as the other Executor of the Estate, had passed away on 5 October 2014.

19. The PDSA was one of six charities between whom the residual balance of Mrs GP's Estate was to be distributed equally in accordance with her Will.

20. The complaints from the PDSA were as follows:

- The Respondent had failed to sell Tesco shares which formed part of Mrs GP's estate "as soon as practicable" despite requests from the PDSA to do so. In the meantime the value of those shares had "substantially decreased" and as at the date of Ms Ellis' report remained unsold;
- The Respondent failed to answer "requests for various pieces of information";
- The Respondent failed to answer calls and "email and paper correspondence";
- The Respondent failed "to undertake certain actions within a specified timescale" despite having promised to do so;
- The Respondent had overseen the sale of the Estate property in February 2014 but did not inform the residuary beneficiaries of the fact of the sale until June 2014;
- The PDSA had to chase the Respondent for an interim payment from the Estate and that was not received until "late December 2014";
- The value of the interim payment made by the Respondent was "substantially less" than the Respondent had previously indicated;
- The Estate property was sold at an undervalue; it was sold in February 2014 for £485,000 but was sold on in December 2014 "for an amount in excess of £770,000";
- The PDSA requested a copy of the firm's complaints procedure "on more than one occasion" but was never provided with it;
- The Respondent told the PDSA that the firm did not have a complaints procedure following the death of his business partner, Mr JS.

21. Following receipt of the report from the PDSA, a number of emails dated from 8 April 2016 to 1 July 2016 passed between Mr Pardoe, (a Regulatory Supervisor in the SRA's Supervision Department) and the Respondent. Mr Pardoe required the Respondent to respond to a number of allegations arising from the PDSA report. Thereafter Mr Pardoe commissioned an inspection of the firm to investigate.

22. Subsequently, on 31 August 2016, the FI Officer commenced an inspection of the firm and produced the FI Report dated 27 February 2017.

<u>The Estate of the late Mrs GP</u>

23. Mrs GP executed her last Will on 21 December 2011. Under the Will, her residuary estate was to be divided equally amongst the following six charities:

- The Horse Trust;
- The PDSA;

- The RSPCA;
- Cats Protection;
- The Donkey Sanctuary;
- Cancer Research UK.

24. Mrs GP died on 10 October 2013. Her Will named the Respondent and his former business partner, Mr JS, as her Executors. The Respondent issued a Client Care letter dated 11 October 2013.

25. The Inheritance Tax Form submitted by the Respondent dated 8 November 2013 provided a gross value of Mrs GP's Estate in the sum of £1,845,245.00. The Estate included a property valued at £490,000, funds held in a bank account totalling £1,085.00 and 380,574 Tesco Shares valued at £1,354,160.

26. On 11 November 2013, the firm wrote to each of the charities, notifying them that they had been left a share of Mrs GP's estate. In the letter to the PDSA, the Respondent stated:

> "By the Deceased's Will, a copy of which we enclose herewith, your Charity has been left a one sixth share of her residuary Estate. We estimate that this will be in the region of £250,000."

27. The Grant of Probate was issued out of The District Probate Registry at Oxford in favour of the Respondent and Mr JS on 25 November 2013. The net value of the Estate was stated to be £1,827,103.

28. The sale of the late Mrs GP's property completed on 24 February 2014 and after that the sale proceeds in the sum of £485,099 were transferred into the firm's client account.

29. As at the date of the FI Report, matters relating to the late Mrs GP's Estate had still not been finalised. In particular, the Tesco shares remained unsold and therefore their value had not been realised.

Allegation 1.1
Unsecured loan to Miss W - £120,838.01 on 27 February 2014

30. On 19 August 2013, the Respondent was instructed to act on behalf of Miss W in the sale of her property at 2 CG for £179,950.00 and on her purchase of a property at 20 B Lane for £249,950.00.

31. There was a mortgage registered against 2 CG and the amount to be repaid to the lender, Halifax, on the date of completion was £120,838.01.

32. The client ledger showed the amount of £120,838.01 was paid out of client account of the Estate of the late Mrs GP on 27 February 2014 with the matter description being "Halifax."

33. The client matter file for Miss W showed that she had arranged a mortgage with Nationwide Building Society towards the purchase of 20 B Lane. Nationwide was represented by ONP Solicitors.

34. The FI Officer found that the mortgage funds were not received from Nationwide prior to the completion of Miss W's purchase. She also found that there was no explanation on the client file as to why those mortgage funds had not been received. She noted that there was no communication with the client and/or ONP Solicitors concerning a delay in receipt of funds.

35. The completion of Miss W's sale of 2 CG took place on 7 February 2014. Her client ledger showed that £162,205.87 was received into client account on the same day with the description, "07/02/2014 – [WWR] - SALE PRICE."

36. The completion funds were allocated to the purchase ledger on the same date with the description, "07/02/2014 - W154/1 >154/2 FOR PURCHASE."

37. Miss W's purchase of 20 B Lane completed on 7 February 2014. The entry on her client ledger dated 7 February 2014 stated "07/02/2014 – [PB & T] P.PRICE" with the amount of £232,045.00 then being debited from client account.

38. On the same date, the Respondent sent an email at 12:42, to the vendor's solicitors which stated:

> "I have a delay on funds release from mortgagees. You will therefore receive funds twice, not today and possibly a week or more. If I send the funds to complete on a bridging basis can you undertake to return them to my firm?"

39. In a letter to ONP Solicitors dated 2 May 2014, the Respondent stated in relation to the source of the completion funds:

> "13. The balance of the funds came from the sale of Miss [W]s existing property and balance from her and in view of need to complete the balance of the funding was provided through the writer on private bridging finance arrangement."

40. The FI Officer noted that there was no evidence on the file of a "private bridging finance arrangement" and that monies required to complete on Miss W's conveyancing matter had been taken from monies belonging to the Estate of the late Mrs GP. Similarly, there was no evidence to show that the Respondent had told Miss W of the source of the funds for the loan. Furthermore, Form CH1 Legal Charge of a Registered Estate showed that the Respondent was the lender of the £120,838.01 when that was not the case.

41. On 20 June 2014, £174,340.00 was paid into the firm's client account from ONP Solicitors. The FI Officer found no correspondence on the client matter file relating to that receipt.

42. The ledger also showed that on 18 December 2014, £51,296.05 was paid to the Respondent's firm with the matter description, "18/12/2014 027335 JK REPAYMENT OF LOAN".

43. On the same date, a transfer was made from the ledger relating to Miss W's client matter to the client matter of the Estate of the late Mrs GP in the sum of £120,838.01.

44. The FI Officer discussed the loan of the late Mrs GP's Estate with the Respondent. He stated:

> "…… they were supposed to have been short terms loans, whilst awaiting funds from the Nationwide."

45. The Respondent stated he believed that he had acted in the best interests of the Estate as he had an 'unregistered charge' against the property of Miss W and that, as sole Executor of the Estate of the late Mrs GP, he thought that he was allowed to loan the funds as he had not seen it to be a risk and thought it would only be a short term loan. The Respondent also said that he had discussed the matter with his accountants and 'they said okay'. The FI Officer did not see any documentation to confirm this.

46. In an email dated 12 December 2016 to the FI Officer the Respondent explained in relation to the loan to Miss W as follows:

- He said that he had not acted for Nationwide who had been separately represented;
- He said that he understood everything was in place regarding the mortgage "but when it came it to it they could not release the funds";
- He said that the transaction would have been in difficulties had the matter not proceeded and that "exchange did take place in good faith on the basis that mortgage funds would be available";
- He said that Ms W had been in a vulnerable position due to her pregnancy and that as such a decision was taken to assist;
- He said that he had carried out due diligence and that he had also acted for Miss W's father, mother and brother in the past;
- He said that the "CH1 was attended and signed in person and it was explained fully verbally and she was aware of the situation in this respect";
- He said that the "CH1 was executed but not registered as the funds were replaced by those made available through Nationwide."

47. During an interview between the FI Officer and the Respondent which took place on 6 February 2017 the Respondent stated he did not think it was misleading not to inform the beneficiaries about the unsecured loan to Miss W. He stated he thought it would be "extremely short term" and that it was:

> "….. covered … 100% by the charges, even though they weren't registered ….. basically they got replaced with the funds …. So I didn't consider there was any risk …"

48. During the interview the Respondent also made reference to:

- "Weird issues" on the part of the Nationwide which meant that funds were not forthcoming although the Nationwide had originally indicated that the matter would be able to proceed;
- The Respondent could not recall, when asked by the FI Officer, what those issues were but said that there was a "hiccup on the papers";
- He said that ONP Solicitors told him that there was going to be a delay;
- He said that he informed Miss W on the telephone that there was going to be a delay;
- He said that he agreed to provide a loan but on the basis that Miss W signed a Form CH1;
- The Respondent said that the matter was discussed in person and in the office and that that was the reason why there was no documentation evidencing what was said;
- When asked by the FI Officer what would have happened had the Respondent not loaned the funds, he said that Miss W would have defaulted on her purchase, which would have been a "massive inconvenience" for her;
- When asked by the FI Officer if completion could have been moved back a week, the Respondent said that, for personal reasons, Miss W did not want to move the completion date back because she was heavily pregnant;
- The Respondent confirmed that Miss W's mortgage application was still proceeding at the time of completion and that ONP Solicitors were told that the funds were being covered "short term";
- The Respondent told the FI Officer that the cause of the delay was not explained to him;
- When asked by the FI Officer why he did not charge interest on the loan, the Respondent replied, "...the interest would have been minimal you know if it had been on the …. if it had been… you know invested..."
- The Respondent indicated that he knew Miss W very well and that he had acted for her mother and father "for years";
- He stated that Miss W's father "didn't have the funds available to help his daughter...";

- He accepted that he did not have any security for the loan for the four months during which he was waiting for the funds to come through;

- When asked what he did during the intervening four months to make certain that Miss W did not sell the property, the Respondent said that he undertook some renewed searches;

- When Ms Bridges referred to the fact that she had not seen any renewed searches on the Miss W file, the Respondent answered "...I might have just checked on the Land Registry, done an office...";

- When asked by the FI Officer if he considered what he had done to be "a normal thing for a solicitor to do," the Respondent answered, "...it was abnormal";

- The Respondent said, "I wouldn't put myself in the same situation ever again";

- When questioned by the FI Officer regarding the absence of a loan agreement, the Respondent said that the loan agreement was the Form CH1;

- The Respondent accepted that there was a period of some months when the property was unregistered;

- When asked by the FI Officer if he thought his conduct was honest, the Respondent replied, "yeah";

- When asked by the FI Officer whether he thought his conduct was "conduct that another solicitor would follow or accept as reasonable," the Respondent replied, "I don't know. I don't know."

<u>Unsecured loan to Mr and Mrs B - £250,000.00 on 11 March 2014</u>

49. The FI Officer stated she requested the file of papers relating to the Mr and Mrs B matter on four separate occasions between 7 September 2016 and 23 January 2017. The Respondent stated the files were missing and despite an intensive search for them, they could not be located. He made reference to the possibility that the files were misplaced and may have been moved during an office redecoration. He said he would continue to look for them and if they were discovered, the paperwork would be produced.

50. During the interview with the FI Officer and the Respondent on 6 February 2017, the FI Officer again asked the Respondent where Mr and Mrs B's file was. The Respondent stated he had not been in the office full time, that the file was somewhere in the office but did occasionally go out of the office for working. He was asked if part of the file would be on the computer such as letters written and he replied they would but were deleted after a while. The Respondent failed to provide the FI Officer with the file for Mr and Mrs B.

51. From a review of Mr and Mrs B's client ledgers, the FI Officer was able to ascertain that the firm was instructed to act on behalf of Mr and Mrs B in respect of their sale of 18 J Street for £235,000.00 and their purchase of 7 P Grove for £315,000.00.

52. The sale of the property completed on 11 March 2014 and the client ledger contained an entry which stated: "11/03/2014 T/T [B] SOLICITORS - BAL SALE PRICE £235,000.00".

53. On 28 March 2014, out of the sale proceeds £210,116.79 was sent to Nationwide to discharge the mortgage on the property, with the matter description on the ledger, "28/03/2014 NATIONWIDE - MTGE DISCHARG £210,116.79".

54. The purchase of 7 P Grove also completed on 11 March 2014. £315,000.00 was sent to the vendor's solicitors on that date. However, on 11 March 2014, the purchase ledger was credited with £250,000.00 with the matter description, "11/03/2014 TRF TO [B] RE CH1 CHGE DOC £250,000.00." There was a corresponding debit entry on the ledger relating to the Estate of the late Mrs GP on the same date with the same description, "11/03/2014 TRF TO [B] RE CH1 CHGE DOC £250,000.00."

55. On the ledger for the Estate of the late Mrs GP, the Respondent had made a costs transfer on 25 March 2014 in the sum of £60,000. He also made another costs transfer on 20 June 2014 in the sum of £11,750.

56. On the ledger for Mr and Mrs B, the sum of £239,914.00 was received from ONP Solicitors on 3 November 2014.

57. On 15 December 2014 £250,000.00 was transferred back to the matter relating to the Estate of the late Mrs GP with the description "15/12/2014 CL-CL B238/2 > P52/3 TO REPAY LOAN £250,000.00". This was some nine months after the loan monies had been taken from those funds.

58. In an email dated 7 September 2016 the FI Officer asked the Respondent "to provide a background to his decision to loan the funds to Mr and Mrs B." The Respondent replied by an email dated 12 December 2016 stating:

- He had not acted for Nationwide;
- He "had every reason to believe that the finance was in place...but then it became apparent from their solicitors that Nationwide were not in a position to release the funds;"
- Mr and Mrs B had committed to the purchase in good faith;
- He referred to "usual due diligence in connection with confirmation of identity and mortgage arranged via brokers";
- Mr and Mrs B had attended personally to deal with the execution of the Form CH1 and they were aware that funds were being provided to them "on short-term basis with the mortgage registerable if alternative funding was not received";
- The Form CH1 had not been registered at HM Land Registry "as funding was replaced by that supplied by Nationwide";

- Despite searching, he could still not find the file of papers relating to Mr and Mrs B's matter.

59. During the interview between the FI Officer and the Respondent which took place on 6 February 2017 the Respondent stated:

- He thought that on the Mr and Mrs B matter, a new mortgage offer had to be issued;

- Mr and Mrs B had to provide further documentation to the Nationwide;

- When asked by the FI Officer what had caused the delay of over six months on this matter, the Respondent referred to the mortgage offer having been reissued but stated that the cause of the delay was not explained to him;

- When asked by the FI Officer if he believed he had acted with integrity in making the loan, and whether it was the right and proper thing for a solicitor, sole Executor to do, the Respondent said that, at the time, he didn't perceive "there was any risk essentially" and that his accountants had seen the documents and had not told him that he was not allowed to do what he did;

- When asked by the FI Officer whether he had perceived an increased risk with the Mr and Mrs B matter given that the same thing had happened on the Miss W matter not long before, the Respondent said he did not because "the mortgage people were saying 'oh this is gonna be sorted. In a few days we've got to do this that and the other...'"

60. The Respondent had therefore made two transfers from the Estate of the late Mrs GP, in his capacity as trustee, in circumstances in which the payments to the third parties were unconnected to the Estate of the late Mrs GP.

Allegation 1.2

61. Between November 2013 and December 2014 the charities made several requests for updates and interim payments. They were not advised that estate funds had been loaned to other clients of the firm.

62. The PDSA, one of the six beneficiaries, sent emails, letters and made calls to the Respondent on 25 March 2014, 9 June 2014, 23 June 2014, 29 July 2014, 18 August 2014, 26 September 2014, 6 October 2014, 12 November 2014, 4 December 2014, 15 December 2014 and 22 December 2014.

63. During the course of the interview between the FI Officer and the Respondent on 6 February 2017, the FI Officer questioned the Respondent about the fact that he had not disclosed the loans to the beneficiaries. The Respondent accepted he had not informed them. He stated the loans were protected and were intended to be short term. He also accepted that if he had told the beneficiaries about the loans:

> "….. they probably wouldn't have liked it."

Allegation 1.3

64. On 11 November 2013 the Respondent wrote to each of the six charities notifying them that they had each been left a share of the late Mrs GP's Estate.

65. The Solicitor and Legacy Officer at the PDSA, responded on 14 November 2013 with the following request:

> "If the estate includes a freehold or leasehold property, may I trouble you for details of the selling agents' marketing recommendations, and a note of the terms of their commission? ...
>
> If the estate includes stocks and shares, please arrange to sell PDSA's share of the investments as bare trustee on our behalf in order that we might receive our entitlement in cash once a grant of probate has been obtained."

66. As at 8 November 2013, the Tesco shares were valued at £1,354,160.00.

67. The PDSA wrote to the Respondent on 21 January 2014 referring to the Grant of Probate, which was issued on 25 November 2013, and requesting a schedule of assets and liabilities as at the date of death. No schedule of assets and liabilities was provided.

68. The Respondent wrote to the PDSA on 28 January 2014 indicating that the sale of the late Mrs GP's property had been agreed and that the conveyancing process was "well underway" with the agents "anticipating exchange" shortly. He also stated that the shares, the other significant asset of the Estate, had not yet been disposed of because it had not been possible to locate the share certificates and consequently a quotation was awaited from insurance brokers for an indemnity policy. The Respondent sent a similar letter to Cancer Research UK on 13 February 2014.

69. The late Mrs GP's property was sold on 27 February 2014 for £485,099 but the PDSA was not informed of that fact until 30 June 2014.

70. The PDSA sent a further letter on 25 March 2014 requesting, once again, a schedule of assets and liabilities. The Respondent did not provide this.

71. On 2 April 2014, Zurich gave an indication to the Respondent that they would be able to provide policy cover for the Tesco shares for £15,635.00. On 4 April 2014, the firm wrote to Equniti (with whom the Tesco shares were registered) requesting information that was needed to obtain the policy from Zurich.

72. The FI Officer was not able to determine from the client matter file she reviewed whether the information requested was ever received from Zurich. Moreover, she was neither able to make certain why the Respondent did not proceed with obtaining the policy from Zurich, nor what steps he had taken since April 2014 to obtain an indemnity policy.

73. The PDSA wrote to the Respondent on 9 June 2014 requesting an update on the administration and asking him whether he was in a position at that stage to make an

interim distribution. No response was received to the letter. A further chase up letter was sent by the PDSA to the Respondent on 23 June 2014 but no response was received.

74. The PDSA made a number of further attempts to seek an update from the Respondent between 23 June 2014 and 17 October 2014. However, there was still no reply. On 26 September 2014 the PDSA requested a copy of the firm's complaints procedure. No response was received.

75. On 17 October 2014, the PDSA requested a full update with regard to the administration of the estate within 21 days and stated a formal complaint may be made if the full update requested was not provided by then. On 12 November 2014 the PDSA telephoned the Respondent and he agreed to make an interim distribution of £100,000 to each of the residuary beneficiaries by mid-December 2014. He also informed the PDSA that his firm did not have a complaints procedure.

76. The PDSA made a number of further telephone calls to the Respondent during December 2014 to remind him of the interim distribution he had promised to make.

77. In an email dated 22 December 2014 the PDSA informed the Respondent that unless the PDSA received the interim distribution in the sum of £100,000 by the end of the year then they would have no choice but to report the Respondent and his firm to the SRA.

78. The PDSA received an interim distribution of £70,000 on 29 December 2014. The client ledger showed that the co-beneficiaries received their distributions during the mid-late part of January 2015.

79. The RSPCA had made a formal complaint to the Respondent in a letter dated 11 September 2015. There was no response so a further letter was sent on 7 October 2015. The Respondent replied on 20 October 2015. On 15 February 2016 the RSPCA requested confirmation that the Indemnity Policy had been obtained and a copy of the file of papers relating to the matter of the late Mrs GP.

80. The Respondent sent an email dated 4 March 2016 stating:

> "Apologies for some delay in responding but the broker dealing with the matter has been away in South Africa but has just returned so I will be speaking to him to ascertain the current position and when I have that I will report to you further next week."

81. The RSPCA sent two further emails, on 15 March 2016 and 29 March 2016 expressing dissatisfaction with the Respondent's conduct of the matter. The Respondent replied on 5 April 2016 stating that he had not been well and asking whether an extension could be agreed to 15th/18th.

82. The RSPCA replied by email on 6 April 2016 informing the Respondent that if he did not respond by 4pm on Friday 15th April 2016 in relation to the shares and with a copy of the file of papers relating to the Estate of the late Mrs GP, then a complaint

would be submitted to the SRA on Monday 18 April 2016. The Respondent replied by email on 15 April 2016 at 15:42 with an update on the position.

83. On 1 June 2016, a firm of solicitors, W Solicitors wrote to the Respondent stating that they were representing the interests of all six beneficiaries and setting out their concerns relating to the shares. They requested a reply to five specific questions within 7 days. The Respondent replied on 22 June 2016.

84. During the interview with the FI Officer on 6 February 2017, the Respondent was asked about the delay in administering the Estate of the late Mrs GP. The Respondent stated he had chased up Equiniti and/or Zurich about the Indemnity Policy, by telephoning them several times but said he had not made a record of the conversations.

85. The Respondent accepted it might have been possible to obtain the indemnity policy more quickly but stated it would still have "months and months". The Respondent also stated that he had not said the firm did not have a complaints procedure but that when Mr JS was at the firm, complaints would have gone to him. He also stated the firm's complaints procedure was set out in the client care letter.

86. The FI Officer asked the Respondent whether he thought he had misled the RSPCA in his email to them of 15 April 2016 by stating that "the insurance position is also in hand" when he had not notified his insurers as at that date, in response to a question about whether he had put his insurers on notice of a potential claim.

87. The Respondent replied he had given an indication that he intended to report to his insurers but that he did not think he had been dishonest. He stated he had not intended to mislead. During the course of the interview, the Respondent stated:

- a policy had been obtained and a new share certificate issued; and
- as at that date he needed to dispose of the shares and then the estate could be finalised; and
- he envisaged that he would finalise the estate within a couple of weeks.

88. The Respondent did not provide the FI Officer with a copy of the share certificate. As at 9 February 2017, the Equiniti "Share Price Calculator" had calculated 380,574 Tesco shares as having a value of £738,313.56. In his letter to the SRA dated 6 April 2017, the Respondent stated the shareholding had been disposed of at 191.75 per share.

Allegation 1.4

89. The Respondent was an experienced solicitor and the COLP/COFA of the firm. In September and October 2014, when the PDSA requested a copy of the firm's complaints procedure and indicated it would make a formal complaint, the Respondent was alerted to the fact that his actions may give rise to a negligence claim.

90. On 26 September 2015, the RSPCA had made a formal complaint and on 6 April 2016 had threatened to report the Respondent to the SRA. The Respondent was again alerted to the fact that his actions may give rise to a negligence claim.

91. On 15 April 2016 the Respondent informed the RSPCA that "the insurance position is in hand" when he had not reported the matter to insurers. He did not report the matter until 13 December 2016.

92. The Respondent continued to act as Executor of the Estate of the late Mrs GP throughout this period.

Allegation 1.5

93. The Respondent did not report the breaches of the SRA Principles 2011 or the breaches of the SRA Accounts Rules to the SRA. This was in breach of his obligations as the firm's COLP/COFA, and it was alleged in breach of his obligations to run his business effectively and act with integrity.

94. On 6 April 2017, the Respondent wrote to the SRA with his response to the allegations as follows:

- He said that the late Mrs GP and her family had been long-established clients of the firm.

- He said that there was no under-sale of the late Mrs GP's property which had been in a poor condition without any modernisation which was made worse by "haphazard adaptations" to accommodate a live-in carer. He said the property been professionally valued and extensively marketed.

- He said the loans were made in good faith to parties who were known to the firm and who had no other lending facilities available and the firm was in control of the transactions. The Respondent stated that Rule 20 referred to client approval and, as far as beneficiaries were concerned, they were not clients.

- The Form CH1 was written in favour of the Respondent and executed on the basis that he was a trustee on the Miss W matter as there were personal monies being loaned as well as those from the estate. He said that all monies were returned and no loss was incurred.

- He said that W Solicitors who were acting for the beneficiaries, did after a period from first contact offer to assist at the beginning of July and that the process took "some five months."

- The Respondent stated the value of the shares fell quite suddenly. On 6 October 2014 the value was down to 169.35 per share. The shareholding was disposed of at 191.75 per share.

- He said that at no stage was it suggested by W Solicitors or the FI Officer he should not continue with the administration of the Estate.

- The Respondent stated that if any overcharging had taken place that was capable of being addressed by way of a refund to the estate, but that costs were taken after a large amount of work had been done. The Respondent stated there had been no obligation to consult with the beneficiaries, no loss had occurred and the estate had been protected throughout.

Witnesses

95. The following witnesses gave evidence:

- Lisa Bridges (SRA Forensic Investigation Officer)
- Katherine Ellis (Solicitor and Legacy Manager at the British Heart Foundation)
- Matthew Glaze (Senior Legacy Officer at the PDSA)
- Katherine Woolf (Legacy Manager at the RSPCA)
- Stephen Richards (solicitor at W Solicitors)

Findings of Fact and Law

96. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of the Applicant. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.

97. **Allegation 1.1: The Respondent made unsecured loans on 27 February 2014 and 11 March 2014, together totalling £370,383.01, from funds the firm was holding on trust for the beneficiaries of the Estate of the late Mrs GP, to two other unrelated clients of the firm in circumstances in which he had no authority to do so and in breach of all or alternatively any of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and in breach of Rules 6.1 and 20.1(b) of the SRA Accounts Rules 2011.**

Allegation 1.2: The Respondent failed to disclose to the beneficiaries of the Estate of the late Mrs GP the fact that he had made unsecured loans on 27 February 2014 and 11 March 2014, together totalling £370,383.01, from the funds the firm was holding on trust for the beneficiaries of the Estate of the late Mrs GP, to two other unrelated clients of the firm, in breach of all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

97.1 Ms Carpenter took the Tribunal carefully through the various client ledgers and documents to show how the Respondent had transferred funds from the ledger for the Estate of the late Mrs GP on 27 February 2014 and 11 March 2014 to Miss W and Mr and Mrs B respectively. £120,838.01 had been used for the benefit of Miss W, and £250,000 had been used for the benefit of Mr and Mrs B, to enable each of them to complete purchase transactions at a time when insufficient funds were showing on their respective client ledgers.

97.2 The Tribunal also heard from Ms Lisa Bridges, the FI Officer from the SRA. She confirmed that she had requested the file for Mr and Mrs B from the Respondent four times but it had not been produced. The Respondent had informed her that he had redecorated his office and that the file was somewhere in the office but could not be found.

97.3 The Tribunal heard from witnesses from each of the beneficiary charities. Ms Ellis, on behalf of the British Heart Foundation, confirmed nobody at the charity was aware of the loans being made and that had she been asked for consent, she would have refused to allow the funds being loaned.

97.4 The Tribunal also heard from Matthew Glaze, the Senior Legacy Officer at the PDSA and Katherine Woolf, the Legacy Administration Manager at the RSPCA. Each of them confirmed their charity had not been made aware of the loans that had been made. Ms Woolf stated if she had been told the Respondent had loaned monies to others from the Estate funds, she would have been "horrified" as the charity relied heavily on legacy income and manipulating that legacy would be quite shocking to the charity. Each of their witness statements provided details of the number of times each respective charity had contacted the Respondent with concerns about the way in which the Estate of the late Mrs GP had been administered and the responses received.

97.5 The Respondent in his Response dated 24 November 2017 did not deny the loans had been made. He stated they had been secured by way of Forms CH1 which had been executed by the borrowers. Those CH1s were capable of registration although were not registered. He stated they had been held pending completion of the Nationwide mortgages. He confirmed the new owners were not registered until after this and the repayment of the monies. He stated there was no risk as the borrowers could not deal with the properties and all the monies were repaid.

97.6 The Respondent stated in his Response that all the charities were informed of the Will dispositions but that they were not clients so had no right to dictate or require production of papers. He stated there was no need to obtain consent as the charities were not clients and the monies were protected by his position as an Executor. He stated "It was a totally manageable situation".

97.7 In his letter of 20 April 2018 to the Tribunal the Respondent stated he conceded the matters set out in the SRA's Skeleton Argument. He made reference to his health issues and said he accepted formal responsibility for his failings.

97.8 The Tribunal found all the witnesses to be credible. The Tribunal considered carefully all the documents it had been referred to and the various client ledgers for the Estate of the late Mrs GP, Miss W and Mr and Mrs B. It was clear that the Respondent had used funds by way of loans from the Estate of the late Mrs GP for the benefit of unrelated clients, Miss W, and Mr and Mrs B, indeed the Respondent did not deny this. He had not liased with the solicitors acting for the mortgage company on each of the purchase transactions and as a result had exchanged contracts and agreed a completion date without ensuring funds would be in place to complete the transactions. When the funds were not available to complete the purchases, the Respondent chose to use funds from the Estate of the late Mrs GP as loans to Miss W

and Mr and Mrs B. They were repaid to Mrs GP's ledger in December 2014, after funds were received from the mortgage company some 9 months later.

97.9 Although a Form CH1 had been completed by the borrowers of each purchase, the Respondent was named as the lender and he did not register those Charges. As such the loans were clearly unsecured and placed both the Estate of the late Mrs GP at risk as well as Miss W and Mrs and Mrs B whose interests in their new properties had not been protected by registration. The Tribunal also noted no formal loan agreements had been entered into and no interest had been paid on the loans.

97.10 The Tribunal was satisfied having heard from each of the witnesses that the Respondent had no authority to make the loans, notwithstanding his position as an Executor. It was clear none of the charities were aware the loans had been made until they were informed by the SRA many months later. The Respondent accepted in his Response that he had not obtained the consent of the beneficiaries.

97.11 The Tribunal did not accept his assertion that he was not required to obtain consent as the charities were not clients of the firm. The Tribunal was satisfied from the various documents provided and the evidence of the witnesses from the charities that the Respondent had been asked for updates on numerous occasions but had not disclosed the loans had been made. He had failed to provide a Schedule of assets and liabilities despite a number of requests to do so. If he had provided a Schedule, it would have shown that the loans had been made. During his interview with the FI Officer on 6 February 2017, the Respondent accepted the beneficiaries would not have been pleased had they been aware. Furthermore when the Respondent wrote to the purchasers and the mortgage company, he led them to believe the loans had been made by him in his personal capacity. He had therefore not been frank and open with them either.

97.12 The Tribunal had been referred to the appealed cases of Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366 which set out the definition of integrity. The Court of Appeal held in those cases that integrity expressed the higher standards which society expects from professional persons and which the professions expect from their own members. The underlying rationale was that professionals had a privileged and trusted role in society and were required to live up to their own professional standards.

97.13 The Tribunal was satisfied the Respondent's conduct in using funds from the late Mrs GP's Estate as loans for unrelated clients was a breach of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and breached Rules 6.1 and 20.1(b) of the SRA Accounts Rules 2011. The Respondent had made improper payments from client account and had failed to ensure compliance with the SRA Accounts Rules. By lending money from one client to another unrelated client without authority, the Respondent had acted with a lack of integrity. He had also placed the interests of both the beneficiaries of the Estate of the late Mrs GP, and Miss W and Mr and Mrs B at risk by failing to register both the loans and the interests of the new purchasers.

97.14 The Tribunal had been referred to correspondence from Mr B to the Respondent in April 2014 which showed he was very unhappy that his purchase had completed without a mortgage and he had not been registered as the new owner. It was clear that

the Respondent had not acted in the best interests of each client or provided a proper standard of service to each client. The Tribunal was satisfied that the Respondent had behaved in a way that did not maintain the trust the public placed in him or in the profession and he had failed to protect client money and assets. The Tribunal found Allegation 1.1 proved.

97.15 The Tribunal was also satisfied that the Respondent had not been open and frank with the charities. As such he had acted with a lack of integrity. A solicitor acting properly would, on receipt of correspondence from beneficiaries who were actively seeking information, have told them that he had made loans on behalf of the Estate to Miss W and Mr and Mrs B together with details of the repayment terms. He would have been open and frank about the situation. Failure to do so was acting with a lack of integrity and did not maintain the trust the public placed in the Respondent and in the provision of legal services. The Respondent had breached Principles 2 and 6 of the SRA Principles 2011. The Tribunal found Allegation 1.2 proved.

98. **Allegation 1.3: Between October 2013 and February 2017, the Respondent unreasonably delayed in administering the Estate of the late Mrs GP in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011.**

98.1 Ms Carpenter submitted there had been two delays in the administration of the Estate. Firstly a delay in making the interim distribution to the charities due to the loans that had been made. Secondly, the delay in selling the Tesco shares, which were a major asset of the Estate, as the share certificates could not be found and the Respondent needed to obtain an indemnity policy. Ms Carpenter submitted he had taken an unreasonable time to do so.

98.2 Ms Carpenter submitted that because the Respondent had loaned the sum of £370,383.01 from the Estate of the late Mrs GP he was unable to distribute the legacies to the charities. She submitted he had delayed with the distribution of the funds because he could not immediately pay the money. It was only when the loans were repaid in December 2014 that the Respondent made the first interim payment to one of the charity beneficiaries with the remaining charities receiving interim payments in January 2015.

98.3 Ms Carpenter further submitted it was only when the Respondent was threatened with being reported to the SRA that he made some distribution of the funds. Even then, Ms Carpenter submitted, the Respondent made excuses rather than reveal what he had actually done. Nor did he explain the monies had been received from the ledger of another client. She submitted he was simply seeking to rescue himself from a professional negligence situation.

98.4 In relation to the Tesco shares, Ms Carpenter submitted this issue had arisen before Mrs GP had passed away as the missing share certificates had been discovered in August 2013 when the firm had been dealing with Mrs GP's Power of Attorney. Letters had been sent in July 2013 enquiring about an indemnity policy. Mrs GP had died in October 2013. Ms Carpenter submitted the charities had suffered loss as the value of the Tesco shares had fallen. Whilst she accepted the Respondent could not be blamed for the drop in the value of the shares over a short period of time, she submitted this particular loss had been incurred over an unreasonably long period.

98.5 The Tribunal had already heard evidence from Mr Glaze, Ms Ellis and Ms Woolf on behalf of the various charities. They had all confirmed in their witness statements that they had written to the Respondent multiple times to find out what was happening with the administration of the Estate. They had not received satisfactory explanations and had eventually instructed W Solicitors in May 2016 to progress matters for them.

98.6 The Tribunal had heard evidence from Stephen Richards, who was a partner at W Solicitors. He confirmed that the late Mrs GP's Will did not name the Respondent and Mr JS specifically as Executors, but simply appointed the partners at the firm as Executors. In his witness statement, Mr Richards confirmed he had been instructed by the RSPCA, the PDSA, the Cats Protection, the Donkey Sanctuary and the Horse Trust in May 2016 as they had experienced problems concerning the 380,574 shares of 5p each in Tesco Plc ("the shares") which had formed part of the late Mrs GP's Estate. By this time two years had passed since probate had been granted and the Respondent had not obtained the replacement share certificates therefore the shares had not been sold. Mr Richards stated he had written to the Respondent on 1 June 2016 and described how he had liased with him to resolve the issue. A replacement share certificate was issued on 1 November 2016 to enable the Respondent to sell the shares.

98.7 The Respondent, in his Response dated 24 November 2017, stated that the charities were informed about the difficulties concerning the shares and the Estate generally. He stated the delay in the shares was due to no share certificates being available and extreme difficulties in obtaining the required indemnity insurance. He stated the shares could not be disposed of as there was uncertainty in their position due to the lack of share certificates, and probate had been obtained on the assumption that the shares could be proved and dealt with. The Respondent stated the process in obtaining the required insurance was extremely difficult. The offer made by Zurich was subject to criteria being met. He also stated that other avenues of enquiry were actively underway when W Solicitors became involved but were not productive. He stated that a policy had been processed by SD but it was not without considerable delay, which had been incurred by SD, and which would have still progressed issues beyond the period of the share value dropping.

98.8 In his Response, the Respondent accepted some delay had occurred. He said this had been caused by the sudden death of his business partner Mr JS and by his own ill-health. He stated that whilst there had been regrettable delay, it was not such that would have saved the value of the Tesco shares which had recovered somewhat prior to disposal.

98.9 The Tribunal accepted the evidence of the various witnesses it had heard from. Mrs GP's house was sold on 24 February 2014 and therefore the Respondent was in a position to make interim payments to the beneficiaries shortly after this date as the sale proceeds had been received. However, instead of doing this, he used the funds from the sale proceeds to provide loans to Miss W and Mr and Mrs B. Accordingly the monies were no longer available and could not be distributed to the charity beneficiaries. It was only when those loans were repaid by the mortgage companies of Miss W and Mr and Mrs B in December 2014, some 10 months later, when the Respondent made the first interim payment.

98.10 Mrs GP had passed away in October 2013. The Respondent did not distribute all the assets of the Estate until April 2017 when the charity beneficiaries received cheques for their share of the sale proceeds of the Tesco shares. Even after he had received the indemnity policy in November 2016, it was not until February 2017 that he actually sold the shares, by which time their value had decreased substantially. This was a delay of 3½ years.

98.11 Whilst the Respondent claimed he had approached other brokers and insurers, he was unable to provide any evidence of this to the FI Officer. It was only when the FI Officer examined the file of papers for the Estate of the late Mrs GP that it became apparent some approaches had been made in summer 2013 and January 2014 but these were not progressed. In January 2016 an approach was made to another broker. Nothing then happened until Mr Richards was instructed by the charities and became involved in June 2016. It was particularly pertinent that once Mr Richards became involved, the issues around the share certificates and the indemnity policy were resolved within five months. It was also relevant that the Respondent had been aware of the issue regarding the missing share certificates before Mrs GP died so he knew this needed to be resolved before those shares could be sold.

98.12 The Tribunal was satisfied that there had been an inordinate amount of delay in relation to the administration of the Estate, both on the basis of making interim distributions to the beneficiaries from the proceeds of sale of Mrs GP's house, and also in obtaining an indemnity policy for the Tesco shares and in selling those shares. It was not acceptable that the sale proceeds were received in February 2014 but were not distributed until December 2014, particularly in light of the Respondent's actions with regard to those funds during the period in between. Nor was it acceptable that it had taken him 3½ years to resolve the issues concerning the share certificates and the indemnity policy when it was quite clear that this should have taken approximately 5-6 months at most.

98.13 The Tribunal was satisfied that by allowing these lengthy delays which had been incurred because he had used the late Mrs GP's sale proceeds in an unauthorised manner, the Respondent had failed to act with integrity. Whilst the charity beneficiaries may not have been clients of the firm, the Respondent, as an Executor, had a duty to the late Mrs GP and a duty to the beneficiaries to administer the Estate in a timely manner. He had failed to do this and had therefore not provided a proper service to the late Mrs GP's Estate, or acted in her best interests. He had failed to provide a proper standard of service to her Estate and in doing so had behaved in a way that did not maintain the trust placed in him and in the provision of legal services. He had breached Principles 2, 4, 5 and 6 of the SRA Principles 2011. The Tribunal found Allegation 1.3 proved.

99. **Allegation 1.4: The Respondent continued to act as Executor of the Estate of the late Mrs GP when aware that his actions may give rise to a claim in negligence and he should report the matter to his firm's insurers, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011.**

99.1 Ms Carpenter submitted the charity beneficiaries had suffered losses as the value of the Tesco shares had fallen quite substantially. She referred the Tribunal to the documents which showed that the charities had been writing to the Respondent over a

long period of time trying to progress matters but receiving no satisfactory response. Eventually in September/October 2014 the PDSA requested a copy of the firm's complaints procedure. In September 2015 the RSPCA made a complaint and threatened to report the Respondent to the SRA. Ms Carpenter submitted the Respondent knew by this time that a formal complaint may be made due to his considerable delays in both distributing the proceeds of sale from Mrs GP's property and in not progressing the obtaining of indemnity insurance for the Tesco shares, and that these were matters that could give rise to a negligence claim. However, Ms Carpenter submitted the Respondent continued to act as Executor when in fact he should have reported his conduct to his insurers.

99.2 The Respondent, in his Response dated 24 November 2011 stated negligence was denied as the loss in the Tesco shares value had occurred within 9/10 months of Mrs GP passing away. He stated at that time millions had been lost by numerous pension funds and the loss in value of the shares was due to the actions of Tesco management.

99.3 The Tribunal having considered the correspondence between the Respondent and the charities noted that he had been asked by the British Heart Foundation to provide a copy of the firm's complaints procedure in September/October 2014 but had failed to provide this. Indeed he informed Ms Ellis that his firm did not have a complaints procedure. This was denied by the Respondent during the interview with the FI Officer in February 2016 as he claimed the complaints procedure was set out in the firm's client care letter. However, the charities were beneficiaries so were unlikely to have received a copy of the client care letter.

99.4 Furthermore, a formal complaint was made by the RSPCA on 25 September 2015 informing the Respondent that a report may be made to the SRA. Further emails were sent by the RSPCA in March and April 2016 expressing dissatisfaction with the Respondent's conduct of the matter.

99.5 On 6 April 2016, the RSPCA had sent an email to the Respondent requesting a copy of the file of papers for the Estate of the late Mrs GP and an explanation as to why it had taken so long to deal with the missing share certificates. That email stated:

> "The IHT400 indicates that the shareholding in the estate had a value of £1,354,160 at [Mrs GP]'s date of death and I have calculated that today the same shareholding with Tesco plc is worth in the region of £717,000, which is a decrease of £637,160. This is a huge loss and you have failed to provide a reasonable explanation as to why the shareholding still has not been disposed of, some 2 and a half years after [Mrs GP] passed away. Please confirm that you have put your insurers on notice regarding this issue."

The email also stated that if a response was not received by 4pm on 15 April 2016, a complaint would be submitted to the SRA.

99.6 The Respondent had replied on 15 April 2016 at 15.42 stating:

> "I am already in correspondence with the SRA concerning this matter and the insurance position is also in hand."

In fact the Respondent had made no report to his insurers and he continued to deal with the estate as an Executor after this email had been received.

99.7 The Tribunal was satisfied that when the Respondent had used the sale proceeds from Mrs GP's property in February 2014 to make unauthorised loans to Miss W and Mr and Mrs B, he had not been properly carrying out his duties as an Executor. When he therefore received requests for the firm's complaints procedure and threats to report him to the SRA, he was alerted to the possibility of a negligence claim against his firm. By April 2016 he was specifically informed of the losses suffered and asked to report the matter to his insurers. He failed to do this until 13 December 2016, long after he had been asked to do so.

99.8 The Tribunal was satisfied the by continuing to act as Executor of the late Mrs GP's estate after he had received complaints and notice that the possibility of a claim should be reported to his insurers, the Respondent had acted with a lack of integrity, he had failed to act in the best interests of the Estate of the late Mrs GP, and he had failed to provide a proper standard of service to it. As could be seen from the emails from the various charities, his conduct had clearly not maintained the trust placed in him by the public or maintained the trust placed by the public in the provision of legal services. The Tribunal was satisfied he had breached Principles 2, 4, 5 and 6 of the SRA Principles 2011 and found Allegation 1.4 proved.

100. **Allegation 1.5: In his capacity as COLP and COFA of the firm, the Respondent did not report the material failures of the SRA Accounts Rules 2011 and the SRA Principles 2011 to the SRA, in breach of Rule 8.5 of the Authorisation Rules 2011 and in breach of all or alternatively any of Principles 2, 7 and 8 of the SRA Principles 2011 and thereby failed to achieve Outcome 10.3 of the SRA Code of Conduct 2011.**

100.1 Ms Carpenter submitted that it was quite clear the Respondent had breached the SRA Accounts Rules 2011 and the SRA Principles 2011 in a number of ways by virtue of his conduct as the Executor of the Estate of the late Mrs GP. She submitted he was the COLP and COFA of the firm and therefore had a duty to report these material failures to the SRA, but had failed to do so.

100.2 In his Response dated 24 November 2011 the Respondent simply stated:

> "In view of the above saw no reason to report."

He did not elaborate on this any further.

100.3 Rule 8.5 of the Authorisation Rules 2011 contains the provisions that apply to the COLP and COFA of authorised bodies. These include a duty to ensure compliance with the SRA Accounts Rules and a duty to report any material failures to the SRA.

100.4 Outcome 10.3 of the SRA Code of Conduct 2011 states:

> "You must achieve these outcomes …..

O(10.3) you notify the SRA promptly of any material changes to relevant information about you including ……. serious failure to comply with or achieve Principles, rules, outcome and other requirements of the Handbook".

100.5 The Respondent was the firm's COLP/COFA. He had made unauthorised loans to unrelated clients from the proceeds of sale of the late Mrs GP's property and had clearly breached Rules 6.1 and 20.1(b) of the SRA Accounts Rules 2011. He had also breached Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 by his conduct in the manner in which he had dealt with the administration of the late Mrs GP's Estate and the beneficiaries of that Estate, as well as the way he had dealt with the property transactions for Miss W and Mr and Mrs B. These were all material breaches which should have been reported to the SRA. The Tribunal was satisfied the Respondent had not reported the material failures and had thereby breached Rule 8.5 of the Authorisation Rules 2011. In so doing he had failed to achieve Outcome 10.3. He had acted with a lack of integrity (Principle 2), he had failed to comply with his legal and regulatory obligations (Principle 7) and he had failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles (Principle 8). The Tribunal found Allegation 1.5 proved.

101. **Allegation 1.6: In relation to allegations 1.1 - 1.3, it was further alleged that the conduct of the Respondent was dishonest.**

101.1 Ms Carpenter referred the Tribunal to the test of dishonesty contained in the case of Ivey v Genting Casinos (UK) Ltd [2017] 3 WLR 1212. She submitted the Tribunal must first ascertain the Respondent's knowledge and belief as to the facts at the time. Having done so, the Tribunal must then consider whether the Respondent's conduct would be regarded as dishonest by the standards of ordinary decent people.

101.2 Ms Carpenter submitted the Respondent had acted dishonestly in relation to Allegations 1.1-1.3. She submitted he had sought to conceal his conduct on the client ledgers in relation to the loans he had made, he had delayed the sale of the Tesco shares because he knew that once those shares were sold he would have to prepare final Estate accounts and he did not want to declare he had made loans from the Estate funds.

101.3 The Respondent in his letter to the Tribunal dated 20 April 2018 denied he had acted dishonestly. He stated the charitable beneficiaries had not suffered any loss.

101.4 The Tribunal considered firstly the Respondent's knowledge and belief of the facts at the material time. The Respondent was a solicitor with over 30 years of experience. As such he must have known that lending one client's money to another unrelated client without authority was not permissible. He had not liased with the solicitors acting for the lenders on the matters of Miss W and Mr and Mrs B about the receipt of mortgage funds in time for completion. Consequently he had agreed completion dates and found himself without sufficient funds to complete the purchases for Miss W and Mr and Mrs B on those dates. Therefore, in order to avoid those transactions failing, and a negligence claim against his firm, the Respondent had to find funds to complete the purchases on the completion dates. By this time the late Mrs GP's house had been sold and her funds were in client account awaiting distribution to the charity

beneficiaries. Instead of distributing those funds, the Respondent chose to use them improperly to finance the unrelated purchases of Miss W and Mr and Mrs B.

101.5 It was particularly pertinent that the ledgers for the Estate of the late Mrs GP, or Miss W or Mr and Mrs B were vague in the descriptions of entries on those ledgers and they did not properly reflect the true nature of the loans.

101.6 On the late Mrs GP's client ledger, there was a payment out of £120,838.01 dated 27 February 2014 which contained the description "Halifax". This implied that the monies had been paid to the lender to discharge the mortgage on Mrs GPs' property when in fact the money had been used to complete the purchase for Miss W.

101.7 On the client ledger for Miss W there was a payment received of £120,838.01 on 18 December 2014 described as "Repay Loan". On that same day there was an entry on the client ledger of the Estate of the late Mrs GP for the same amount which also stated "Repay Loan". There was no reference to the actual parties to the loan.

101.8 Mr and Mrs B's files were never produced to the FI Officer. On 11 March 2014 there was an entry on the client ledger for the late Mrs GP with a payment out of £250,000 with a description "TRF TO B … RE CH1 CHARGE DOC". On the same date the same amount was shown as a credit on the client ledger for Mr and Mrs B with the description "To [B] RE CH1 CHGE DOC".

101.9 Then on 15 December 2014 there was a payment out of Mr and Mrs B's client ledger for the sum of £250,000 with a description "To Repay Loan". On the same day there was an entry on the client ledger for the Estate of the late Mrs GP with the description "To Repay Loan". Again there was no reference to the actual parties to the loan.

101.10 Furthermore when the Respondent had corresponded with the solicitors acting for the sellers on the transactions for Miss W and Mr and Mrs B, he had referred to bridging finance being provided by himself. This was not true and he knew it was not true as he knew the loans had been made from the proceeds of sale of the late Mrs GP's house.

101.11 Most importantly, there were no loan agreements in place, neither of the loans were registered or properly protected and the beneficiaries of the Estate of the late Mrs GP were never informed about them. The two Form CH1s which the Respondent had obtained from Miss W and Mr and Mrs B described the Respondent as the lender in his personal capacity. A number of the beneficiaries had written to the Respondent on numerous occasions requiring updates on the progress of the administration of the Estate and asking various questions. The Respondent had delayed replying to those enquiries and when he did reply he did not provide the information requested because he would clearly have had to explain why the money from the sale of the late Mrs GP's property was not available for distribution.

101.12 The Tribunal was satisfied that the Respondent knew he should not have made the unsecured loans from the sale proceeds of the house of the late Mrs GP to finance the purchases for Miss W and Mr and Mrs B. He had done so for his own personal benefit to avoid a negligence claim against his firm in circumstances where he had failed to ensure sufficient funds were available to complete the purchases for Miss W

and Mr and Mrs B. This was evident from the manner in which he had concealed the true nature of the loans on the various client ledgers and also had concealed them from the parties involved in each of these matters. There were complaint emails from Mr B in April 2014 who was understandably concerned when he found out the purchase had been completed without his mortgage and the new property he had purchased had not been registered in his name.

101.13 The Respondent knew the sale proceeds should have been distributed between the beneficiaries and he concealed what he had done with the sale proceeds from those beneficiaries. In fact he did not even inform the beneficiaries that the property had been sold until at least June 2014 (4 months after the property had been sold).

101.14 The Tribunal had no doubt that the Respondent had deliberately delayed the administration of the Estate of the late Mrs GP and that this flowed directly from his conduct in making unauthorised loans from her sale proceeds. He had accepted during his interview with the FI Officer that if the beneficiaries had known about the loans "they probably wouldn't have liked it". There was clear correspondence on the file of the Estate of the late Mrs GP in which the Respondent claimed he was progressing matters but there was actually nothing happening.

101.15 The Respondent had further delayed obtaining the indemnity policy to enable the sale of the Tesco shares, possibly because he did not have the funds available to pay for an indemnity policy having loaned them elsewhere. There was correspondence to show that he had informed the beneficiaries that he was having difficulties obtaining an indemnity policy, when in fact he had done nothing about it for long periods of time. In any event, the Respondent knew that as soon as the shares were sold, the Estate would be finalised and full distribution would need to take place as well as Estate accounts prepared, which would have required him to disclose the loans. The Respondent's motivation in the delays was to protect his own position and conceal the manner in which he had used the late Mrs GP's sale proceeds.

101.16 Having ascertained the Respondent's knowledge and belief at the material time, the Tribunal had no doubt that his conduct in relation to Allegations 1.1, 1.2 and 1.3 would be regarded as dishonest by the standards of ordinary decent people. The public would not expect a solicitor to use one client's money for the benefit of other clients without permission. The public would also expect a solicitor to be open and frank about the manner in which matters are dealt with and would not expect a solicitor to conceal relevant issues and facts from clients or beneficiaries who were reliant upon that solicitor to conclude matters properly, professionally, efficiently and in their best interests. The Tribunal found Allegation 1.6 proved.

Previous Disciplinary Matters

102. None.

Mitigation

103. There was limited mitigation from the Respondent in the documents before the Tribunal. In his representations to the SRA dated 6 April 2017, the Respondent stated the loans had been made in good faith and CH1 forms were signed and available for

registration if necessary. He stated both conveyances for Miss W and Mr and Mrs B had been complicated by the fact that the mortgage company was represented by separate solicitors and that there had been a level of misunderstanding and communication. The Respondent stated that no losses had been incurred in respect of the loans, and that the loss in value of the shares occurred due to malpractice within Tesco.

104. In his Response dated 24 November 2017, the Respondent made reference to health issues. In his letter dated 20 April 2018 to the Applicant, the Respondent enclosed a Personal Financial Statement and stated he would not be returning to employment in any capacity due to health issues.

105. In his letter dated 20 April 2018 to the Tribunal the Respondent again referred to his health issues and made reference to the financial form he had sent to the Applicant. He apologised for his past actions/inactions and said he accepted formal responsibility for his failings.

Sanction

106. The Tribunal had considered carefully the Respondent's documents. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also 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.

107. The Tribunal firstly considered the Respondent's level of culpability. His motivation for the misconduct was to protect himself from negligence claims and conceal his own actions. That conduct was planned and took place over a long period of time. The Respondent had clearly acted in breach of his position of trust as Executor for the late Mrs GP. This was a breach of the highest seriousness as it related to a deceased client who had placed the utmost trust in her solicitor to deal with her affairs in accordance with her wishes after she had passed away.

108. The Respondent was an experienced solicitor of over 30 years who had direct control over his actions. His conduct had caused immense harm as the charitable beneficiaries did not receive the benefit of their legacies as quickly as they should have done. In the case of the Tesco shares, these had dropped in value by approximately 50% and even allowing for some reduction in their value, these considerable losses were entirely due to the Respondent's inordinate delay in dealing with their disposal quickly and efficiently. In addition to this, the beneficiaries had not received any interest on the loans that had been made and had gained no benefit from the Respondent's conduct. The Tribunal found the Respondent's level of culpability was very high.

109. As well as causing harm to the beneficiaries of the Estate, the Respondent had also caused immense harm to the reputation of the profession. This was evident from the evidence given by the witnesses who were shocked and horrified when they found out what the Respondent had done. It was also evident from the complaint emails received from Mr B in April 2014 which referred to the great stress he and his wife had suffered due to the Respondent's actions. The Respondent had failed to act with

complete integrity, probity and trustworthiness in circumstances where the harm caused by his conduct was reasonably foreseeable.

110. The Tribunal identified the following to be aggravating factors in this case:

- The Respondent had acted dishonestly
- His conduct had been deliberate, calculated and repeated over a long period of time
- He had taken advantage of a deceased client and had also taken advantage of his position as an Executor thereby depriving a number of charities for a long period of time of funds which they relied upon for their survival
- The Respondent had concealed his conduct from the beneficiaries who had asked him on multiple occasions to explain what progress was being made with the administration of the Estate. He had also concealed his conduct from Mr and Mrs B who were not initially aware their purchase was completed without their mortgage funds and that their interest in their new property had not been registered.
- The Respondent's conduct had caused immense harm and he ought to have known it was in material breach of his obligations to protect the public and the reputation of the legal profession
- There was limited insight from the Respondent and no recognition at all of the consequences his actions had had on those affected by his conduct.

111. The Tribunal identified the following mitigating factors:

- The Respondent had a previously long unblemished career
- He had made limited admissions and apologies albeit very late in the proceedings.

112. The Tribunal noted the Respondent had referred to health issues but he had not provided any medical report relating to these.

113. The Tribunal did not consider this was a case where it would be appropriate to make no order, or to Reprimand or Fine the Respondent because such sanctions would not be sufficient to reflect the seriousness of the Respondent's conduct which involved dishonesty and had caused immense harm.

114. The Tribunal was satisfied that the Respondent could not be trusted to deal with client funds in a proper and appropriate manner, or to be open and honest with clients about the way their matters were being dealt with. As such he presented a risk to the public and to the reputation of the profession. It was not therefore an appropriate case for a Restriction Order.

115. The Tribunal then considered whether a Suspension should be imposed. The Respondent's conduct was extremely serious and he was a risk to both the public and to the reputation of the profession. He had acted dishonestly on a number of occasions over a long period of time.

116. The Tribunal took into account the case of the SRA v Sharma [2010] EWHL 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"

117. The Tribunal was satisfied that there were no exceptional circumstances in this case. There had been a gross breach of trust by the Respondent. He was not fit to be a member of the profession. It was clear he could not be trusted to deal with client funds properly and both the protection of the public and the reputation of the profession required the most serious sanction to be imposed. Accordingly the Tribunal decided that the appropriate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

118. Ms Carpenter, on behalf of the Applicant requested an Order for the Applicant's costs in the total sum of £33,931.98. She referred the Tribunal to the Applicant's Costs Schedules and confirmed the costs claimed on Schedule had been amended to reflect the fact that although the hearing had been listed for three days, it had actually concluded within one day. Reductions to the Costs Schedule had been made to take account of this. Ms Carpenter reminded the Tribunal that the Respondent had denied all the allegations until the day before the hearing when his letter of 20 April 2018 had been received. As a result of this, considerable costs had already been incurred in preparing for a fully contested hearing.

119. In relation to the Respondent's means, the Respondent had filed a Personal Financial Statement giving details of his net monthly income which appeared to be low. However, Ms Carpenter submitted the Respondent had not provided sufficient evidence of his means. She referred the Tribunal to a letter sent by the Applicant to the Respondent on 23 April 2018. In that letter the Applicant had explained the Respondent's financial statement was deficient and set out the reasons why. The Respondent had not provided any independent evidence of his means, there was no medical report to support his reference to health issues and most importantly, it appeared he had sold a property in November 2017 in which he had had an interest. In his Personal Financial Statement the Respondent had stated he had used the proceeds of his half share in the property to pay his debts but had provided no evidence of this.

120. Ms Carpenter confirmed the Applicant had issued a bankruptcy petition against the Respondent in relation to the costs of intervention and was waiting for a hearing date relating to that. Ms Carpenter submitted that the costs of these proceedings would fall into the bankruptcy as these proceedings had commenced before the bankruptcy was declared. Ms Carpenter referred the Tribunal to the case of Re Nortel GmbH (in administration) and related companies and Re Lehman Bros International (Europe) (in

administration) and related companies [2014] AC 209 as the authority to confirm this position. It was stated by Lord Neuberger of Abbotsbury PSC as follows:

> "88. In a number of cases, it has been held that, when an order for costs was made against a person after an insolvency process had been instituted against him, his liability for costs did not arise from an obligation which had arisen before the issue of the bankruptcy proceedings, even though the costs order was made in proceedings which had started before that insolvency process had begun ……..
>
> 89. In my view, by becoming a party to legal proceedings in this jurisdiction, a person is brought within a system governed by rules of court, which carry with them the potential for being rendered legally liable for costs, subject of course to the discretion of the court. An order for costs made against a company in liquidation, made in proceedings begun before it went into liquidation, is therefore provable as a contingent liability under rule 13.12 (I)(b), as the liability for those costs would have arisen by reason of the obligation which the company incurred when it became party to the proceedings. "

121. Ms Carpenter requested the Tribunal make a full order for costs. It was likely the Applicant would only receive a percentage of those costs in any event due to the ongoing bankruptcy proceedings. She submitted if the Tribunal reduced the costs claimed, there would be an element of double reduction which would not be fair on the Applicant.

122. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. This had been a complex case which required careful analysis. Although the Respondent had made some very late limited admissions which the Tribunal had received that morning, the costs had already been incurred in preparing for a fully contested hearing. Indeed the Tribunal had heard from six witnesses who had attended to give evidence. Accordingly the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £33,931.98.

123. 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."

124. In this case the Respondent claimed to have limited income but had not provided any documentary evidence of his income, expenditure, capital or assets. The Tribunal was 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 the costs. It appeared from the Respondent's Financial Statement that he had had an interest in a property which was

sold in October/November 2017 but it was not clear what had happened to the proceeds of sale. No evidence had been provided to confirm the amount received by the Respondent or the debts he claimed to have settled. There were bankruptcy proceedings that were ongoing and in light of the limited information before the Tribunal, there was no reason to restrict enforcement of the costs order.

Statement of Full Order

125. The Tribunal Ordered that the Respondent, JOHN RICHARD KILLINGTON, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £33,931.98.

Dated this 5th day of June 2018
On behalf of the Tribunal

T Cullen
Chair