SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11766-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MARTIN EDWARD BURNETT Respondent

Before:

Mr S. Tinkler (in the chair)
Mr B. Forde
Mr S. Hill

Date of Hearing: 4 September 2018

Appearances

Inderjit Singh Johal, barrister of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent, were that:

1.1. By creating and presenting a false Grant of Probate to the Halifax Building Society in November 2015 in order to close the account of Mr PF (deceased), he acted in breach of Principles 2, and/or 6 of the SRA Principles 2011.

1.2. He breached all or alternatively any of Principles 2, 4 and 6 of the SRA Principles 2011 by:

1.2.1. deliberately altering the transaction date on a TR2 form from the 13 May 2013 to 13 October 2013 in a conveyancing transaction; and

1.2.2. forging the signatures of Mr J McA, his witness and Mr D McK on a TR1 form; and

1.2.3. purporting to witness the signature of Mr D McK on a TR1 form when Mr D McK did not sign the TR1 form in his presence or at all, the Respondent having forged Mr D McK's signature.

1.3. He breached all or alternatively any of Principles 2, 4 and 6 of the SRA Principles 2011 by:

1.3.1. In or about June 2014 forging the signatures of Trustees, Mr TM and Mr SL on a DS1 form to discharge a charge in the Trust's favour over a client's property; and/or

1.3.2. presenting or causing to be presented the DS1 form in June 2014 to the Land Registry.

1.4. By failing to disclose material information he knew of to his lender client (NatWest Bank), in relation to the purchase of 23 Spinners Yard between 2011 and 2014, he:

1.4.1. breached Rule 4.02 of the Solicitors' Code of Conduct 2007 until 5 October 2011 and failed to achieve Outcome (4.2) of the SRA Code of Conduct 2011 after 6 October 2011;

1.4.2. failed to act with integrity in breach of Rule 1.02 of the Solicitors' Code of Conduct 2007 until 5 October 2011 and in breach of Principle 2 of the SRA Principles 2011 after 6 October 2011; and/or

1.4.3. failed to behave in a way that maintains the trust the public places in him and the provision of legal services in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007 until 5 October 2011 and in breach of Principle 6 of the SRA Principles 2011 after 6 October 2011.

1.5. By releasing mortgage funds to a transferor when there was no contract of sale and/or taking inadequate steps to ensure the lender client would have a first legal charge, he:

1.5.1. failed to act in the lender client's best interests in breach of Rule 1.04 of the Solicitors' Code of Conduct 2007 until 5 October 2011 and in breach of Principle 4 of the SRA Principles 2011 after 6 October 2011; and/or

1.5.2. failed to provide a good or proper standard of service to his lender client in breach of Rule 1.05 of the Solicitors' Code of Conduct 2007 until 5 October 2011 and in breach of Principle 5 of the SRA Principles 2011 after 6 October 2011.

1.6. By acting in matters in which a conflict of interest existed, or came into existence during the course of the retainer whilst acting for the seller, buyer and lender for 23 Spinners Yard during the period from 2011 to 2014, the Respondent breached Rules 3.01 and 3.16 of the Solicitors' Code of Conduct 2007 ("SCC 2007") until 5 October 2011 and failed to achieve Outcome (3.5) of the SRA Code of Conduct 2011 after 6 October 2011.

1.7. On 1 October 2013, the Respondent provided misleading information to his lender client in a letter by stating that "...the funds for VAT were provided on a short-term loan basis to the client by a third party" when he knew his lay client, Mr MG had not agreed to receive any loan and was unaware that any loan had been made, and thereby he:

1.7.1. failed to achieve Outcome (4.2) of the SRA Code of Conduct 2011 ("SCC 2011");

1.7.2. failed to act with integrity in breach of Principle 2 of the SRA Principles 2011; and/or

1.7.3. failed to behave in a way that maintains the trust the public places in him and the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

1.8. By failing to respond to written correspondence sent to him by the SRA, the Respondent failed to deal with his regulator in an open, timely and co-operative manner in breach of Principle 7 of the SRA Principles 2011 ("the Principles").

2. Whilst dishonesty was alleged with respect to the Allegations at paragraphs 1.1, 1.2, 1.3, and 1.7, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

Documents

3. The Tribunal had before it a hearing bundle including the Rule 5 Statement, exhibits and witness statements.

Preliminary Matters

Application to proceed in absence

Applicant's Submissions

4. The Respondent did not attend and had not been in contact with the Tribunal. Mr Johal applied to proceed in the Respondent's absence.

5. Mr Johal told the Tribunal that notice of the hearing had been contained in the Standard Directions dated 22 December 2017 and served on 27 December 2017. This had been signed for by the Respondent on that date. He had not engaged at all and there had been a non-compliance hearing on 16 February 2018, when he had not attended. He had also not attended a Case Management Hearing on 2 March 2018 and he had not complied with any directions and had not updated the SRA with any new address. In the circumstances it was submitted that there was no prospect of the Respondent attending if the matter was adjourned and that he had waived his right to attend. The Tribunal was referred to GMC v Adeogba [2016] EWCA Civ 162 and was invited to grant the application to proceed in the Respondent's absence.

The Tribunal's Decision

6. The Tribunal considered the representations made by Mr Johal. The Respondent was aware of the date of the hearing, as he had signed for the papers which had included the Standard Directions, and SDPR Rule 16(2) was therefore engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002).

7. In Adeogba, Leveson P had noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

> "…It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".

8. Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account".

9. The Respondent had been served with the papers in this case and with notice of the hearing date. He had not updated the SRA with a new or alternative address and there had been no engagement of any sort throughout the proceedings. The Respondent had not complied with any of the Tribunal's directions. The Allegations before the Tribunal were serious and it was in the interest of justice that they be dealt with expeditiously.

The Tribunal therefore granted the application to proceed in the absence of the Respondent.

Civil Evidence Act Notices

10. Mr Johal told the Tribunal that the Civil Evidence Act Notices had been sent to the Respondent on 3 August 2018. They had been returned marked "not called for", having been sent by Guaranteed Post and clearly not collected from the sorting office. The Applicant had re-served them on 30 August 2018 and they had been signed for by the Respondent on 31 August. No counter notice had been served by the Respondent. The Tribunal confirmed that the Applicant was permitted to rely on the Civil Evidence Act Notices in this hearing.

Factual Background

11. The Respondent was born in 1969 and admitted to the Roll of Solicitors on 3 November 2003. At the time of the hearing he remained on the Roll, but he did not hold a current practising certificate.

12. The Respondent was a Solicitor at BPK Limited from 1 June 2007. He resigned from the firm on 25 January 2016. On 25 January 2016, Mr JB, the Compliance Officer for Legal Practice of BPK Limited ("the firm") wrote to the SRA reporting concerns about the Respondent. The firm had discovered a number of issues with work carried out by the Respondent for clients of the firm from a review of his files. In light of the information provided by the firm, the SRA commissioned a Forensic Investigation into the work carried out by the Respondent at the firm. This commenced on 9 November 2016 and culminated in a Forensic Investigations Report dated 3 March 2017 ("FIR").

Allegation 1.1

13. The firm acted for Mr PF (deceased). The Respondent was the fee-earner of a conveyancing file for this client relating to the sale of the deceased's property in Carlisle and had been appointed the sole Executor to Mr PF's Will in a Codicil dated 4 November 2008. The residuary beneficiary under Mr PF's Will was his nephew, Mr MW. Mr PF died on 2 April 2015.

14. Mr PF (deceased) held an account with the Halifax Building Society. On 26 October 2015, the Halifax wrote to Mr MW to confirm that there was £45,761.97 in Mr PF's account at the date of Mr PF's death. The letter stated that:

> "As the late Mr F held more than £25,000 in his account with us, I need to see the original Grant of Probate/Letters of Administration/Confirmation, together with closure instructions signed by all named Executors/Administrators".

15. On the client file was what purported to be a copy of a Grant of Probate dated 6 November 2015. It bore no seal of the Probate Registry. The purported Grant was provided to the Halifax on 13 November 2015 with a letter in the name of the Respondent. The purported Grant was stamped "Certified a true copy of the original" by the firm. Mr PF's account with the Halifax was closed on 20 November 2015 with

£45,962.72 being paid out of the account. Instructions were given to the Halifax by the Respondent for the monies in the account to be paid to Mr and Mrs MW.

16. Following enquiries by the firm, a letter received from the Probate Registry on 3 February 2016, confirmed that there is "…. No record of a grant or will existing within our archive ….". No Grant of Probate had been issued by the Probate Registry in relation to the estate of Mr PF. The original Will was still on the firm's file.

17. On 3 February 2016 the Respondent admitted to Mr DC, a Director of the firm, that he forged the Grant of Probate in this case and "… his motivation was to allow a transaction to proceed when he had slept on his oars and not acted quickly enough to obtain a Grant of Probate". This admission had been recorded in Mr DC's witness statement dated 5 February 2016.

Allegation 1.2

18. The firm acted for Mr D McK in his purchase of a property in Wigton, Cumbria. The Respondent was the fee-earner of this matter.

19. The owner of the property was Mr J McA and the sale was being managed by the mortgagee-in-possession, Santander UK Plc by auction for £49,000.

20. The TR2 form dated 13 October 2013 (transfer of whole of registered title under power of sale) was submitted to the Land Registry. The form was signed by Mr DP on behalf of Santander and by Mr D McK, with the Respondent signing as witness to Mr D McK's signature. The SDLT 5 Certificate confirming that the stamp duty land tax return had been submitted to HM Revenue & Customs on 7 November 2013 stated that the effective date of the transaction was 13 October 2013.

21. The Land Registry sent a Requisition letter to the firm dated 12 November 2013. It stated that as the registered charge over the property had been discharged on 30 May 2013, the transfer could only be registered if the correct form was used – TR1 (transfer of whole of registered title) rather than TR2. There was no correspondence in response to the Land Registry's letter on the client file but a TR1 form dated 13 October 2013 was present on the client matter file. This form was purportedly signed by Mr J McA and Mr D McK. The Respondent had purportedly witnessed Mr D McK's signature. Mr J McA's signature was witnessed, but the identity of the witness is unclear.

22. The FI Officer had noted that there were no letters, emails or attendance notes on the client file with either Mr D McK or Mr J McA asking either to sign a TR1 form and there was no note on the client file of Mr J McA's address or contact details.

23. During the firm's investigation into this client matter, the firm contacted Mr D McK who provided a witness statement to the firm. In that statement dated 14 November 2016 he stated that he had not signed the TR1 form.

24. On 7 July 2015 the Land Registry sent to the firm a Requisition letter stating that they could not complete the application for registration as the signature of Mr J McA differed significantly from the charge executed by him on 12 November 2010 and they required

an explanation for the discrepancy. There was no correspondence in response to the Land Registry's letter on the client file.

25. In the firm's report to the SRA dated 25 January 2016, Mr JB, the firm's Compliance Officer for Legal Practice, stated that both he and Mr DC had met with the Respondent on 25 January 2016 to discuss their concerns They stated that the Respondent had admitted to them both that he had altered the date on the TR2 from 13 May 2013 to 13 October 2013; that he had completed the TR1 and forged the signatures of Mr J McA and the solicitor who allegedly witnessed it; and that he was not sure if he also forged the signature of Mr D McK. The handwritten note of that meeting was contained within the hearing bundle.

Allegation 1.3

26. The firm acted for Mr MS in matters connected with 23 Spinners Yard, a property owned by Mr MS. Mr MS was one of the beneficiaries under the WRD Marriage Contract Trust set up in 1946. The Trustees were Mr TM and Mr SL. Mr MS had received a loan of £20,000 in or about July 2010 from the Trust. As security for the loan, a charge had been created over the leasehold title of 23 Spinners Yard. The Respondent acted for Mr MS in connection with that loan. A copy of the CH1 form (legal charge of a registered estate) dated 16 July was submitted to the Land Registry for registration of the charge. This form was signed by Mr TM and Mr SL.

27. The property was transferred by Mr MS to Ms DT on 15 July 2011. Ms DT took out a mortgage with the National Westminster Bank at the time of the transfer. The Respondent had acted for Ms DT and the NatWest. Following an application to register the Transfer to Ms DT and the Charge in favour of the NatWest, the Land Registry raised Requisitions in their letter to the firm dated 9 November 2011. One of the queries was that there was no evidence of the discharge of the charge dated 16 July 2010 in favour of Mr SL and Mr TM.

28. Office copy entries dated 16 January 2012 on the client file had showed that the registered proprietor of the leasehold property was Ms DT; there was a first charge in favour of Mr SL and Mr TM and a second charge was registered in favour of the NatWest. A second set of office copy entries dated 27 June 2014 had also been on the client file, which showed that the NatWest had a first charge over the property. The legal charge in favour of Mr SL and Mr TM had been removed from the registered title.

29. A copy of the DS1 form (cancellation of entries relating to a registered charge) dated 26 June 2014 had been submitted to the Land Registry for the discharge of the charge over the property in favour of Mr SL and Mr TM. The DS1 form was purportedly signed by Mr SL and Mr TM.

30. GM Solicitors acted for the Mr SL and Mr TM and made a report to the SRA concerning the Respondent's conduct of this matter. In that report GM Solicitors had denied that either Mr SL or Mr TM had signed the DS1.

Allegations 1.4-1.6

31. Ms DT was an existing client of the firm, the firm having acted for her in her purchase of a property known as Stoneybeck and in the sale of 3 Watermans Walk in 2011.

32. On 13 April 2011, NatWest wrote to the firm instructing them to act in respect of a mortgage over the leasehold property of 23 Spinners Yard. The borrower was stated to be Ms DT with the loan being £65,000 and the purchase price, £89,000. The FI Officer noted that there was no correspondence on the client file with Ms DT about this transaction and no contract of sale was on the client file.

33. There was a signed handwritten note dated 19 July 2011 on the file which stated that:

> "I [Ms DT] hereby confirm that the amount of £62,240 is to be paid to [Mr MS] from the money remaining from the charge over Stoneybeck".

34. On 15 July 2011, £64,970 was paid into the firm's client account from NatWest as the mortgage advance for 23 Spinners Yard, as shown by Ms DT's ledger account for the purchase of Stoneybeck. In the same client ledger sheet, £60,240 was shown to have been paid to Mr MS on 20 July 2011 with the description "release of funds". The withdrawal slip for the payment of £60,240 to Mr MS was dated 20 July 2011 and authorised by "MB".

35. The TR1, under the 'consideration' section, had stated "The transfer is not for money or anything that has a monetary value". There was a delay in registering the leasehold property in Ms DT's name as the Land Registry required evidence that the pre-existing charge over the property in favour of Mr TM and Mr SL had been discharged. The Respondent wrote a letter to NatWest on 13 January 2012 stating that:

> "We can confirm an application has been resubmitted to the Land Registry. There has been an issue getting a release on the property from the Lender, but we have now secured this and understand this is being forwarded immediately to the Land Registry".

36. The Applicant's case was that this was incorrect as the DS1 form in relation to the discharge of the charge in favour of Mr SL and Mr TM was dated 26 June 2014 and the Land Registry's Document Registration form showed that the DS1 form was submitted on 27 June 2014.

37. GM Solicitors, who acted for Mr SL and Mr TM, had sought further information in their letter to the Respondent of 20 January 2012 concerning the Respondent's proposal that the charge on 23 Spinners Yard be released in return for a charge being secured against another one of Mr MS's properties. They asked the Respondent to provide a valuation of the property to which Mr MS wished to transfer the security, so the Trustees could confirm that it covered the loan. There was no indication in that letter or on the client file that the Trustees had or were about to cancel the charge on 23 Spinners Yard. On 27 February 2012, the Respondent wrote to NatWest and updated them on the position by stating "...we confirm we are still waiting for the Lender to release their charge over the property". There was no evidence on the client file that the Respondent informed NatWest that their charge ranked as a second charge over the

property. The Trustees had a first charge over the property until June 2014 when their registered charge was cancelled by the Land Registry.

38. On 25 June 2014, O Legal Solicitors, who had been instructed by NatWest, wrote to the firm raising concerns about the delay in registration since the completion of the mortgage advance on 15 July 2011. A DS1 form dated 26 June 2014 was submitted to the Land Registry for the discharge of the charge over the property in favour of Mr SL and Mr TM. As described above, it was the Applicant's case that this document contained signatures forged by the Respondent.

39. On 30 June 2014, the Respondent wrote to O Legal Solicitors to confirm that the registration had now been completed and the Title Information Document showed the charge in favour of the NatWest.

Allegation 1.7

40. Mr MG instructed the Respondent in his and Ms JT's purchase of the Green Bank Inn in Carlisle. The purchase price was £145,000 plus value added tax ("VAT") of £26,100. The purchase was part-funded by way of a mortgage of £107,000 from Cumberland Building Society who had instructed the Respondent to act on their behalf.

41. Mr MG's tax consultant had proposed that the purchase should proceed as a transfer of an ongoing concern so VAT on the purchase would not be payable. However the purchase did not proceed on that basis and therefore VAT was payable. On 25 September 2013, contracts were exchanged. According to paragraph 3.2 of the agreement, VAT of £26,100 was payable, with £20,000 being payable on completion on 26 September 2013 and the remaining £6,100 being payable by 10 November 2013. As a result of VAT being payable, Mr MG was liable for £1,711 in Stamp Duty Land Tax. On exchange of contracts on 22 September 2013, Mr MG had emailed the Respondent and stated "....I want you to get this sorted first thing on Monday morning you can start by (BPK) paying the £26,100 required to complete the sale." The client ledger recorded a payment of £20,000 paid to the seller's solicitors on 26 September 2013. The paying-in slip showed that this sum was received from Ms AW, the Respondent's sister.

42. On 30 September 2013, post-completion, the Cumberland Building Society wrote to the Respondent asking how completion had been funded as they had become aware from Mr MG that VAT was payable on the purchase. The Respondent responded in a letter on 1 October 2013, stating that "The funds for the VAT were provided on a short-term loan basis to the client by a third party to enable the VAT to be paid. This is to be reimbursed once the VAT has been reclaimed". The Cumberland Building Society asked for clarification of the source of the loan and the Respondent replied that it was Ms AW. On 15 January 2014 they wrote to the Respondent and said that their customer was unclear as to who Ms AW was and the terms upon which the monies were paid. They asked whether Mrs AW had any security in support of this facility and when the loan would be repayable. The Respondent had replied on 24 January 2014 and stated that "The money from [Mrs A W] was an unsecured loan and was to be repaid to her when the VAT was reclaimed. There is no interest payable on this amount."

43. Mr MG had told Mr DC that he was unaware of any loan from Ms AW. Mr DC had spoken to the Respondent and had recorded; "he realises can of worms is prepared to walk away from loan".

Allegation 1.8

44. During her investigation, the FI Officer had made various attempts to contact the Respondent including a letter dated 2 December 2016 inviting the Respondent to an interview which was sent by recorded delivery on 2 December 2016. The letter was delivered and signed for on 3 December 2016. The Respondent did not respond to the FI Officer's request.

45. The Respondent had also not responded to a notice issued under S44B of the Solicitors Act 1974 (as amended) dated 9 January 2017 sent by the FI Officer on 10 January 2017. The FI Officer had send a reminder on 18 January 2017 but did not receive any response.

46. A letter from a Supervisor employed by the SRA dated 15 May 2017 was sent to the Respondent by recorded delivery an address where the Respondent was registered on the electoral roll. The letter was not signed for at the Respondent's address and neither was it collected from the Royal Mail delivery office. Subsequently, the letter dated 15 May 2017 was returned to the SRA.

Witnesses

47. None.

Findings of Fact and Law

48. The Respondent had not admitted any allegations, and 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.

49. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition, it had regard to the oral and written submissions made in the case. As the Respondent was not present, the Tribunal was especially mindful to ensure that the allegations were proved on the evidence presented to it, having critically analysed that evidence to ensure the Respondent was not being prejudiced by his absence and inability to point to inconsistencies or ambiguities.

The Tribunal's Approach

Dishonesty

50. The test for considering the question of dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ….. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

51. The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.

- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

52. When the Tribunal was required to consider whether the Respondent had lacked integrity it applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".

53. Wingate and Evans and Malins had continued a line of authorities that included SRA v Chan [2015] EWHC 2659, Scott v SRA [2016] EWHC 1256 (Admin), Newell-Austin v SRA [2017] EWHC 411 (Admin) and Williams v SRA [2017] EWHC 1478 (Admin).

54. **Allegation 1.1** - By creating and presenting a false Grant of Probate to the Halifax Building Society in November 2015 in order to close the account of Mr PF (deceased), he acted in breach of Principles 2, and/or 6 of the SRA Principles 2011.

Applicant's Submissions

54.1 The Applicant's case was that the Respondent had created and presented to the Halifax the false Grant of Probate in order to close the account of Mr PF by giving the

impression it was a true copy of the Grant of Probate issued by the Probate Registry. A solicitor acting with integrity would not create and produce a false document. His conduct would undermine public confidence in him and in the profession.

54.2 It was further submitted that he had acted dishonestly by the standards of ordinary decent people in line with the test in Ivey.

Respondent's Submissions

54.3 None.

The Tribunal's Findings

54.4 The Respondent was the sole executor of the Mr PF's Will.

54.5 The Grant of Probate was clearly not genuine as the Probate Registry had no record of it, as confirmed by their letter of 3 February 2016, and it did not bear the Probate Registry's stamp. The original Will, which would have had to be sent to the Probate registry to obtain the Grant, was still on the file. The Tribunal considered the witness statement of Mr DC, a director of the Firm, made to the SRA on 5 February 2016. This evidence had not been challenged by the Respondent. In that witness statement Mr DC stated:

> "This matter was discussed and Martin Burnett readily admitted he forged the Grant of Probate and his motivation was to allow a transaction to proceed when he had slept on his oars and not acted quickly enough to obtain a Grant of Probate".

54.6 The Tribunal accepted Mr DC's evidence and found that the Respondent had admitted to his employer that he had created the false Grant of Probate.

54.7 The false Grant of Probate had clearly been sent to the Halifax as it was shown as received by them on 13 November 2015. The Respondent was the fee earner dealing with this matter and this could be seen from the letter he sent to the Halifax on 13 November 2015 in which he had given instructions as to where the funds should be sent. That letter was signed by the Respondent with his name printed below his signature. At the top of the letter was his reference and the words "Please ask for: Martin Burnett".

54.8 The Tribunal was satisfied beyond reasonable doubt that the Respondent was responsible for presenting the false deed of grant to the Halifax, and that he had done so to cover up his delay in seeking the Grant of Probate.

54.9 *Principle 2*

54.9.1 The Tribunal considered that creating a false document and then sending it to a bank in order to extract money from the account of his deceased client was completely inconsistent with the Respondent's duty to act with integrity. The Tribunal found beyond reasonable doubt that the Respondent had breached Principle 2.

54.10 *Principle 6*

54.10.1 It was a statement of the obvious that the trust the public placed in the provision of legal services depended on solicitors being scrupulously ethical when handling documents. It was therefore beyond question that the Respondent's actions in forging the Grant of Probate and in presenting it to the Halifax represented a complete failure to behave in a way that maintained the trust the public placed in him and in the provision of legal services. The Tribunal found beyond reasonable doubt that the Respondent had breached Principle 6.

54.11 *Dishonesty*

54.11.1 The Tribunal considered the Respondent's state of knowledge at the time.

54.11.2 The Respondent knew that he was the sole executor to the Will. He was evidently aware that he had created the false Grant of Probate and he had known that he had presented it to the Halifax. He had done so in order to conceal the fact that he had failed to obtain the Grant of Probate sooner. He had confirmed as much to Mr DC.

54.11.3 The Tribunal was satisfied beyond reasonable doubt that this was dishonest by the standards of ordinary decent people. The Tribunal therefore found the allegation of dishonesty proved in relation to Allegation 1.1.

54.12 Allegation 1.1 was therefore proved in full including the allegation of dishonesty.

55. **Allegation 1.2 - He breached all or alternatively any of Principles 2, 4 and 6 of the SRA Principles 2011 by:**

1.2.1. deliberately altering the transaction date on a TR2 form from the 13 May 2013 to 13 October 2013 in a conveyancing transaction; and

1.2.2. forging the signatures of Mr J McA, his witness and Mr D McK on a TR1 form; and

1.2.3. purporting to witness the signature of Mr D McK on a TR1 form when Mr D McK did not sign the TR1 form in his presence or at all, the Respondent having forged Mr D McK's signature.

Applicant's Submissions

55.1 Mr Johal submitted that the Respondent had deliberately altered the transaction date on the TR2 to give the impression that completion had occurred on 13 October 2013 when he knew it had occurred earlier. He had forged the signatures of Mr J McA, his witness and that of Mr D McK on the TR1 and he had purported to witness the signature of Mr D McK on the TR1 for when Mr D McK did not sign it. The Respondent had known that he had forged Mr D McK's signature. A solicitor acting with integrity would not deliberately alter a transaction date in a TR2, forge signatures of the parties or sign the form as a witness without being in the presence of the parties.

55.2 The Respondent had failed to act in the best interests of his client as the circumstances in which the TR1 was altered and the TR2 was executed could have invalidated the effect of those forms. His conduct would undermine public confidence in him and in the profession.

55.3 It was further submitted that he had acted dishonestly by the standards of ordinary decent people in line with the test in Ivey.

Respondent's Submissions

55.4 None.

The Tribunal's Findings

55.5 The Tribunal considered the TR2 and noted that there had indeed been an alteration to the date to show 13 October 2013.

55.6 In his witness statement to the SRA, Mr D McK had stated that he had instructed the Respondent in the transaction. In reference to the TR1 Mr D McK stated:

> "I confirm that I did NOT sign this document in the presence of Martin Burnett or at all. I am absolutely sure of this".

55.7 The Land Registry had raised concerns about the signature of Mr J McA on the TR1 being inconsistent with that appearing on a previous document.

55.8 In his witness statement, Mr JB, the Firm's COLP and a director had stated that he had held a meeting with the Respondent and Mr DC about this matter. He stated:

> "During this meeting Martin admitted in front [Mr DC] and I, that in relation to client file Mr D McK:
>
> a. He altered the date on the TR2 from 13 May 2013 to 13 October 2013.
> b. He created the TR1 form and forged the signature of JMcA and the solicitor who allegedly witnessed it.
> c. He was not sure if he also forged the signature of Mr D McK"

55.9 This evidence had not been challenged by the Respondent. It was consistent with the documentary evidence and the Tribunal found that the Respondent had made those admissions to Mr JB.

55.10 The Tribunal was satisfied that the Respondent had altered the transaction date on the TR2, forged the signatures of Mr J McA and Mr D McK on the TR1 and purported to witness the signature of Mr D McK on the TR1.

55.11 *Principle 2*

55.11.1 The Tribunal had already found, when considering Allegation 1.1, that forging documents was inconsistent with acting with integrity. The alteration of key information, the forging of signatures on documents and the subsequent

submission of those documents to the Land Registry fell into the same category. The Tribunal found beyond reasonable doubt that the Respondent had breached Principle 2.

55.12 *Principle 4*

55.12.1 It was clearly never in the best interests of a client to forge their signature and to submit a false document on their behalf. The Tribunal found beyond reasonable doubt that the Respondent had breached Principle 4.

55.13 *Principle 6*

55.13.1 The Tribunal found beyond reasonable doubt that the Respondent had breached Principle 6 for the same reasons as those set out in relation to Allegation 1.1.

55.14 *Dishonesty*

55.14.1 The Tribunal considered the Respondent's state of knowledge at the material time.

55.14.2 He knew that he was the fee earner acting for Mr D McK. He obviously knew that he was forging the signatures and that he had been amending the date on the TR2. The query from the Land Registry contained the Respondent's reference on the letter and so he had been responsible for presenting the document to them. He was doing so to cover up his own delays and errors.

55.14.3 The Tribunal was satisfied beyond reasonable doubt that the Respondent's actions were dishonest by the standards of ordinary decent people. The Tribunal therefore found the allegation of dishonesty proved in relation to Allegation 1.2.

55.15 Allegation 1.2 was therefore proved in full including the allegation of dishonesty.

56. **Allegation 1.3 - He breached all or alternatively any of Principles 2, 4 and 6 of the SRA Principles 2011 by:**

1.3.1. In or about June 2014 forging the signatures of Trustees, Mr TM and Mr SL on a DS1 form to discharge a charge in the Trust's favour over a client's property; and/or

1.3.2. presenting or causing to be presented the DS1 form in June 2014 to the Land Registry.

Applicant's Submissions

56.1 Mr Johal invited the Tribunal to draw the inference to be drawn that the Respondent had forged the signatures of Mr TM and Mr SL on the DS1 to discharge a charge in their favour over a property and had presented or caused to be presented this form to the Land Registry. It was submitted that a solicitor acting with integrity would not

forge lenders' signatures and would not submit a form containing such forged signatures to the Land Registry.

56.2 The Respondent failed to act in the best interests of his client as the circumstances in which the form was executed could potentially invalidate its effect. His conduct would undermine public confidence in him and in the profession. It was further submitted that he had acted dishonestly by the standards of ordinary decent people in line with the test in Ivey.

Respondent's Submissions

56.3 None.

The Tribunal's Findings

56.4 The DS1 form had been purportedly signed by Mr TM and Mr SL. In his witness statement Mr TM had stated:

> "My name is on this form as [TM]. I can confirm that the signature in Box 8 'Execution' is not mine. I can confirm that I did not sign this DS1 form".

56.5 In his witness statement, Mr SL had similarly confirmed that the signature was not his and he had not signed the DS1.

56.6 The Respondent was the fee earner dealing with the sale and purchase of 23 Spinners Yard and was acting for Ms DT and NatWest. The Land Registry Registration document registration form, which confirmed submission of the DS1, contained the reference "MB". The Tribunal was satisfied that this was a reference to the Respondent. It also appeared in the letter from the Respondent to GM Solicitors in January 2012.

56.7 The Tribunal found that the Respondent had forged the signatures of Mr TM and Mr SL on the DS1 and that he had presented, or at least caused to be presented, the DS1 to the Land Registry. He had done so in order to remove a charge which ranked ahead of the charge of NatWest, his client, and which his client had discovered.

56.8 *Principle 2*

56.8.1 The Tribunal found that the forging of signatures and submission to the Land Registry of the document on which they were forged to amount to a lack of integrity. The reasons for this conclusion were the same as those set out in relation to Allegations 1.1 and 1.2 as the conduct was of a very similar nature. The Tribunal found beyond reasonable doubt that the Respondent had breached Principle 2.

56.9 *Principle 4*

56.9.1 It was clearly not in the best interests of his clients to forge signatures on a document and thus mislead the Land Registry as to the charges attached to the property. This was particularly so when one of his clients was NatWest who

were seeking a first charge on 23 Spinners Yard. The Tribunal found beyond reasonable doubt that the Respondent had breached Principle 4.

56.10 *Principle 6*

56.10.1 The Tribunal found beyond reasonable doubt that the Respondent had breached Principle 6 for the same reasons as those set out in relation to Allegations 1.1 and 1.2.

56.11 *Dishonesty*

56.11.1 The Tribunal considered the Respondent's state of knowledge.

56.11.2 The Respondent knew that he was dealing with the sale and purchase of 23 Spinners Yard and knew that he was acting for the lender, NatWest. He knew that they required a first charge over the property. He evidently knew that he was forging the Trustees' signatures in order to give the impression that the charge had been removed. He had known that by sending the DS1 to the Land Registry that they would, if they accepted it, enter an erroneous record on the deeds. The Tribunal was satisfied beyond reasonable doubt that the Respondent's actions were dishonest by the standards of ordinary decent people. The Tribunal therefore found the allegation of dishonesty proved in relation to Allegation 1.3.

56.12 Allegation 1.3 was therefore proved in full including the allegation of dishonesty.

57. **Allegation 1.4 - By failing to disclose material information he knew of to his lender client (NatWest Bank), in relation to the purchase of 23 Spinners Yard between 2011 and 2014, he:**

1.4.1. breached Rule 4.02 of the Solicitors' Code of Conduct 2007 until 5 October 2011 and failed to achieve Outcome (4.2) of the SRA Code of Conduct 2011 after 6 October 2011;

1.4.2. failed to act with integrity in breach of Rule 1.02 of the Solicitors' Code of Conduct 2007 until 5 October 2011 and in breach of Principle 2 of the SRA Principles 2011 after 6 October 2011; and/or

1.4.3. failed to behave in a way that maintains the trust the public places in him and the provision of legal services in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007 until 5 October 2011 and in breach of Principle 6 of the SRA Principles 2011 after 6 October 2011.

Allegation 1.5 - By releasing mortgage funds to a transferor when there was no contract of sale and/or taking inadequate steps to ensure the lender client would have a first legal charge, he:

1.5.1. failed to act in the lender client's best interests in breach of Rule 1.04 of the Solicitors' Code of Conduct 2007 until 5 October 2011 and in breach of Principle 4 of the SRA Principles 2011 after 6 October 2011; and/or

1.5.2. failed to provide a good or proper standard of service to his lender client in breach of Rule 1.05 of the Solicitors' Code of Conduct 2007 until 5 October 2011 and in breach of Principle 5 of the SRA Principles 2011 after 6 October 2011.

Allegation 1.6 - By acting in matters in which a conflict of interest existed, or came into existence during the course of the retainer whilst acting for the seller, buyer and lender for 23 Spinners Yard during the period from 2011 to 2014, the Respondent breached Rules 3.01 and 3.16 of the Solicitors' Code of Conduct 2007 ("SCC 2007") until 5 October 2011 and failed to achieve Outcome (3.5) of the SRA Code of Conduct 2011 after 6 October 2011.

Applicant's Submissions

57.1 Mr Johal submitted that the Respondent had breached Rule 4.02/Outcome (4.2) by failing to disclose material information to his lender client and which may have affected its decision to lend. The particular items of information that the Respondent had failed to disclose were as follows:

- That the firm was acting for the seller and the buyer;
- That the purchase price was not £89,000, but was, in reality, for no monetary value;
- That no contract for the sale of the property had been executed before the release of mortgage funds; and
- On completion of the advance of the loan on 15 July 2011, there was an existing charge over the property in favour of Mr SL and Mr TM which had not been discharged, meaning that NatWest would only secure a second charge over the property until the registration of the first charge had been cancelled in June 2014.

57.2 The Applicant submitted that the Respondent had failed to act with integrity and had undermined the trust placed in him by the public and the provision of legal services in breach of Rule 1.06/Principle 6.

57.3 The Respondent had failed to act in his client's best interests by releasing mortgage funds to a transferor when there was no contract of sale and taking inadequate steps to ensure the lender client would have a first legal charge. He had therefore breached Rule 1.04/Principle 4 and failed to provide a good or proper standard of service to NatWest in breach of Rule 1.05/ Principle 5.

57.4 Mr Johal submitted that the Respondent had acted in matters in which a conflict of interest existed, or came into existence during the course of the retainer whilst acting for the seller, buyer and lender for 23 Spinners Yard. In view of the material facts that he had failed to disclose, he could not act in the best interests of all three clients. He should therefore not have acted once a conflict of interest arose, and by continuing to act for all parties, he had breached Rules 3.01 and 3.16 of the Solicitors' Code of Conduct 2007 and failed to achieve Outcome (3.5) of the SRA Code of Conduct 2011 (after 6 October 2011).

Respondent's Submissions

57.5 None.

The Tribunal's Findings

57.6 Allegation 1.4

57.6.1 The Respondent had been instructed by NatWest as confirmed in the letter of instruction from NatWest to the Respondent dated 13 April 2011. That letter confirmed that the Respondent was instructed in accordance with the CML Lenders' Handbook. There was no evidence that the information set out above was disclosed to NatWest. This was clear from the letter sent by NatWest's solicitors, O Legal, on 25 June 2014.

57.6.2 The Tribunal was satisfied that information such as the purchase price, the charges on the property and the lack of a contract of sale was highly material to the lender, indeed it was fundamental. The Respondent had failed to disclose this information and the Tribunal was satisfied the breach of Rule 4.02 (SCC 2007) and the failure to achieve Outcome 4.2 (SCC 2011) was proved beyond reasonable doubt.

57.6.3 *Rule 1.02/Principle 2* - The Respondent had been under a clear duty to disclose all material information to his lender client. Wingate and Evans and Malins had been clear about the duty on solicitors to be scrupulously accurate. This included not withholding key information from a client. The Tribunal was satisfied beyond reasonable doubt that the Respondent had lacked integrity and had breached Rule 1.02 and Principle 2.

57.6.4 *Rule 1.06/Principle 6* - The trust the public placed in the provision of legal services depended on solicitors disclosing all material information to their clients, save for exceptional circumstances such as tipping-off, which did not apply in this case. The Tribunal found beyond reasonable doubt that the Respondent had breached Rule 1.06 and Principle 6.

57.7 Allegation 1.4 was therefore proved in full beyond reasonable doubt.

57.8 Allegation 1.5

57.8.1 The Tribunal was satisfied that there was no contract of sale in respect of 23 Spinners Yard, based on the report of the FI Officer. The Tribunal had already made findings in relation to the position with regards to legal charges when considering Allegation 1.4.

57.8.2 The transfer of mortgage funds was evidenced by the ledger and the entry shown for 20 July 2011. This showed a transfer of £60,240 to Mr MS.

57.8.3 *Rule 1.04/Principle 4* - It was clearly not in the best interests of his lender client, NatWest, to transfer mortgage monies when there was no contract of sale (something they were unaware of due to his failure to disclose this as

found in relation to Allegation 1.4) and when their interest had not been properly protected by way of a first legal charge. The Tribunal found the breach of Rule 1.04 and Principle 4 proved beyond reasonable doubt.

57.8.4 *Rule 1.05/Principle 5* - It was a matter of irrefutable inference that failing to act in a client's best interests could not amount to a proper standard of service. The Tribunal found the breach of Rule 1.05 and Principle 5 proved beyond reasonable doubt.

57.9 Allegation 1.5 was proved in full beyond reasonable doubt.

57.10 Allegation 1.6

57.10.1 The Tribunal noted the wording of Allegation 1.6, which was based on an assertion that the Respondent had acted for the seller (Mr MS), the buyer (Ms DT) and the lender (NatWest) in relation to 23 Spinners Yard.

57.10.2 There was no doubt that the Respondent had acted for Ms DT and for NatWest. This was clear from the NatWest instruction letter. The Respondent, and his firm, had acted for Mr MS on other matters. However there was insufficient evidence put before the Tribunal that the Respondent had acted for Mr MS in this specific property sale. The Tribunal was mindful of the standard of proof and was not satisfied beyond reasonable doubt on this point.

57.11 Therefore because the Allegation depended on the Tribunal being satisfied that the Respondent had acted for all three clients, the Tribunal found Allegation 1.6 not proved.

58. **Allegation 1.7 - On 1 October 2013, the Respondent provided misleading information to his lender client in a letter by stating that "...the funds for VAT were provided on a short-term loan basis to the client by a third party" when he knew his lay client, Mr MG had not agreed to receive any loan and was unaware that any loan had been made, and thereby he:**

1.7.1. failed to achieve Outcome (4.2) of the SRA Code of Conduct 2011 ("SCC 2011");

1.7.2. failed to act with integrity in breach of Principle 2 of the SRA Principles 2011; and/or

1.7.3. failed to behave in a way that maintains the trust the public places in him and the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

Applicant's Submissions

58.1 The Applicant submitted that the Respondent failed to provide material information to his lender client in breach of Rule 4.02 of the Solicitors' Code of Conduct 2007.

58.2 The Respondent had deliberately made an untruthful statement to the Cumberland Building Society that money was provided by Mrs AW as a loan to the client. It was

submitted that the clear implication from that statement was that the client was aware of the loan and had agreed to its terms. A solicitor acting with integrity would not deliberately provide misleading information to his lender client. His conduct would undermine public confidence in him and in the profession. It was further submitted that the Respondent had acted dishonestly by the standards of ordinary decent people in line with the test in Ivey.

Respondent's Submissions

58.3 None.

The Tribunal's Findings

58.4 The Tribunal considered the letter of 1 October 2013. The letter had the Respondent's name at the bottom of the letter and at the top was his reference and the words "Please ask for: Martin Burnett". The Tribunal was satisfied that he was the author of the letter.

58.5 That letter clearly stated that "...the funds for VAT were provided on a short-term loan basis to the client by a third party".

58.6 This letter was in response to a letter from the Cumberland Building Society dated 30 September 2013. The relevant section of that letter read:

> "In the circumstances I would be obliged if you would clarify how the completion has been funded and provide the Society with a completion statement for the purchase...".

This was a direct and clear question being asked of the Respondent.

58.7 The reality of the situation was different to that set out in his reply of 1 October 2013. There was no evidence that the payment was a loan, short-term or otherwise. The email from Mr MG made it very clear that he expected the Firm to find the money for the VAT. He did not indicate that he was seeking to borrow the funds. The Respondent had not made anyone at the Firm aware of this expectation from Mr MG. Instead, he arranged for his sister to lend money to the Firm, unknown to the Firm, and to use that money to complete the purchase, without Mr MG having any knowledge of the source of the funds.

58.9 The description of Ms AW as a third party was also not correct in that it did not paint the full picture, which the Cumberland Building Society was clearly seeking. It certainly did not disclose that Ms AW was a relative of the Respondent.

58.10 The Respondent's representations also gave the impression that Mr MG was aware of the loan. He clearly had been unaware, as confirmed by the witness statement of Mr DC who had met Mr MG to discuss this issue. The source of the funds could not reasonably be described as a "loan... to the client".

58.11 The Tribunal found that the Respondent had provided misleading information to his lender client, the Cumberland Building Society and it therefore found the failure to achieve Outcome 4.2 proved beyond reasonable doubt.

58.12 *Principle 2*

58.12.1 The Tribunal considered that the Respondent was under a duty not to provide misleading information to anyone, let alone to the building society, his client. The Tribunal found that to fail to discharge that duty amounted to a clear lack of integrity. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

58.13 *Principle 6*

58.13.1 The Tribunal found that providing misleading information inevitably undermined the trust the public placed in the provision of legal services. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

58.14 *Dishonesty*

58.14.1 The Tribunal considered the Respondent's state of knowledge. He was the fee earner handling the transaction and he knew that the issue of VAT had caused difficulty with Mr MG. The Respondent had written the letter and was therefore aware of its contents. He was aware that what he was saying was not true as he was fully aware of the actual circumstances of Ms AW's payment. He had clearly read the Cumberland Building Society's letter as he had referred to it in his reply of 1 October 2013.

58.14.2 The Tribunal was satisfied beyond reasonable doubt that the Respondent's actions had been dishonest by the standards of ordinary decent people. The allegation of dishonesty was proved beyond reasonable doubt.

58.15 Allegation 1.7 was therefore proved in full beyond reasonable doubt including the allegation of dishonesty.

59. **Allegation 1.8 - By failing to respond to written correspondence sent to him by the SRA, the Respondent failed to deal with his regulator in an open, timely and co-operative manner in breach of Principle 7 of the SRA Principles 2011 ("the Principles").**

Applicant's Submissions

59.1 The Applicant submitted that the Respondent had failed to co-operate with the SRA throughout its investigation and had not provided any information when requested. The Respondent had failed to respond to written correspondence sent to him by the SRA and had failed to deal with his regulator in an open, timely and co-operative manner in breach of Principle 7.

Respondent's Submissions

59.2 None.

The Tribunal's Findings

59.3 The Tribunal noted each of the SRA's written requests for information from the Respondent including invitations to attend an interview. The Tribunal was satisfied that the Respondent had received this written correspondence. An example of this was the signature on 3 December 2016 for a letter that was delivered by recorded delivery.

59.4 The Respondent was under an obligation to respond to communications from his regulator and he had completely failed to do so. The Tribunal was entirely satisfied that he had failed to comply with his legal and regulatory obligations and had failed to deal with his regulator in an open, timely and co-operative matter, or indeed at all.

59.5 The Tribunal found the alleged breach of Principle 7 proved in full beyond reasonable doubt.

60. **Allegation 2 - Whilst dishonesty was alleged with respect to the Allegations at paragraphs 1.1, 1.2, 1.3, and 1.7, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.**

Applicant's Submissions on Dishonesty

60.1 The Applicant submitted that the Respondent's actions in relation to Allegations 1.1, 1.2, 1.3 and 1.7 had been dishonest by the standards of ordinary decent people.

60.2 The specific actions which the Applicant submitted had been dishonest were:

- creating and presenting the false Grant of Probate to the Halifax in 2015;
- deliberately altering the transaction date on the TR2 in 2013;
- forging the signatures of the owner and purchaser on the TR1 in 2013;
- signing to state that he had witnessed the signature of the purchaser on a TR1 when he had not been present with the signatory at the time he signed;
- forging the signatures of the lenders in 2014 on a DS1 to discharge a charge over a client's property and arranging for such document to be submitted to the Land Registry; and
- deliberately providing false and misleading information to his lender client in 2013.

60.3 The Applicant submitted that the Respondent had made conscious decisions to take such actions and his conduct was pre-meditated. The Respondent appeared to have been motivated or at least influenced in taking the actions he did to achieve or avoid the following:

- close a bank account swiftly;
- avoid a SDLT penalty charge;

- complete a registration of a transfer and avoid or minimise further requisitions from the Land Registry;

- cancel registration of the first charge so his lender client could obtain a first charge over the property; and

- avoid or minimise further questions from his lender client about the source of funds of the VAT on the purchase price.

60.4 The Applicant told the Tribunal that the Respondent had admitted that he had created a false Grant of Probate on the Mr PK (deceased) matter, that he had altered the date on the TR2 in Mr D McK's conveyancing transaction and that he had completed the TR1 form and forged the signatures of Mr J McA and the solicitor who allegedly witnessed it. He had also stated that he may have forged the signature of Mr D McK.

60.5 The Applicant submitted that the Respondent's actions were not isolated acts, but amounted to a course of conduct from 2013 to 2015. He had failed to report what had occurred, and the matters only came to light following the Firm's review of the Respondent's files in 2016.

The Tribunal's Findings

60.6 The Tribunal had considered the question of dishonesty as it arose in respect of each of the Allegations in which it was alleged. The Tribunal's findings that dishonesty was proved in every case it had been alleged are set out above under the respective headings.

Previous Disciplinary Matters

61. There was no record of any previous disciplinary findings by the Tribunal.

Mitigation

62. The Respondent did not present any mitigation.

Sanction

63. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

64. In assessing the Respondent's culpability, the Tribunal found that his motivation had been to cover up mistakes made in the course of his practice. He had sought to avoid having difficult conversations with his clients and with the Firm. In that sense he had been reactive to events, but his subsequent actions had been planned. He had produced forms, created letters and carried on the deception through correspondence. He had breached a position of trust as an executor of a will, breached the trust placed in him by clients as well by his employers. The Respondent's conduct had been entirely within his control and he had been an experienced practitioner.

65. In considering the harm caused, the degree of financial harm actually caused to individuals was unclear, but the clients had clearly suffered distress and anxiety. The potential for very significant loss was considerable given that the most serious misconduct related to property transactions and/or probate. The damage to the reputation of the profession was very significant. The misconduct affected matters relating to individuals, families and property which were of great significance to members of the public.

66. The misconduct had been deliberate, calculated and repeated and had continued for a considerable period of time. He had sought to conceal his wrongdoing from the Land Registry, the Probate Registry and clients, including lenders. The Respondent would clearly have known that he was in material breach of his obligations.

67. The matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

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

68. The Tribunal found there to be no mitigating factors. The Respondent had not cooperated with the SRA and had not engaged with the Tribunal at any stage in the proceedings.

69. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction bearing in mind the very significant harm to the reputation of the profession caused by the Respondent, as well as harm to individual clients. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.

70. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Respondent had not put forward any exceptional circumstances and the Tribunal was unable to identify any. The Tribunal found there to be nothing that would justify an indefinite suspension. The only appropriate and proportionate sanction was that the Respondent be Struck-Off the Roll.

Costs

71. Mr Johal applied for the Applicant's costs of the investigation and the proceedings based on the Schedule which had been served on the Tribunal and the Respondent.

72. The figure in the schedule was £11,987.63. Mr Johal submitted that this should be reduced as the hearing had taken less than one day and the figure in the schedule was based on a two-day hearing.

73. The Tribunal considered the schedule and was satisfied that it was a reasonable and proportionate sum. The Tribunal reduced the claim for attending the hearing as Mr Johal had suggested. This brought the total costs to £10,557.63.

74. The Respondent had not served a statement of means and so there was no basis for any further reduction based on the Respondent's ability to pay. The Tribunal therefore made the order requested.

Statement of Full Order

75. The Tribunal Ordered that the Respondent, MARTIN EDWARD BURNETT, 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 £10,557.63.

Dated this25th day of September 2018
On behalf of the Tribunal

S. Tinkler
Chairman