# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11780-2018/ 11813/2018

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY — Applicant

and

EDWARD SIBLEY — First Respondent
[NAME REDACTED] — Second Respondent

---

Before:

Mrs J. Martineau (in the chair)
Mrs C. Evans
Mr M. Palayiwa

Date of Hearing: 10 to 19 October 2018

---

**Appearances**

Yash Bheeroo, Counsel, of 3 Verulam Buildings, Gray's Inn, London, WC1R 5NT, instructed by Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The First Respondent represented himself.

Paul Parker, Counsel, of 4 New Square Chambers, Lincoln's Inn, London, WC2A 3RJ (Instructed by Michelle Garlick, solicitor, of Weightmans Solicitors LLP) for the Second Respondent (on 18 October 2018 only)

---

# JUDGMENT

---

## Allegations

First Respondent

1. The allegations made against the First Respondent by the Applicant were set out in a Rule 5 Statement dated 29 January 2018 and Rule 7 Statement dated 11 April 2018. The allegations related to the First Respondent whilst in practice as a Member at Sibley Law LLP (under that name and Sibley Germain LLP, together referred to as "the Firm") and thereafter while a solicitor providing legal services at Sibley Strategic Services Limited ("SSSL"). The allegations were that:

1.1 Between February 2014 and October 2015 he caused the Firm to accept a loan or loans ("the Firm Loans") with an aggregate value of about £75,000 ("the Firm Loaned Funds") from a client or former client of the Firm, PW and:

1.1.1 failed to cause PW to obtain independent legal advice about the Firm Loans before they were effected, and by reason of such failure breached one or both of Principles 2 and 6 of the SRA Principles 2011 ("the Principles"); and

1.1.2 caused the Firm Loaned Funds to be transferred from Client Account to Office Account other than in the circumstances allowed by Rule 20 of the SRA Accounts Rules 2011 ("SARs") and in doing so acted in breach of one or both of Rule 20 of the SARs and Principle 6 of the Principles.

1.2 On or about 20 April 2015 he personally accepted a loan ("the Personal Loan") with a value of about £40,000 ("the Personal Loaned Funds") made by or on behalf of a client or former client of the Firm, PW, and:

1.2.1 failed to cause PW to obtain independent legal advice about the loan before it was made and by reason of such failure breached one or both of Principles 2 and 6 of the Principles; and

1.2.2 caused client monies to be withdrawn from Client Account other than in the circumstances allowed by Rule 20 of the SARs and in doing so acted in breach of one or both of Rule 20 of the SARs and Principle 6 of the Principles.

1.3 On dates on or after 16 February 2014, he caused loans to be made from monies held by the Firm on behalf of PW to other clients of the Firm ("the Client Loans") with an aggregate value of about £50,993.52 ("the Client Loaned Funds"), and:

1.3.1 failed to advise PW on, or cause PW to obtain independent legal advice about, the Client Loans before they were effected, and by reason of such failure breached all or any of Principles 2, 4 and 6 of the Principles; and

1.3.2 caused client monies to be withdrawn from Client Account other than in the circumstances allowed by one or both of Rules 20 and 27 of the SARs and in doing so acted in breach of one or both of Rules 20 and 27 of the SARs and one or both of Principles 6 and 10 of the Principles.

1.4 Between about 14 February 2014 and 20 October 2015 he allowed client monies to be held in and paid out of the Firm's Client Account, comprising the Firm Loaned Funds, the Personal Loaned Funds and other loaned monies, other than in respect of instructions relating to an underlying transaction or to a service relating to the Firm's normal regulated activities, and in doing so acted in breach of one or both of Rule 14.5 of the SAR and Principle 7 of the Principles.

1.5 From 27 November 2017 onwards, he failed to comply with a formal requirement of the Legal Ombudsman to make a payment to a former client and thereby breached one or both of Principles 6 and 7 of the Principles.

1.6* On dates between December 2015 and August 2017 he failed to provide adequate or accurate information to clients about the likely overall costs at the outset of matters or throughout the conduct of them where required, and thereby breached all or any of Principles 2, 5 and 6 of the Principles and failed to achieve Outcome O (1.13) of the SRA Code of Conduct 2011 ("the Code").

1.7* On dates between December 2015 and August 2017 he failed to provide adequate or accurate information to clients about the basis of calculation of costs where required and thereby breached all or any of Principles 2, 5 and 6 of the Principles 2011 and failed to achieve Outcome O (1.13) of the Code.

1.8* On various dates between December 2015 and August 2017 he made transfers from Client Account to Office Account of sums which were in excess of those which might properly be charged for the work undertaken, which did not reflect the work actually undertaken, and which were not fair and reasonable, and thereby breached all or any of Principles 2 and 6 of the Principles.

1.9* On various dates between 2013 and 2016, he provided incorrect and misleading advice to Ms HB and her mother, Ms SS, as to whether HB could be appointed as an executor of the estate of Ms SS, in that the he told Ms HB and Ms SS that Ms HB could not be appointed as an executor of Ms SS's estate because Ms HB was a beneficiary of the estate, when this was not an obstacle to Ms HB's appointment as an executor, and in doing so displayed manifest incompetence and breached Principle 6 of the Principles.

1.10* Between about November 2015 and about August 2016 he failed to report to the SRA serious financial difficulties relating to the Firm, and in doing so breached Outcome O (10.3) of the Code and Principle 7 of the Principles.

1.11* On or after 1 March 2017, he failed to notify the SRA within 7 days that he was the subject of bankruptcy proceedings and in doing so breached Regulation 15 of the SRA Practising Regulations 2011 and Principle 7 of the Principles.

1.12* Between July 2016 and September 2017, while working at SSSL, he practised as a solicitor while he was not authorised as a Sole Practitioner of a Recognised Sole Practice, or a manager, employee, member or interest holder of an authorised body or authorised non-SRA Firm and in doing so breached Rule 1 of the SRA Practising Framework Rules 2011.

1.13* In or after July 2016, when notifying clients for whom he had acted as a solicitor of the intended transfer of their matters from the Firm to SSSL, he failed to inform clients of his intention that, while continuing to provide legal services, he would not continue to act as a solicitor and thereby breached all or any of Principles 5 and 6 of the Principles.

1.14* He failed promptly to comply with production notices served by the Solicitors Regulation Authority pursuant to the Solicitors Act 1974 and in doing so breached Principle 7 of the Principles.

1.15* On or about 27 March 2017, he caused or allowed the Court to be misled in that he relied upon a witness statement containing information which he knew or ought to have known was not true, and in doing so breached Outcome O (5.1) of the Code, Principle 6 of the Principles and acted recklessly.

2. It was the Applicant's case that the First Respondent acted dishonestly in respect of the matters set out at paragraphs 1.1, 1.2, 1.8*, and 1.13* above or any of them. Dishonesty was submitted not to be an essential ingredient to the allegations at 1.1, 1.2, 1.8* or 1.13* above and that it was open to the Tribunal to find those allegations proved with or without a finding of dishonesty.

* The Applicant's application to correct an error in the numbering of the allegations in the Rule 7 Statement was granted, as confirmed below under the heading Preliminary Matters, and the summary above reflects the corrected numbering.

Second Respondent

3. The allegations made against the Second Respondent by the Applicant were set out in a Rule 5 Statement dated 11 April 2018 and were that whilst in practice at the Firm he:

3.1 Between February 2014 and October 2015 he caused or allowed the Firm to accept a loan or loans ("the Firm Loans") with an aggregate value of about £75,000 ("the Firm Loaned Funds") from a client or former client of the Firm, PW and:

3.1.1 failed to cause PW to obtain independent legal advice about the Firm Loans before they were effected, and by reason of such failure breached one or both of Principles 2 and 6 of the Principles; and

3.1.2 caused or allowed the Firm Loaned Funds to be transferred from Client Account to Office Account other than in the circumstances allowed by Rule 20 of the SARs and in doing so acted in breach of one or both of Rule 20 of the SARs and Principle 6 of the Principles.

3.2 Between about 14 February 2014 and 20 October 2015 he allowed client monies to be held in and paid out of the Firm's Client Account, comprising the Firm Loaned Funds, other than in respect of instructions relating to an underlying transaction or to a service relating to the Firm's normal regulated activities, and:

3.2.1 in doing so acted in breach of one or both of Rule 14.5 of the SARs and Principle 7 of the Principles;

3.2.2 in failing to remedy the breaches referred to at 3.2.1 above promptly upon discovery, acted in breach of Rule 7.1 of the SARs.

3.3 Between about 10 November 2015 and about 5 August 2016 he failed to report to the SRA serious financial difficulties relating to the Firm, and in doing so breached Outcome O (10.3) of the Code and Principle 7 of the Principles.

3.4 From 27 November 2017 onwards, he failed to cause the Firm to comply with a formal requirement of the Legal Ombudsman to make a payment to a former client and thereby breached one or both of Principles 6 and 7 of the Principles.

3.5 By reason of the facts and matters alleged at 3.1 to 3.4 above, he failed to comply with his obligations as the Firm's Compliance Office for Legal Practice ("COLP") to ensure, or take adequate steps to ensure, compliance with the Firm's obligations under the Code, contrary to Rule 8.5 of the SRA Authorisation Rules 2011.

**Documents**

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

Applicant

- Application and Rule 5 Statement relating to the First Respondent dated 29 January 2018 with exhibit DWRP1
- Rule 7 Statement relating to the First Respondent dated 11 April 2018 with exhibit DWRP2
- Applicant's Reply to the First Respondent's Answer dated 26 March 2018
- Applicant's Reply to the First Respondent's Answer to the Rule 7 Statement dated 14 June 2018
- Application and Rule 5 Statement relating to the Second Respondent dated 9 April 2018
- Report of JH, claims investigator dated 3 October 2017
- Additional pages supplied by the Applicant's Instructing Solicitors forming pages 1234 to 1261 of the hearing bundle
- Witness Statement of AM (this statement was admitted into evidence following an application from the Applicant summarised below under the heading Preliminary Matters)
- Three documents relating to client PW produced by the Applicant during the hearing
- Schedules of Costs dated 3 October 2018 in respect of both Respondents

First Respondent

- Answer to the Rule 5 Statement dated 9 March 2018
- Supplementary Written Answer dated 22 March 2018
- Witness Statement in response to the Rule 7 Statement (undated)
- Email containing Skeleton Argument dated 6 October 2018

Second Respondent

- Answer to the Rule 5 Statement dated 23 May 2018
- Letter to the Tribunal dated 13 September 2018
- Various testimonials
- Witness Statement dated 10 September 2018
- Skeleton submissions dated 8 October 2018
- Without prejudice save as to costs correspondence from Weightmans Solicitors (produced after liability had been determined)
- Second Witness Statement dated 5 October 2018 with exhibit NS1
- Second Respondent's Schedule of Costs dated October 2018
- Personal Financial Statement dated 11 September 2018

**Preliminary Matters**

Application to amend the Rule 7 Statement relating to the First Respondent

5. At the start of the hearing Mr Bheeroo confirmed that the ten additional allegations against the First Respondent set out in the Rule 7 Statement were numbered incorrectly. They should be allegations 1.6 to 1.15 (rather than 1.5 to 1.14) so that they continued from the original allegations (1.1 to 1.5) included in the Rule 5 Statement as this would be likely to simplify the hearing. Mr Bheeroo also stated that allegations in respect of which it was alleged that the First Respondent acted dishonestly were 1.1, 1.2, amended 1.8 and amended 1.13. He confirmed that the Applicant would not pursue the allegation of dishonesty in relation to amended allegation 1.9.

6. The First Respondent stated that he had prepared for the hearing on the basis of the numbering in the Rule 7 Statement but he did not object to the clarifying amendment.

7. Under Rule 11(4)(c) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") the Tribunal may agree to the amendment of any application or allegation or the correction of any matter. The Tribunal considered that the clarifying amendment of the numbering of the allegations was sensible and as the First Respondent was not disadvantaged by the Applicant not pursuing the allegation of dishonesty in relation to amended allegation 1.9, and the allegation was a minor element of the case brought by the Applicant, the Tribunal granted the permission for the amendments to be made.

Objection to the inclusion of Ms AM's witness statement

8. The First Respondent objected to the inclusion of Ms AM's witness statement. He submitted that it was not relevant to the allegations included in the Rule 5 and Rule 7 Statements. He submitted that there were only two references to the matters covered in the witness statement in the hearing bundle and these concerned a loan that Ms AM had repaid in full and also the suggestion that Ms AM considered she owed money to the First Respondent following a loan rather than to Ms PW. He submitted that neither of these points was relevant to whether or not he had acted inappropriately. He stated that the witness statement contained various new allegations on which he had not been able to prepare his defence. He stated that he had received the witness statement six weeks previously and had had no opportunity to meaningfully consider the contents as the relevant legal files had been returned to Ms AM and he had no access to them. He

submitted that he would be disadvantaged by the statement being admitted and suggested it was intended to discredit him rather than being relevant to the allegations.

9. Mr Bheeroo stated that the statement was filed in accordance with the Tribunal's directions and that Ms AM was relied upon as a witness of fact as to the use of the funds with which the allegations were concerned. He submitted that the six weeks since the statement had been served was sufficient time to consider its contents and that the First Respondent could cross examine Ms AM and make submissions about the weight to be placed on the evidence if he wished to do so. Mr Bheeroo confirmed that the only allegations facing the First Respondent were those set out in the Rule 5 and Rule 7 Statements and that Ms AM's statement did not raise any new allegations. Mr Bheeroo stated that the Applicant had returned the legal files to Ms AM after its intervention into the Firm as they belonged to her.

10. The Tribunal considered the First Respondent's objections carefully. The Tribunal noted that the statement had been filed in accordance with the relevant direction and that the First Respondent had had six weeks to review it. The First Respondent would not face additional allegations from the witness; the hearing was to determine the allegations set out in the Rule 5 and Rule 7 Statements only and he would be able to cross examine and make submissions on the evidence and the weight that he contended the Tribunal should give it. The Tribunal was not persuaded that the First Respondent had set out any clear reason why the witness evidence should be excluded and accordingly directed that it be admitted into evidence.

**Factual Background**

The First Respondent

11. The First Respondent was admitted to the Roll in 1965. Between 31 January 2010 and 28 March 2015, he was a member of Sibley Germain LLP and the Firm's Compliance Officer for Legal Practice ("COLP"), and from 28 March 2015 until July 2016 was a member and a manager at Sibley Law LLP. Following the closure of Sibley Law LLP in July 2016, the First Respondent continued to provide legal services to clients through SSSL, which was formed on 12 July 2016 and of which he was the sole director and shareholder.

12. As a result of concerns raised with the SRA as to the First Respondent's conduct of clients' files, the SRA undertook an investigation commencing in May 2016. The First Respondent's Practising Certificate was made subject to conditions on 21 July 2017, to the effect that the First Respondent should not act as a solicitor other than with the prior approval of the SRA. On 4 September 2017, the First Respondent's Practising Certificate was suspended when an Adjudication Panel of the SRA determined that the SRA should intervene into the practices of the remnants of Sibley Law LLP and SSSL.

The Second Respondent

13. The Second Respondent was admitted to the Roll on 1 November 1995. Between 31 January 2010 and 28 March 2015, he was a member of Sibley Germain LLP, and from 28 March 2015 until July 2016, he was a member and a manager at Sibley Law

LLP. Sibley Law LLP. The Second Respondent was the Firm's COLP from March 2015.

14. Following the orderly wind-down compliance plan agreed with the SRA on 8 July 2016 and the closure of the Firm, the Second Respondent worked as a consultant solicitor for a new firm subject to conditions on his Practising Certificate made on 14 July 2017.

**Witnesses**

15. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

16. The following witnesses gave oral evidence:

- Ms AM, who had entered into a loan agreement with a client of the Firm
- Mr DB, the second Forensic Investigation Officer
- Ms HB, the daughter of a client of the Firm
- Ms SC, costs lawyer instructed by the Applicant
- the First Respondent

**Findings of Fact and Law**

17. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal gave due weight to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondents' right to a fair trial and to the Respondents' right to respect for their private and family life under Articles 6 and 8 respectively of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<u>The First Respondent</u>

18. **Allegation 1.1: Between February 2014 and October 2015 the First Respondent caused the Firm to accept the Firm Loans with an aggregate value of about £75,000 from a client or former client of the Firm, PW and:**

**1.1.1 failed to cause PW to obtain independent legal advice about the Firm Loans before they were effected, and by reason of such failure breached one or both of Principles 2 and 6 of the Principles; and**

**1.1.2 caused the Firm Loaned Funds to be transferred from Client Account to Office Account other than in the circumstances allowed by Rule 20 of the SAR and in doing so acted in breach of one or both of Rule 20 of the SARs and Principle 6 of the Principles.**

The Applicant's Case

18.1 The relevant background events on which allegations 1.1 to 1.4 are based are summarised under this allegation in order to avoid later duplication. In about 2012, the First Respondent began acting for Client PW in respect of the administration of the estate of her deceased husband. During the course of the administration, the First Respondent collected into the Firm's Client Account approximately £600,000. By the end of 2013, the Firm was holding over £435,000 on behalf of Client PW. Thereafter, and while funds were held on behalf of PW on the Firm's Client Account, the First Respondent arranged a number of loans from PW's assets to the Firm, the First Respondent and other clients. The First Respondent had accepted making such arrangements. Client PW stated, in the witness statement provided to the Applicant, that the idea of making such loans was first raised with her by the First Respondent.

18.2 The loans were, in some instances, entered into with the First Respondent acting on behalf of lender and borrower, by reason of his execution of loans using a power of attorney granted to him by Client PW on or about 23 February 2014. Client PW accepted that she was aware of and agreed to several of the loans. However, Client PW asserted, and the First Respondent did not contest, that before any loans were made to the Firm he did not cause PW to receive independent legal advice. None of the loan agreements were signed by Client PW. Mr Bheeroo submitted that the Tribunal should ask itself three questions: did the First Respondent allow loans to be made to himself, the Firm and other clients? Should he have advised and ensured that legal advice be taken by PW? Was each transfer in breach of the SARs?

18.3 The First Respondent stated in interview with the Applicant's Forensic Investigation Officer ("FIO") that the purpose of the loan purportedly entered into between Client PW and the Firm, but not signed by Client PW, dated 14 February 2014 was "to fund the cash flow of the Firm". The Respondent accepted that Client PW did not see the loan agreement at the time it was drafted. The first loan agreement provided for a loan facility for the Firm of £50,000, all of which was borrowed.

18.4 The loan agreement purportedly between Client PW and Client AM, a client of the First Respondent, was not signed by or on behalf of Client PW. The loan agreement provided for a loan facility of £50,000 of which £29,500 was borrowed. There is no indication of any measures taken by the First Respondent to assess the degree of risk to Client PW of making an unsecured loan to Client AM, of any explanation being provided to Client PW as to how the First Respondent had identified Client AM as an appropriate recipient of a loan, or of any pre-existing relationship between the First Respondent and Client AM. The First Respondent accepted in interview that he had no documentary evidence to show that Client PW was informed of the details of the loans being made.

18.5 The loan agreement purportedly between Client PW and Client GB, another client of the First Respondent, dated 19 June 2014, was again not signed by or on behalf of Client PW. The loan agreement provided for a loan facility of £30,000 of which £21,493.52 was borrowed. The First Respondent accepted that Client PW was not aware of the loan being made to Client GB and there was, again, no indication of measures taken by the First Respondent to assess the degree of risk to Client PW of making an unsecured loan to Client GB, or of any explanation being provided to Client PW as to how the First Respondent had identified Client GB as an appropriate

recipient of a loan, or of any pre-existing relationship between the First Respondent and Client GB. The First Respondent acknowledged that he did not know the purpose to which the loaned funds would be put by Client GB but that he assumed that they were for GB's cash-flow purposes. The Respondent accepted that he did not provide Client PW with a copy of the loan agreement.

18.6 The Respondent accepted in interview that neither Client AM nor Client GB were advised to seek independent advice in respect of the loans, on the basis that he "doubted" that Client AM needed such advice given the nature of his relationship with her, and because Client GB would have been "offended" by such advice.

18.7 The loan agreement purportedly entered into between Client PW and the First Respondent in his personal capacity, dated 20 April 2015, was also not signed by Client PW. The loan agreement provided for a loan facility of £50,000 of which £40,000 was borrowed.

18.8 The second loan agreement purportedly entered into between Client PW and the Firm was again unsigned by Client PW. A transfer of £20,000 from Client PW's assets to the Firm's account occurred 8 days prior to the purported agreement, on 12 October 2015.

18.9 The combined total of the various loan facilities was £200,000 and the total amount borrowed under them was £165,993.52. Client PW stated that the loans which were actually entered into did not reflect her instructions to the First Respondent that any loans should be repayable on demand. Client PW maintained that she was not aware of the £20,000 loan made to the Firm on October 2015. That loan was effected by the First Respondent and in making the loan he exercised a power of attorney granted to him by Client PW. It was therefore alleged that the First Respondent took monies from Client Account for his own benefit (as a manager of the entity receiving the loan), acting on behalf of both lender and borrower, and without causing the lender to receive independent legal advice before effecting the loan.

18.10 Client PW subsequently took steps, including instigating winding up proceedings, to seek to recover the sums loaned to the Firm. The First Respondent sought an injunction to prevent such proceedings. He argued before the High Court that the first loan agreement by which £50,000 had been borrowed by the Firm did not accurately record the parties' intentions as to the period within which repayment should be made. The loan agreement provided for payment on the first anniversary of the loan, but the loan was not repaid within this period. The Respondent sought to persuade the Court that the parties had in fact agreed other terms by which it would be repayable later. He stated in an affidavit that "The loan agreement that was drafted by me …was expressed to be for one year, because a loan for less than 1 year would enable [Client PW] to receive her monthly interest payments without any deduction for tax…There can be no doubt, however, that [Client PW] knew and agreed that it should not be repayable on its anniversary or at any time thereafter until she paid off her mortgage…".

18.11 The Court rejected this argument and the First Respondent's submissions were described by the Judge as "wholly implausible". The First Respondent sought to justify this position to the SRA investigators by suggesting that contracts often involved provisions which were "behind the veil" and were not fully recorded in documents. The

Respondent continued to maintain in a letter to the SRA of 1 November 2016 that "...the loan documentation does not reflect the true agreement of the parties…".

18.12 In respect of both of the loans to the Firm, the ledgers record that the First Respondent caused the funds to be transferred from the Firm's client account to its office account. Such transfers were submitted not to be made in compliance with any of the conditions laid down for such transfers in Rule 20 of the SARs or, in respect of the loans between clients, in compliance with Rule 27.2 of the SARs.

18.13 Client PW stated that in respect of the loan to Client GB, the loan was made without her knowledge and authority, and had the effect that the aggregate sum loaned from her assets exceeded the maximum £100,000 which she had instructed the First Respondent could be loaned. Client PW further stated that the loan to Sibley Law LLP of £20,000 on 20 October 2015 was made without her knowledge and authority and amounted to a further loan in excess of the aggregate total loans of £100,000 which she had authorised in principle.

18.14 The Statutory Demand served by Client PW on the Firm was withdrawn on the Firm's agreement to make instalment repayments to her. The Firm subsequently failed to make repayments and, according to Client PW's evidence, the First Respondent indicated to her that he would not make further repayments. On 17 October 2017 a decision was made by the SRA Compensation Fund to make a payment to Client PW of £20,000 in respect of the loan made to Sibley Law LLP which was not repaid.

18.15 In respect of each of the loans to the First Respondent or to the Firm, the First Respondent did not cause Client PW to obtain independent legal advice before he effected the loans by causing the transfer of funds from the Firm's Client Account to Office Account. The First Respondent said that such advice was not necessary because the loan was made outside of the course of his legal practice. However, the funds were taken from monies held in the Respondent's Firm's Client Account. Indicative Behaviour 3.8 of the Code provides that borrowing from a client, unless the client has obtained independent legal advice, may tend to show non-compliance with the Principles.

18.16 The Applicant alleged that the First Respondent should have declined the loan unless PW had obtained independent legal advice. The fact that the First Respondent exercised a power of attorney over Client PW's assets was submitted to be an aggravating rather than mitigating factor, in that such power was utilised by the First Respondent to appropriate funds without client knowledge of or consent to individual transfers. It was further alleged that he acted in a manner which undermined the trust the public placed in him and the provision of legal services in breach of Principle 6 in arranging and effecting the loan from a client, in circumstances where:

- the loan was unsecured;

- the loans were taken at a time when the Firm was experiencing serious financial difficulties;

- there was, in respect of the loan of £20,000, an inconsistency between the documented terms of the loan and those later asserted by the First Respondent; and

- Client PW had not taken independent legal advice on the loan and was known by the First Respondent not to have taken such advice. Had such advice been taken the minimum advice would have been to ensure that the fact and terms of the loan were recorded in writing and that Client PW be satisfied as to the First Respondent's ability to repay it.

18.17 The Applicant alleged that the First Respondent's actions amounted to a failure to act with integrity in breach of Principle 2 of the Principles, in accordance with the test accepted in Newell-Austin v SRA [2017] EWHC 411 as applying in the context of solicitors' disciplinary proceedings, i.e. that the person had failed to act with moral soundness, rectitude and steady adherence to an ethical code, applying a purely objective test. Mr Bheeroo also referred the Tribunal to paragraphs [95] to [101] in Wingate & Evans v SRA [2018] EWCA Civ 366 and the comments about the higher standards expected of members of a profession and the need to comply with the ethical standards of the profession. Mr Bheeroo submitted that it was clear that the First Respondent had subordinated Client PW's interest to his own and those of the Firm. It was alleged that the First Respondent's conduct amounted to a failure of steady adherence to an ethical code in that:

- he appropriated client monies for his own benefit, in some cases in the exercise of a power of attorney granted to him by the client, in circumstances where he had not complied with his professional obligations or taken steps to ensure the protection of the client's best interests;

- he took such steps in respect of monies regarding which he was aware that he was in a position of responsibility while collecting in and holding substantial sums of money on behalf of clients; and

- he gave client PW inadequate advice about the terms of the loans.

18.18 The First Respondent had stated in a letter sent to the SRA, in response to its letter to him of 29 June 2016, that if Client PW had been advised to seek independent legal advice "there is no certainty that she would have sought independent legal advice such was her trust and confidence in him at the time". The Applicant submitted that acting as he did, in the knowledge of the degree of trust placed in him by Client PW, was a further manifestation of a failure to act with integrity.

18.19 In respect of the loans to Sibley Law and the First Respondent summarised above, it was alleged that the First Respondent transferred funds from Client Account to Office Account other than in the circumstances allowed for under Rule 20 of the SRA Accounts Rules and therefore in breach of that Rule. Clients and the public would expect the First Respondent and solicitors generally to comply strictly with controls over the use to which client monies may be put.

The First Respondent's Case

18.20 The First Respondent submitted that the loans, including those made to the Firm and to him, were commercial transactions. He stated that the loans that he had made on Client PW's behalf were made in his capacity as her attorney and not as her solicitor. He submitted that, accordingly, the loans did not engage the solicitor-client relationship. He stated that he had made this clear to the SRA. He referred the Tribunal to a decision by the SRA Compensation Fund dealing with the £50,000 loan to the Firm. Their letter of 16 March 2017 stated that because the loans made by Client PW to the Firm "were within the scope of an overarching loan agreement" the losses fell outside the scope of the Compensation Fund Rules. This was stated to be because "losses must arise in the course of the usual activity of a solicitor, a legal transaction… [f]inancial agreements do not fall within this". The First Respondent submitted that this supported his contention that he was not acting as a solicitor when acting in relation to the loans made on behalf of Client PW.

18.21 The First Respondent stated that Client PW had received independent advice, albeit not legal advice, from an Independent Financial Adviser, Mr DP. The First Respondent submitted that such an adviser was a more sensible source of advice on the subject of making of commercial investments. Client PW had agreed that for a rate of interest of 10% the First Respondent could, as her attorney, arrange for loans to be made from the money held for her by the Firm. His evidence was that it was Client PW's wish for the money to be retained in the Firm's client account and for the various loans to be made to generate income for her. She appointed the First Respondent as her attorney to allow him to manage various matters in her absence overseas. The First Respondent also stated that he had not exceeded the authority acknowledged in Client PW's witness statement to have been given which was for loans of up to £100,000 to be made. In response to the Applicant's contention that some of the loans had been made when the power of attorney had not yet been effected, the First Respondent submitted that Client PW was able to, and did, 'cure' this by ratifying and confirming the actions he had taken. He also submitted that the power arose as a result of the prior oral agreement reached. He stated that Client PW was very clear that he was not acting as a solicitor when making the loans for her. In his evidence he stated that Client PW would "think he was mad" if he had told her to get legal advice on loans he was carrying out on her instructions as her attorney.

18.22 The First Respondent submitted that Client PW had agreed the loans made to the Firm and also the loan made to himself. The First Respondent submitted that Client PW had acknowledged in her statement that she was aware of every loan, save the final one to the Firm of £20,000 (something he disputed). He stated that she had also received regular interest payments on all of the loans which supported his contention that she was in fact aware of all of the loans. His evidence was that she had also agreed the final £20,000 loan to the Firm and did so on 8 October 2015. This was stated to be in the context of her decision to remove funds from the low interest yielding Old Mutual Wealth Fund and the advice from the Independent Financial Adviser that he could not match the 10% interest that the Firm was already paying on its initial loan. As with the other loans, the interest payable on the further loan was 10% and Client PW promptly received increased interest payments to reflect the additional £20,000 loaned. The First Respondent stated that the increased payments started from the day after Client PW's

second loan to the Firm of a further £20,000 and that the amount of interest paid had been amended to reflect the increase in money borrowed by the Firm.

18.23 The First Respondent submitted that Client PW's account of events over time was contradictory and he invited the Tribunal to draw adverse inferences from the fact she had not attended the hearing. He stated that Client PW was often confused about the state of her account with the Firm and was adamant that she did not wish to receive financial information at home. He referred the Tribunal to attendance notes where former colleagues had stated amongst other things that Client PW was "repetitive and slurring her words" and "I was under the impression she was drunk". He stated that Client PW had previously, wrongly, accused the Firm of misappropriating her money and submitted that she was not a reliable source of what had occurred. The First Respondent stated that he did not send a copy of the loan documents to Client PW and this was in accordance with her instructions.

18.24 The First Respondent submitted that there was no meaningful distinction between the two loans to the Firm, the initial £50,000 and the subsequent £20,000, to explain the different decision reached by the SRA Compensation Fund in respect of the latter. Unlike in respect of the £50,000 loan to the Firm, the Compensation Fund accepted that the £20,000 loan fell within its jurisdiction. He submitted that the Compensation Fund payment to Client PW of £20,000 was made erroneously and, in his view, as a result of SRA intervention and misrepresentation.

18.25 The First Respondent considered that Client PW was clear at the outset about the terms of repayment, which he stated was when her mortgage was due to be paid. He submitted that there was nothing improper about the loan agreement recording a term of one year rather than the longer period which he stated had been agreed with his client. The effect was merely and permissibly to delay his client's payment of tax. The First Respondent's submission was that Client PW's version of events had changed after the intervention of the SRA. His evidence was that it was inconceivable that Client PW genuinely believed that the loans were agreed to be repayable on demand, and that the generous 10% interest payable reflected the fact that they were not. He stated that Client PW was entirely happy with the 10% interest and she had asked, after the first loan to the Firm, if he knew of anyone else who wished to borrow money on the same terms. The First Respondent stated that at times in the documents before the Tribunal Client PW had described the loans as being repayable on demand and at others had complained that monies had not been repaid in line with the one year term included in the deed. In statutory demands that she issued to recover money loaned Client PW had described the loan as being for one year, whereas after the SRA's intervention she described the loan as payable on demand. The First Respondent submitted this was one example of what he described as her muddled and inconsistent evidence which he attributed in part to the SRA's investigation and contact with her.

18.26 The First Respondent stated that all monies had been repaid to Client PW, including that loaned to the Firm and to himself. He also stated that Ms AM had repaid the money loaned to her (following mediation) as had Mr GB.

18.27 The First Respondent's principal submission on allegation 1.1 was that he was acting as Client PW's attorney, that she received independent financial advice and that she knew about (and had approved) both loans to the Firm. In those circumstances, he

denied that the Principles required that he must decline the loan. It was a commercial transaction, carried out in his capacity as his client's attorney and accordingly he submitted that Indicative Behaviour 3.8 of the Code was not relevant and did not suggest any non-compliance with the Principles. He also stated that the Applicant could not know whether his client would have taken independent legal advice nor what it would have been.

18.28 He further submitted that the fact the loans were unsecured was part of the rationale for the payment of 10% interest and that accordingly the Applicant's contention that public trust would be undermined by it was misconceived. The public would understand, he submitted, that the rate of interest reflected the lack of security.

18.29 The First Respondent further submitted that the Applicant's suggestion that he had appropriated client monies for his own benefit was an outrageous slur. He described it as a mere allegation unsupported by evidence which could amount to any proof let alone proof beyond reasonable doubt. He denied any breach of Principle 2 on the basis that a commercial agreement had been reached with the agreement of his client whilst he was acting as her attorney rather than solicitor.

18.30 He denied any breach of the SARs on the basis that when the loans had been agreed the money became the property of the borrower. He submitted that in those circumstances the Firm was obliged to transfer the funds.

The Tribunal's Decision

18.31 The Tribunal noted that the underlying facts were largely agreed: it was agreed that the loans to the Firm were made, independent legal advice was not obtained and the transfers from client account necessary to effect the loans were made. The dispute between the parties as to whether the Principles were engaged and breached turned primarily on whether or not a power of attorney existed at the relevant time and, if so, whether arranging the commercial loans under a power of attorney had the effect that the First Respondent was not acting in his capacity as a solicitor.

18.32 The Tribunal noted that the First Respondent had acted for Client PW in connection with her late husband's estate and had secured a positive result for which she was grateful. The Tribunal considered that having engaged the First Respondent as her solicitor, and his having achieved such a positive result, Client PW was likely to have regarded him as her solicitor acting as her attorney, rather than seeing any significant distinction between the two roles. The Tribunal was not directed to any evidence that the stark distinction maintained by the First Respondent was made clear to Client PW.

18.33 The Tribunal was not persuaded by the First Respondent's submissions that a power of attorney may arise orally, and it therefore found that the power did not exist when the first loan agreement, which predated the power of attorney, was executed. The first loan agreement was dated 14 February 2014 and the power of attorney was dated 23 February 2014. In any event, the Tribunal found that the First Respondent's actions as his client's attorney could not be wholly separated from his previous role as her solicitor and his obligations as a solicitor to comply with the Principles.

18.34 The Tribunal did not accept the First Respondent's submissions that the SRA Compensation Fund's different decisions on the two loans to the Firm meant that the second decision, to pay compensation in respect of the second loan to the Firm, was wrongly decided. The Tribunal noted that the second loan to the Firm was made outside the scope of the original agreement for £100,000 worth of commercial loans to be made and consequently different legal considerations may have applied.

18.35 When the possibility of the loans was discussed with his client, in around December 2013, the Tribunal considered that the First Respondent should have, and was obliged by the Principles to, ensure that Client PW obtained independent legal advice about the loans to the Firm. The Tribunal rejected the First Respondent's submission that advice from an Independent Financial Adviser was adequate. The Tribunal considered such advice was inadequate when the potential loans in question were to the practice and its clients. This brought about very clear risks of conflict of interest as the First Respondent was proposing to act as both lender (as attorney) and as borrower (in the case of the loans to the Firm). The Tribunal considered it essential both to the provision of a proper service as a solicitor and public trust in the First Respondent and in the provision of legal services that independent legal advice be obtained. The Tribunal found beyond reasonable doubt that by failing to ensure such advice was taken he had acted in breach of Principle 6 of the Principles.

18.36 For the reasons summarised above, the Tribunal also found that the First Respondent had failed to act with integrity in breach of Principle 2. By reference to the test in Wingate, the Tribunal found that by failing to secure independent legal advice for Client PW, in circumstances where the risk of conflict was so blatant and where the information he had provided to his client was so minimal, the First Respondent was clearly not adhering to the ethical standards of the profession. The ethical standards of the profession required that Client PW received legal independent advice given the First Respondent's proposal that she lend money to the Firm and other clients. The First Respondent had subordinated the interests of his client to his own, and the Firm's. The Tribunal recognised that an attractive rate of interest was paid by the Firm, and other borrowers, but this did not obviate the need to protect her interest by way of independent legal advice. The Tribunal found beyond reasonable doubt that he had breached Principle 2 of the Principles.

18.37 Given that the Tribunal had found that no power of attorney existed for the first of the loans made, the Tribunal considered that it was not sustainable for the First Respondent to maintain that he had not breached the SARs. Whilst the loans made under the power of attorney may potentially have fallen within Rule 20.1(f) of the SARs, transfers from client account made where no power of attorney existed could not be justified by reference to Rule 20.1 and the Tribunal found beyond reasonable doubt that the First Respondent had thereby breached Rule 20.1 of the SARs. The Tribunal considered that for a regulated Firm and as a solicitor, compliance with accounts rules was of the utmost importance for client protection and public trust in the First Respondent and in the provision of legal services. By acting in breach of such an important system which exists for public protection, the Tribunal found beyond reasonable doubt that the First Respondent had breached Principle 6 of the Principles.

19. **Allegation 1.2: On or about 20 April 2015 the First Respondent personally accepted the Personal Loan with a value of about £40,000 ("the Personal Loaned Funds") made by or on behalf of a client or former client of the Firm, PW, and:**

**1.2.1. failed to cause PW to obtain independent legal advice about the loan before it was made and by reason of such failure breached one or both of Principles 2 and 6 of the Principles; and**

**1.2.2. caused client monies to be withdrawn from Client Account other than in the circumstances allowed by Rule 20 of the SARs and in doing so acted in breach of one or both of Rule 20 of the SARs and Principle 6 of the Principles.**

The Applicant's Case

19.1 The Applicant relied upon the background allegations summarised above in paragraphs 18.1 to 18.14 relating to the various loans made from money held for Client PW.

19.2 In respect of the loans made to the First Respondent personally from PW's assets, it was alleged that the First Respondent failed to cause PW to obtain independent legal advice on the loans. He accepted that he did not cause her to obtain legal advice, but maintained that he was not obliged to do so, and satisfied his obligations to Client PW by referring her to a friend who was an Independent Financial Adviser. The Applicant repeated the submissions summarised at paragraph 18.16 above, and submitted that in so acting the First Respondent breached Principle 6 of the Principles.

19.3 It was also alleged that the First Respondent failed to act with integrity according to the test recited at paragraph 18.17 above in that he:

- initiated, arranged and executed a loan from a client to himself;
- exercised a power of attorney granted to him by the client for sums in excess of the aggregate total agreed by the client;
- on terms which failed to provide the client with adequate protection;
- in circumstances in which his ability to repay the sums was uncertain and the loans were unsecured;
- without causing the client to obtain independent legal advice.

The Applicant submitted that such conduct amounted to a clear failure to demonstrate steady adherence to an ethical code.

The First Respondent's Case

19.4 The First Respondent relied upon the context set out in his response to allegation 1.1 summarised above. He referred the Tribunal to the witness statement of Client PW dated 14 July 2016. In this statement she confirmed: "I agreed, as 'Lender', to provide a further facility of up to £50,000 to [the First Respondent] personally, as 'Borrower'".

The First Respondent submitted that she was clearly aware of the fact that he was borrowing money as an individual notwithstanding her contrary later statements to the SRA's FIO. The First Respondent submitted that Client PW's later account to the SRA was unreliable and motivated in large part by a strong desire for the loans to be repaid quickly (before the First Respondent submitted they were due to be paid).

19.5 Given that the First Respondent's position was that this was a commercial loan in the same way as the loans made to the Firm, he relied upon the same advice provided to Client PW by an Independent Financial Adviser and denied that the lack of independent legal advice in respect of the loan was inappropriate. Given the favourable commercial terms, the financial advice received, the fact he was acting as her attorney and not solicitor what he stated was express agreement of Client PW, the First Respondent denied any breach of Principles 2 or 6.

The Tribunal's Decision

19.6 The Tribunal was referred to a copy of the power of attorney which lasted for six months from 23 February 2014. The loan to the First Respondent was dated 20 April 2015. Even accepting the First Respondent's oral evidence that the initial six month power of attorney was extended for a further six months, for which no supporting evidence was proffered and to which Client PW did not refer in her written statement of 24 June 2016 in which she discussed the initial power, the loan to him as an individual was made after the power had expired. Accordingly, the distinction that the First Respondent sought to draw between acting as a solicitor and an attorney was not sustainable in the case of this loan.

19.7 In any event, the Tribunal considered that the conflict of interest was self-evidently even more marked where the loan was made from Client PW to the First Respondent personally. For the reasons given in relation to the first allegation, the Tribunal did not consider that the advice obtained from the Independent Financial Adviser was an adequate substitute for independent legal advice for a client whose solicitor proposed to borrow money from them personally. For the reasons set out in relation to the previous allegation, the Tribunal found beyond reasonable doubt that the First Respondent had breached Principles 2 and 6 of the Principles. The fact that the loan was made to himself personally was likely to undermine public trust in him and in the provision of legal services to an even greater degree. The Tribunal also found that in the absence of a power of attorney as a potential source of authority under Rule 20.1(f) for the transfer from Client Account, the First Respondent had breached Rule 20.1 of the SARs by making the transfers to himself from the Client Account. The Tribunal also found beyond reasonable doubt that such breaches amounted to a failure to act with integrity and in a way which would maintain the trust placed by the public in the First Respondent and in the provision of legal services. The accounts rules provided vital protections for clients and the public trust in the profession required that they be scrupulously observed.

20. **Allegation 1.3: On dates on or after 16 February 2014, the First Respondent caused loans to be made from monies held by the Firm on behalf of PW to other clients of the Firm (the Client Loans) with an aggregate value of about £50,993.52 (the Client Loaned Funds), and:**

**1.3.1. failed to advise PW on, or cause PW to obtain independent legal advice about, the Client Loans before they were effected, and by reason of such failure breached all or any of Principles 2, 4 and 6 of the Principles; and**

**1.3.2. caused client monies to be withdrawn from Client Account other than in the circumstances allowed by one or both of Rules 20 and 27 of the SARs and in doing so acted in breach of one or both of Rules 20 and 27 of the SARs and one or both of Principles 6 and 10 of the Principles**.

The Applicant's Case

20.1 The Applicant again relied upon the background allegations summarised above in paragraphs 18.1 to 18.14 relating to the various loans made from money held for Client PW.

20.2 The Respondent caused monies to be paid from the Client Account of Sibley Law LLP to other clients (Ms AM and Mr GB). In doing so, the Applicant alleged that the First Respondent failed to provide Client PW with advice, or to cause her to otherwise receive legal advice, as to the merits and risks of such loans, and such failure occurred in circumstances in which the First Respondent was not aware of the purposes to which the loaned funds would be put, and was aware of risks to Client PW of a failure to repay. Specifically, he was aware that Ms AM would use funds to repay other creditors. It was alleged that there was no evidence that the First Respondent took steps to establish whether either of the client borrowers would be in a position to repay Client PW, promptly or at all.

20.3 The Applicant submitted that it was not in Client PW's best interests to make loans without any advice being given as to the risks of doing so, and clients and the public would expect such advice to be given or recommended. It was submitted that consequently the First Respondent acted in breach of Principles 4 and 6, by not acting in the best interest of each client and in a way that maintained the trust placed by the public in him and in the provision of legal services respectively.

20.4 It was also alleged that the First Respondent failed to act with integrity according to the test recited at paragraph 18.17 above in that he:

- initiated, arranged and executed loans from a client to other clients;
- exercised a power of attorney granted to him by the lender client for sums in excess of the aggregate total agreed by the client;
- on terms which failed to provide the client with adequate protection;
- in circumstances in which the borrowers' ability to repay the sums was uncertain, the loans were unsecured, and one of the loans was believed by the First Respondent to be for the purpose of repaying other creditors;
- without advising the lender client or causing the lender client to obtain independent legal advice.

20.5 In respect of the Client Loans, it was alleged that the First Respondent transferred funds from Client Account to other clients other than in the circumstances allowed for under Rule 20 of the SARs and therefore breached that Rule. He did not have express written authority from the lender client as is required under Rule 27. Clients and the public would expect the Respondent and solicitors generally to comply strictly with controls over the use to which client monies may be put, particularly in circumstances in which the Respondent exercised a particular responsibility by reason of the power of attorney. It was further alleged that the making of the Client Loans in the absence of any apparent steps to assess the degree of risk to Client PW arising from the Client Loans amounted to a failure to protect client money and so constituted a further breach of Principle 10 of the Principles which requires that client money and assets be protected.

The Respondent's Case

20.6 The First Respondent again relied upon the context set out in his response to allegation 1.1 summarised above. He did not dispute the fact of the loans made by him to Clients AM and GB. He regarded the loans as permissible on the same basis as those to the Firm and to himself as set out above. His position on the absence of legal advice was the same as with the above two allegations: independent financial advice had been received and in the context of commercial investments this was more sensible that legal advice from a solicitor.

20.7 The First Respondent stated that the loan to Client AM, of £29,500, was a commercial transaction he made on Client PW's behalf under the power of attorney and with her knowledge. He referred the Tribunal to comments from Client PW in her interview with the FIO in which she stated that she was aware of the loan.

20.8 The First Respondent stated that Client PW had agreed that he could loan up to £100,000 of the money held for her by the Firm on the commercial terms agreed. He stated that the borrowers could be chosen by him as Client PW's attorney and did not need to be approved by her. As with the response to the previous allegations, the First Respondent's case was that the 10% interest payable reflected the fact the loans were not secured and were not payable on demand. He stated that his client was content to leave the risk assessment of the borrowers to him. Given his detailed knowledge of Clients GB and AM, and their financial position, he submitted that he was ideally placed to make this risk assessment and he did not consider either to represent a risk.

20.9 The First Respondent again submitted that Client PW's account of the terms of the loans was unreliable and had changed over time from payable after one year to payable on demand and neither of those was accurate; the loans were due to be payable, in his submission, when Client PW came to repay her mortgage. The First Respondent stressed that Clients GB and AM had repaid the money borrowed from Client PW. He also stated that he had not acted as solicitor to Clients GB or AM in respect of the loans they agreed; the question of advising them to take independent legal advice or any failure to act in their best interests as alleged did not therefore arise in his submission.

20.10 The First Respondent stated that interest was paid from Clients AM and GB to Client PW via the Firm's office account in order to comply with her instructions and wish for secrecy over her inheritance. The Firm duly passed the interest payments to Client PW. As with the loans to the Firm and himself, the First Respondent submitted

that once the loans had been agreed he had no option but to make the transfers from Client Account. Accordingly, he denied any breach of the SARs or Principle 6. Structuring the payments so as to comply with his client's wishes was not, he submitted, something which would undermine public trust. He also denied that in all the failure to secure independent legal advice was a breach of Principles 2, 4 or 6 in all the circumstances, where he submitted he was acting in accordance with his client's wishes, as an attorney rather than solicitor, and independent financial advice about the commercial transactions involved had been obtained.

The Tribunal's Decision

20.11 The Tribunal again noted that the parties agreed about the key relevant facts. The First Respondent had made loans from funds held by the Firm for Client PW to other clients of the Firm, Ms AM and Mr GB. The information provided to Client PW about these loans had been minimal; the First Respondent's case was having given broad agreement that up to £100,000 may be loaned he was not obliged to seek consent from Client PW or even reveal the identities of those to whom he loaned her money. The Tribunal noted that the power of attorney existed when the two loans to clients of the Firm were made.

20.12 For the reasons given in relation to allegation 1.1, the Tribunal did not consider that the First Respondent's role as a solicitor and Client PW's attorney could be entirely separated. It was likely that she had particular confidence in him as her attorney given the professional obligations and standards applicable to and required of him as a solicitor. The Tribunal noted the evidence and submissions about the potential risk of the clients being unable to repay the money borrowed, but considered there was a more fundamental professional failing which was that it was essential, in the Tribunal's view, that Client PW received independent legal advice about the possibility of making loans to other clients of the Firm. The protracted difficulties that Client PW had recovering her money from Ms AM, the apparent confusion on the part of Ms AM, who the Tribunal considered to be an impressive and honest witness, about the loan she took out which she understood to be from a friend of the First Respondent and not Client PW, and the disputes between the First Respondent and Client PW as to the terms of repayment, all demonstrated why independent legal advice was required.

20.13 Even disregarding these difficulties, the Tribunal considered that as a solicitor, irrespective of whether a client had agreed a power of attorney, the First Respondent should have ensured that Client PW received independent legal advice about the possibility and practicalities of making loans to clients of the Firm. The Tribunal accepted the submission of the Applicant the fact that the First Respondent was arranging the loans under a power of attorney was an aggravating and not a mitigating factor; under such a power he would have very extensive autonomy to take and act on decisions and independent legal advice in that context was even more important.

20.14 For the reasons above and those set out in relation to the previous two allegations, the Tribunal found beyond reasonable doubt that the First Respondent had breached Principles 2 and 6 of the Principles by not ensuring that PW had received independent legal advice before making loans to other clients of the Firm.

20.15 Notwithstanding the power of attorney was in existence at the time of the loans to Mr GB and Ms AM, the Tribunal was not persuaded that the conditions set out in Rules 20 or 27 of the SARs were satisfied. The Tribunal accepted the oral evidence of Ms AM that she had not been informed that she was borrowing money from the First Respondent's Client, PW. In those circumstances the Tribunal did not consider that Ms AM could be said to have consented to the loan such that Rule 27 of the SARs could potentially be satisfied. Similarly, in the absence of independent legal advice for Client PW, and given the clear evidence of disagreement and ambiguity over the arrangements reached with her by the First Respondent as to the terms of the loans made from her money held by the Firm, the Tribunal found that none of the conditions in Rule 20 of the SARs had been met. The Tribunal therefore found beyond reasonable doubt that the First Respondent had breached Rules 20 and 27 of the SARs. As with the previous allegation, the Tribunal also found beyond reasonable doubt that such breaches amounted to a failure to act in a way which would maintain the trust placed by the public in the First Respondent and in the provision of legal services. The accounts rules provided vital protections for clients and the public trust in the profession required that they be scrupulously observed. Given the treatment of Client PW's monies held by the Firm summarised above, the Tribunal also found beyond reasonable doubt that the First Respondent had failed to protect her money and assets in breach of Principle 10 of the Principles.

21. **Allegation 1.4: Between about 14 February 2014 and 20 October 2015 the Respondent allowed client monies to be held in and paid out of the Firm's Client Account, comprising the Firm Loaned Funds, the Personal Loaned Funds and other loaned monies, other than in respect of instructions relating to an underlying transaction or to a service relating to the Firm's normal regulated activities, and in doing so acted in breach of one or both of Rule 14.5 of the SAR and Principle 7 of the Principles.**

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

21.1 The Applicant again relied upon the background allegations summarised above in paragraphs 18.1 to 18.14 relating to the various loans made from money held for Client PW.

21.2 It was alleged that the First Respondent caused monies to be paid from the Client Account of Sibley Law LLP to the Firm, himself and third parties, in circumstances in which he did not provide an underlying legal service to Client PW or any of the clients involved in receiving loans. Indeed, it was alleged to have been the First Respondent's case that in arranging the loans he was acting outside of the solicitor/client relationship. In handling client monies in this way, it was alleged that he provided a banking facility; the payments into and out of the Client Account were not in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of the First Respondent's normal regulated activities. It was alleged that the First Respondent therefore acted in breach of Rule 14.5 of the SARs and Principle 7 (which required him to comply with his regulatory obligations).

The First Respondent's Case

21.3 The First Respondent again relied upon the context set out in his response to allegation 1.1 summarised above. He denied the allegation. This was principally on the basis that he was acting as Client PW's attorney and so considered that the SARs had no application to the commercial transactions connected with the loans. Given the loan agreements entered into, the First Respondent's submission was again that he was obliged to make the transfers in connection with the loans and that no breach of Principle 7, to comply with legal and regulatory obligations, could arise in circumstances where he was legally obliged to make the payments in accordance with the loan agreements.

The Tribunal's Decision

21.4 There was no evidence presented of any underlying legal transaction or service being provided to Client PW by the First Respondent or the Firm when the various loans were made. The Tribunal noted that the First Respondent accepted in his evidence that there was no underlying legal transaction and submitted that the loans were made as Client PW's attorney. The parties were again in agreement as to the key relevant facts. Accordingly, the Tribunal considered that even on the First Respondent's own case, he should not have retained the clients as he did and made the various transfers necessitated by the loans. The terms of Rule 14.5 of the SARs were very clear: payments into, and transfers or withdrawals from a client account must be in respect of instructions relating to an underlying transaction or a service forming part of the Firm's normal regulated activities. The First Respondent had accepted this condition was not met, and the Tribunal considered that his denial of the allegation was consequently untenable. By failing to comply with the very clear terms of this accounts rule, the First Respondent had also failed to comply with Principle of 7 of the Principles which required a solicitor to comply with his legal and regulatory obligations. The Tribunal found beyond reasonable doubt that the First Respondent had breached both Rule 14.5 of the SARs and Principle 7 of the Principles.

22. **Allegation 1.5: From 27 November 2017 onwards, the First Respondent failed to comply with a formal requirement of the Legal Ombudsman to make a payment to a former client and thereby breached one or both of Principles 6 and 7 of the Principles.**

The Applicant's Case

22.1 On 15 December 2015, the Legal Ombudsman ("LeO") made a formal decision which required the Firm to make a payment to Client DD of £22,000 as a result of findings made by LeO about the service provided. The First Respondent made proposals to make payments by instalments, and made three such payments, but of the sums due £8,250 had not been paid by the time of the closure of the Firm and remained unpaid. The position of the First Respondent in respect of the liability to Client DD, as set out in his letter to the SRA of 7 November 2016, was that Client DD had not objected to payment by instalments and so, by default rather than positively, he had agreed to such instalments, so that following the closure of the Firm no further sums were due to him.

22.2 It was submitted that the public would expect, and public confidence in the profession required, that where an adverse finding is made by a regulatory body, and a payment is required as a result, a solicitor will make such a payment promptly and in full. It was alleged that the First Respondent had sought to avoid liability for payment, and assert that no culpability attached to him as a result of non-payment, by reference to an insistence that he was entitled (without the agreement of LeO or the client concerned) to make payment by instalments. It was submitted that the First Respondent and the Firm had no entitlement unilaterally to impose instalment payments. Furthermore, it was alleged that the First Respondent sought to argue that having sought unilaterally to impose instalment payments, non-payment of part of the amount due was excusable by reference to the liquidation of the Firm. Such a position and such conduct was submitted to have caused obvious prejudice to the client who was the beneficiary of the finding by LeO. In so acting, it was submitted that the First Respondent breached Principle 6 and, by failing to comply with the requirement of LeO, Principle 7 of the Principles.

The First Respondent's Case

22.3 The First Respondent stated that the work for Client DD, in respect of which the LeO decision arose, was under the supervision of a former partner who had left the Firm. The First Respondent maintained that he and the Firm had honoured the LeO's decision.

22.4 The First Respondent stated that instalments were paid to Client DD, and these instalments were accepted. He stated that Client DD had not intimated any objection to payment by instalments and had accepted the first three payments without demur. He submitted that Client's DD's silence in those circumstances gave consent to the instalments arrangements. He stated that when the Firm went into creditor's voluntary liquidation it was unable to prefer the debt owed to Client DD over other debts, notwithstanding the fact that the debt arose out of an LeO decision. He maintained that Client DD was treated fairly and in line with all other creditors and that this was what the Firm was legally obliged to do. Accordingly, he submitted that there was no breach of Principles 6 or 7. The Firm's actions, and his actions, in paying a debt by instalments, when the instalments were being received without demur, was not something which would undermine public trust. Neither, it was submitted, was the way in which the debt owed to Client DD was treated in line with other creditors after the Firm's voluntary liquidation.

The Tribunal's Decision

22.5 The Tribunal noted that the letter from the LeO to the Firm confirming that its decision was binding and Client DD had accepted the decision, was dated 1 December 2015. Under the terms of the decision, the Firm was due to pay £22,000 by 15 December 2015. The First Respondent proposed instalments on the 15 December 2015; the date by which compliance with the decision was due. At no stage did Client DD communicate agreement with the instalment proposal. The Tribunal noted that the LeO wrote to the Firm on 25 February 2016 because two of the first three proposed instalments had by then not been paid by their proposed dates and stated that if the Firm failed to pay the outstanding balance by 3 March 2016 the LeO would refer the matter to the SRA on the basis that the failure to comply with an LeO decision was considered to be a serious breach of professional obligations. The First Respondent and the Firm did not meet this revised deadline.

22.6 The Firm went into liquidation on 5 August 2016. This was over seven months after the LeO's initial deadline for compliance and three and a half months after the First Respondent's own proposal for payment by instalments. Given the importance of maintaining the trust of the public in the First Respondent and in the provision of legal services and of complying with LeO decisions, the Tribunal found that the conduct summarised above inevitably and seriously breached Principle 6 of the Principles. Public trust in the profession would be seriously undermined by a solicitor taking such a cavalier approach to compliance with decisions from the body responsible for investigating and resolving complaints about solicitors. The Tribunal also found beyond reasonable doubt that the failure to comply with the initial deadline set by the LeO for payment, and the First Respondent's own proposed timetable for instalments amounted to a clear failure to comply with his legal and regulatory obligations in breach of Principle 7 of the Principles.

23. **Allegation 1.6: On dates between December 2015 and August 2017 the First Respondent failed to provide adequate or accurate information to clients about the likely overall costs at the outset of matters or throughout the conduct of them where required, and thereby breached all or any of Principles 2, 5 and 6 of the Principles and failed to achieve Outcome O (1.13) of the Code.**

The Applicant's Case

23.1 The background events on which allegations 1.6 to 1.9 are based are summarised below in order to avoid duplication. The SRA undertook an investigation into the First Respondent's conduct of the administration of the estate of Ms SS, following a complaint by her daughter, Ms HB. The investigation commenced in March 2017. The SRA served a notice on 6 July 2017 under s44B of the Solicitors Act 1974 requiring the First Respondent to provide information and documents. He did not comply with the notice. During the course of effecting an intervention into the First Respondent's practice, an order was made by the High Court pursuant to which the Respondent's files relating to the estate of SS were obtained by the SRA.

23.2 A statement was obtained from Ms HB in which she stated that the First Respondent advised, orally and by email, that she could not be an executor of her mother's estate as she was a beneficiary. The First Respondent subsequently gave advice consistent with that belief in an email he sent to Ms HB on 7 December 2015. The Applicant submitted that such advice was incorrect.

23.3 The Grant of Probate indicated that the net value of the estate was £872,101. The total charge by the Firm and SSSL amounted to £92,082.50. The First Respondent's legal charges were reviewed by a costs draftsman, Ms SC, on the instruction of the SRA. Her report was dated 18 January 2018. Ms SC identified numerous concerns arising from the First Respondent's handling of the estate of Ms SS. Ms SC concluded that the First Respondent had overbilled the estate.

23.4 The First Respondent's client care letters to the executors of Ms SS's estate indicated an hourly rate of £600 per hour plus VAT would be applicable from 10 December 2015 (an increase from the £300 per hour charged to Ms SS for advice prior to her death). The hourly rate reverted to £300 per hour from 4 February 2016. Ms SC considered the rate of £600 per hour plus VAT to be grossly excessive, and well in excess of any

rate she had ever seen applied to a probate matter. Given the lack of complexity in this matter (reflected in the statement to that effect by the First Respondent to HMRC in a letter of 24 March 2017), and the First Respondent's apparent inexperience in handling probate matters (demonstrated by the incorrect advice on a basic issue as to whether a beneficiary could be appointed as an executor), Ms SC applied, with some reservations as to its reasonableness, as a means of calculating a fee, the £300 per hour plus VAT rate and a rate of £150 per hour which she considered to be a more appropriate reflection of the First Respondent's experience in handling probate matters.

23.5 Ms SC further considered that the amount of time recorded was excessive and unreasonable, and that time had been recorded and charged to the estate for matters which were not properly chargeable. Additionally, Ms SC identified that charges had been made to the estate for individuals whose work had been stated in the client care letter to be non-chargeable. Ms SC calculated that, even applying the rate of £300 per hour, which she considered to be excessive and unreasonable but which the Respondent provided to Ms SS in a client care letter, the total charge for the work done by the Firm should not have exceeded £13,257 plus VAT. Ms SC considered that a reasonable rate for all work done would be £150 per hour plus VAT across all fee-earners. Applying that rate, Ms SC calculated that an appropriate level of charging would be £6,780. The Firm raised invoices, and received estate funds, in the total sum of £77,462.50.

23.6 In addition, following the closure of Sibley Law LLP and the transfer of the matter to SSSL, additional charges of £14,620 were made (for services which Ms SC valued at £1,350 applying the First Respondent's own £300 per hour rate and £705 at the lower rate which she considered to be reasonable). The First Respondent therefore charged the estate a total of £92,082.50 plus VAT, against his estimate of £40,000 plus £5,000 contingency, for work which Ms Corbin valued at £14,607 applying the Respondent's own rate.

23.7 In respect of the administration of Ms SS's estate, it was alleged that the First Respondent did not provide adequate or accurate costs information to clients. As set out above, an initial letter dated 10 December 2015 indicated an hourly rate of £600 per hour but did not estimate a likely overall cost; a subsequent letter dated 4 February 2016 indicated an hourly rate of £300 per hour but did not estimate an overall cost; a note prepared in January 2016 indicated anticipated costs of £40,000 and a "contingency" of £5,000; no further costs information to clients was recorded. It was submitted that the Tribunal could properly infer from the absence of any record that no further information was provided.

23.8 Outcome 1.13 of the Code required the First Respondent to provide the best possible information to clients, both at the time of engagement and when appropriate as the matters progressed, about the likely overall cost of their matter. It was submitted that he failed to do so and thereby breached O (1.13). It was further submitted that he also failed to provide a good standard of service through such a failure, given the substantial value of the instruction and the proportion of the estate which would be absorbed by costs. In doing so it was alleged that he breached Principle 5 of the Principles. It was submitted that the public would expect solicitors, particularly on estate administrations and where substantial costs were anticipated and, purportedly, incurred, to provide appropriate costs information, and in failing to do so it was alleged that the Respondent failed to behave in a way which maintained public trust and so breached Principle 6 of

the Principles. Mr Bheeroo submitted that the rationale for not providing adequate information to his clients and Ms HB was that to do so would have exposed the degree of overcharging.

23.9 It was alleged that the First Respondent's actions amounted to a failure to act with integrity in breach of Principle 2 of the Principles, in accordance with the test accepted in Newell-Austin as applying in the context of solicitors disciplinary proceedings i.e. that he had failed to act with moral soundness, rectitude and steady adherence to an ethical code, applying a purely objective test. It was alleged that the First Respondent's conduct amounted to a failure of steady adherence to an ethical code in that:

- he gave clients inadequate information about his likely costs;
- he provided no information to any clients as to the level of costs which he would actually seek to recover from the sums held on behalf of clients; and
- he took transfers from clients having provided no information about those costs and while in a position of responsibility while collecting in and holding the client monies.

The First Respondent's Case

23.10 The First Respondent stated that he believed the complaint from Ms HB was inspired by the SRA's investigation and he submitted that Ms HB had confirmed this in her evidence. He recounted his version of a protracted process of requests for information, formal notices and ultimately a High Court search and seizure order under which all SSSL client files and various computer files were taken by the SRA. He stated that following this SRA action, Ms HB made a complaint to the SRA and the LeO. He submitted that the LeO had dealt with the complaint appropriately by responding to the effect that, if Ms HB had an issue with the costs charged by the First Respondent in connection with his work on her mother's estate, she could apply for the costs to be assessed. The First Respondent submitted that it was significant that she had never done so.

23.11 The First Respondent stated that the costs assessor instructed by the SRA, Ms SC, had not had access to the underlying documents which the administration of the estate had involved. He stated there were some ten thousand documents which were in considerable disarray. He submitted that had she had access to these documents she would have concluded that his fees were reasonable. He submitted that she simply did not have the evidential basis on which to conclude that he had overcharged the estate of Ms SS. He further submitted that Ms SC's lack of experience in practice as a solicitor had contributed to what he regarded as a biased, unfair and illogical report. He stated that he had not had any opportunity to challenge or comment on any of Ms SC's assertions. He submitted that many of the conclusions she drew, for example that "the task of collating the papers was no more difficult than in other probate cases I have seen and possibly much easier" was mere assertion without any knowledge of the facts of the case in question.

23.12 The First Respondent stated that his clients in his work on Ms SS's estate, the executors, had never raised any issues with the fees for the work he had completed. He stated that solicitors instructed by Ms HB when she was dissatisfied with his work on behalf of the estate had only raised issues amounting to around £1,500 and that he had conceded those points promptly. He submitted that the queries equating to £1,500 were the only issues with which Ms HB's solicitor could take issue out of overall fees of around £90,000 which demonstrated that the fees reflected work carried out. He stated that once the SRA took up Ms HB's complaint she did not pursue matters via her solicitors and pursue assessment of his fees and he submitted that this was likely to be because the SRA was effectively doing the job for her for free.

23.13 The First Respondent described an amicable relationship with Ms HB which ended, in his view, because she was no longer able to "get her own way". In support of this contention he stated that Ms HB had agreed to the two executors of her mother's estate being paid £5,000 each at a meeting on 30 January 2016. He submitted that she had subsequently reneged on this agreement when it became clear to her that the executors, his clients, did not have any issue with the fees charged and did not support her complaints. He did not accept the Applicant's contention that the executors were entirely dependent on him for information or in any way susceptible to manipulation. He stated that one of the executors was an ex CID Chief Inspector of Police who brought considerable experience and independence to the role.

23.14 The First Respondent submitted that Ms HB had accepted during her live evidence that her only complaint had been with the fees charged for the work he completed. He submitted that the appropriate response in those circumstances was to apply for his fees to be assessed. He submitted that, despite the two hundred page FIO reports, there had been no actual evidence produced that he had disadvantaged or overcharged his client. He also submitted that SSSL was not a firm of solicitors, and he was not practising as a solicitor when advising SSSL clients, and accordingly the SRA had no jurisdiction over it.

23.15 The First Respondent denied the allegation that he had failed to provide adequate or accurate information about costs to his clients. He stated that his clients were the executors of Ms SS's estate and not Ms HB. He also stated in his evidence that his clients had received regular costs information with which they were entirely happy. He submitted that accordingly there was no evidential basis on which to allege breaches of Principles 2, 5 or 6 of the Principles or any failure to achieve Outcome O (1.13).

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

23.16 Outcome 1.13 of the Code requires that clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall costs of their matter. This obligation applied to the First Respondent when administering Ms SS's estate. The Tribunal noted that in his initial confirmation of instruction letter dated 10 December 2015 to the executors of Ms SS's estate, the First Respondent did not include any estimate of likely fees. The letter confirmed the hourly rate of £600 but provided no further meaningful costs information. Even allowing for an unexpectedly large volume of documentation, which the First Respondent stated he had encountered on this matter, the Tribunal considered that this fact and the implications in terms of additional time and costs should have been made

clear to his clients. The Tribunal would expect as a minimum to see an update on costs to client if the documentation was as exceptional as the First Respondent maintained in his evidence. No such update was provided.

23.17 The Tribunal was referred to a brief handwritten note dated 3 February 2016 in which the First Respondent appeared to calculate potential fees of £45,000, based on 5% of the value of the estate. Based on the documents to which it was referred the Tribunal was not satisfied that the executors of the estate received a meaningful explanation of the likely overall fees or the basis for them either at the outset of the matter or as it progressed. The estimate of £45,000 was, by reference to the overall fees ultimately charged, very inaccurate. The Tribunal did not accept that the obligation on the First Respondent was discharged by the provision of monthly fee notes setting out the charges incurred that month. Outcome 1.13 of the Code very plainly required substantially more than that, and the Tribunal considered that the costs information provided to the executors of Ms SS's estate was seriously deficient. The Tribunal accordingly found beyond reasonable doubt that the First Respondent had failed to achieve Outcome 1.13 of the Code.

23.18 The Tribunal considered the failure was aggravated by the fact that the clients in question were effectively spending the beneficiary's money on the First Respondent's legal fees. In those circumstances the obligation to provide meaningful costs information was even more critical. The Tribunal had regard to the test for integrity set out by the Court of Appeal in Wingate. The Tribunal noted in particular the comments of Rupert Jackson LJ:

> "the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards."

The Tribunal also had regard to the comments of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 in the context of the purpose of sanctions against solicitors:

> "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".

23.19 When applying the test in Wingate to the First Respondent's actions, the Tribunal found beyond reasonable doubt that by failing to provide meaningful, coherent and accurate figures about costs to his clients his conduct had lacked integrity in breach of Principle 2. The Tribunal also found beyond reasonable doubt that such a failure to provide adequate costs information would undermine the trust placed by the public in him and in the provision of legal services in breach of Principle 6. When dealing with executors of an estate who were effectively spending the beneficiary's money on his legal fees, the public would expect a solicitor involved in the matter to make sure that the clients had the best possible information about likely fees and was kept up to date if that changed with sufficient explanation for them to make informed decisions and assessments as to the fees. The Tribunal considered that a proper standard of work required the clients receive such costs information that found beyond reasonable doubt that the First Respondent's failure to provide information amounted to a breach of Principle 5 of the Principles.

24. **Allegation 1.7: On dates between December 2015 and August 2017 the First Respondent failed to provide adequate or accurate information to clients about the basis of calculation of costs where required and thereby breached all or any of Principles 2, 5 and 6 of the Principles 211 and failed to achieve Outcome O (1.13) of the Code.**

The Applicant's Case

24.1 The Applicant relied upon the background allegations summarised above in paragraphs 23.1 to 23.7 relating to the fees charged and costs information provided for the administration of Ms SS's estate.

24.2 The First Respondent made transfers of substantial sums from client account to office account in purported satisfaction of bills raised. It was submitted that Outcome O (1.13) of the Code required him to provide the best possible information to the client as the matters progressed about the cost of their matter including the basis of the calculation. It was alleged that he failed to do so. It was also alleged that he failed to provide a good standard of service through such a failure, given the substantial value of the bills raised, and in doing so breached Principle 5 of the Principles. It was submitted that the public would expect solicitors, particularly on estate administrations where substantial costs were anticipated and, purportedly, incurred, to provide appropriate costs information including the basis of the calculation before taking sums out of client funds in satisfaction of their costs, and in failing to do so the Respondent failed to behave in a way which maintained public trust and so breached Principle 6 of the Principles.

24.3 The Applicant alleged that the First Respondent failed to act with integrity according to the test in Newell-Austin referred to above in that he took substantial sums from client monies without giving clients adequate or accurate information about the basis of the charges before doing so. It was submitted that providing such notification was an essential precondition to compliance with an ethical code in circumstances in which clients would have no other means of establishing (and if appropriate scrutinising or challenging) the level of sums being appropriated. It was alleged that the First Respondent's conduct in respect of client monies amounted to an assumption of total control and, where sums were transferred, ownership of client monies.

The First Respondent's Case

24.4 The allegation was denied. As summarised in the response to the above allegation, the First Respondent submitted that his clients had received adequate costs information and that they had no complaint about the information received or the level of the fees. In his oral evidence he stated that he had agreed with his clients, the executors of Ms SS's estate, to limit his fees to 5% of the value of the estate. He stated that he provided monthly itemised bills which made the basis of his charges clear. He also stated in evidence that he had provided an initial estimate, of £40,000 plus a "contingency" of £5,000 in January 2016 but when the extent of the documentation and the work which would be required became clear he provided his proposal to limit the fee to a percentage of the value of the estate. He therefore denied any breach of Principles 2, 5 or 6 of the Principles or failure to achieve Outcome O (1.13).

The Tribunal's Decision

24.5 Having found in relation to allegation 1.6 above that the First Respondent did not provide adequate or accurate information about the likely overall costs of the work relating to Ms SS's estate, the Tribunal considered that he had also failed to provide adequate or accurate information about the basis for the calculation. The initial acknowledgement letter of 10 December 2015 merely referred to charging by reference to the time taken which, in itself, with no indication of the likely time involved being provided either at the outset or subsequently, would not allow the client to understand the basis of the likely fees adequately. The Tribunal was not referred to any evidence suggesting that any coherent explanation of how the First Respondent had arrived at the figures charged was provided. Whilst he did provide an estimate of £40,000 plus a "contingency" of £5,000 in January 2016, and seemingly an estimate of £45,000 in February 2016, the overall fees charged by the Firm and SSSL were in excess of £92,000. The Tribunal found that no adequate explanation of how those fees were calculated was provided as required by Outcome 1.13 of the Code. The information provided was very vague. As with the previous allegation, the Tribunal did not consider that retrospective provision of monthly fee notices with brief narrative explanation came close to satisfying this obligation and found beyond reasonable doubt that the First Respondent had failed to achieve Outcome 1.13.

25.6 As with the previous allegation which focused on the provision of costs information, the Tribunal had regard to Wingate. Again, the Tribunal found beyond reasonable doubt that by failing to provide a coherent explanation of the basis for the charges his conduct had lacked integrity in breach of Principle 2. The Tribunal also found beyond reasonable doubt that such a failure undermined the trust placed by the public in him and in the provision of legal services in breach of Principle 6. The Tribunal also considered that a proper standard of work required that the client should receive adequate information about the basis of charges and found beyond reasonable doubt that the First Respondent's failure to provide such information amounted to a breach of Principle 5 of the Principles.

26. **Allegation 1.8: On various dates between December 2015 and August 2017 the First Respondent made transfers from Client Account to Office Account of sums which were in excess of those which might properly be charged for the work undertaken, which did not reflect the work actually undertaken, and which were not fair and reasonable, and thereby breached all or any of Principles 2 and 6 of the Principles.**

The Applicant's Case

26.1 The Applicant relied upon the background allegations summarised above in paragraphs 23.1 to 23.7 relating to the fees charged and costs information provided for the administration of Ms SS's estate.

26.2 The Applicant alleged that the First Respondent purported to apply an hourly rate to his work which was grossly disproportionate to the complexity of the work to be undertaken and to his expertise in the area. The First Respondent made transfers from sums held on behalf of clients which it was alleged were substantially in excess of the sums to which he was entitled by reference to the work undertaken. The Applicant

relied on the report from an independent costs lawyer who reached the conclusion that the estate of Ms SS has been charged over £92,000 in legal fees against £13,000, which the costs lawyer has concluded would be reasonable in the circumstances. The costs lawyer concludes that the First Respondent has therefore overcharged the estate in the region of £78,000 - £85,000. It was further alleged that transfers were made from Client Account to Office Account which were disproportionate to and not supported by the work actually undertaken. Mr Bheeroo submitted, by way of an example of allegedly inappropriate charging, that it was incredible that the First Respondent had charged the estate for his time responding to queries and then complaints from the sole beneficiary of the estate about his fees.

26.3 It was submitted that applying what the Applicant alleged to be a grossly excessive hourly rate, and making such transfers, amounted to a clear breach of the obligation to act in the best interests of clients. It was submitted that the public would expect solicitors placed in a position of sole responsibility in respect of client monies to display a high level of transparency and accountability in respect of such sums; the Applicant submitted that the First Respondent's conduct in allegedly misappropriating such sums, and making transfers where they were not reported or justified, would seriously undermine public confidence in the profession and thereby breach Principle 6 of the Principles.

26.4 The Applicant's case was that such conduct amounted to the clearest possible failure to act with integrity. It was submitted that adherence to an ethical code would involve the scrupulous management of sums to which the First Respondent was entrusted, and required that sums were taken in respect of costs only where they were fully justified and clients had been notified in advance. The unauthorised appropriation of such funds without justification was submitted to amount to a serious breach of Principle 2 of the Principles.

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

26.5 The allegation was denied. As summarised in the response to the above two allegations, the First Respondent submitted that his clients had no complaint about the level of the fees charged and that the charges were reasonable based on the work completed. As set out above the First Respondent did not accept the report of Ms SC and he submitted it was based on no knowledge of the documentation or work involved in administering the estate. He submitted that the proper route to challenge the level of fees was by way of assessment and he considered it to be significant that Ms HB had declined to do so. In his evidence he stated that in a process where he was permitted to make representations, such as formal assessment of his fees, he would have been able to explain the basis for the fees, something he stated that Ms SC had not allowed him in breach, he submitted, of the principle of natural justice. He stated that in view of the quantity of documentation, the fees were reasonable. The First Respondent submitted that on the basis that the fees were reasonable and reflected the work carried out and detailed in his invoices, the associated transfers were reasonable and appropriate. He therefore denied any breach of Principles 2 or 6 of the Principles.

The Tribunal's Decision

26.6 The Tribunal found Ms SC to be a straightforward and helpful witness, with extensive experience of over 30 years as a costs draftsman. The Tribunal noted her conclusions that of the fees in excess of £92,000 charged by the Firm and SSSL, the First Respondent had overcharged the estate by between £78,000 and £85,000.

26.7 The Tribunal agreed with the First Respondent's submission that the SCCO Guideline rates for solicitors' offices in outer London were not directly applicable to the work he conducted on Ms SS's estate. This fact was acknowledged by the author of the review of his charges, Ms SC. The Tribunal agreed with Ms SC that the hourly rates represented a reference point which was useful in assessing the rate charged by the First Respondent. The £600 rate charged by the First Respondent briefly, and the rate of £300 subsequently applied, both exceeded the Grade A figures significantly. Ms SC's evidence was that she considered a rate of £150 to be reasonable for the administration of the estate. Ms SC's view was that the First Respondent's lack of experience in probate matters meant he did not have the relevant experience to charge the Grade A rates. Even at the rate of £300 per hour her professional opinion was that the fees charged were over five times those which she considered to be warranted.

26.8 The Tribunal considered Ms SC's report to be fairly detailed and her conclusions to be supported by evidence. Whilst recognising that she did not have all of the underlying documentation, as the First Respondent had noted, the Tribunal noted she had access to attendance notes and referred to receiving two boxes of documents from the Applicant for review. Given that she did not have access to the full legal file, and the First Respondent had not had the opportunity to contribute to and challenge the conclusions in her report before it was completed, the Tribunal considered that he should be afforded a significant margin of tolerance before conclusions about overcharging were drawn. This was particularly so given that Ms SC had made minor amendments to the rates relied upon in her report during her live evidence. However, even allowing for this, the conclusions drawn by Ms SC were stark. The First Respondent, at the Firm and SSSL, had charged over £92,000 for work she considered should have cost in the region of £13,000 applying guidance from the Law Society Practice Advice Service on non-contentious probate. The Tribunal found that even allowing for the extensive unexpected documents to which the First Respondent had referred, and accepting that they may have been in some disarray, the degree to which his fees exceeded those considered reasonable by the experienced costs draughtsman in her sworn report, meant that it was satisfied beyond reasonable doubt that he had substantially overcharged the estate of Ms SS for the legal work completed. This was by virtue of the hourly rate charged, which was initially £600, and also the legal work undertaken on what the Tribunal accepted was a non-contested probate matter concerning an estate which was not unusually complex. The First Respondent himself described the estate as not complex when corresponding with HMRC.

26.9 The fact that the executors may have been content to rely on the information provided monthly in arrears with fee notes as to costs did not absolve the First Respondent of his responsibility not to overcharge the estate. The absence of complaints from the executor client about the charges levied did not conclusively show that the fees charged were reasonable and unobjectionable.

26.10 Having regard to Wingate, and having found that the First Respondent had substantially overcharged the estate of Ms SS for work administering the estate, the Tribunal found beyond reasonable doubt that the First Respondent had breached Principle 2 by failing to act with integrity. Fairness with regards to fees and charging fees which were reasonable for the work undertaken was a fundamental element of the necessary ethical standards of the legal profession. Making unwarranted charges was also found beyond reasonable doubt by the Tribunal to seriously undermine the trust placed by the public in the First Respondent and in the provision of legal services in breach of Principle 6 as it went to the heart of the trust in the relationship between a solicitor and their client.

27. **Allegation 1.9: On various dates between 2013 and 2016, the First Respondent provided incorrect and misleading advice to Ms HB and her mother, Ms SS, as to whether HB could be appointed as an executor of the estate of Ms SS, in that the First Respondent told Ms HB and Ms SS that Ms HB could not be appointed as an executor of Ms SS's estate because Ms HB was a beneficiary of the estate, when this was not an obstacle to Ms HB's appointment as an executor, and in doing so displayed manifest incompetence and breached Principle 6 of the Principles**.

The Applicant's Case

27.1 As set out at paragraph 23.2 above, the First Respondent informed Ms HB that she could not be an executor of her mother's estate as she was a beneficiary. It was submitted by the Applicant that there was no principle or rule to this effect. The effect of this advice was to cause Ms HB to be prevented from influencing the management of the estate. The First Respondent actively sought to prevent her such access in, for example, an email to Ms HB dated 3 May 2016 in which he said that she was not entitled to information about costs incurred. It was submitted that the provision of incorrect advice on a basic point amounted to manifest incompetence. It was submitted that such conduct, which was identified by the sole beneficiary concerned, would plainly tend to undermine the confidence of beneficiaries in the First Respondent and potentially in solicitors generally, and amounted to a clear breach of his obligations under principle 6 of the Principles.

The First Respondent's Case

27.2 The Respondent denied the allegation. In his evidence he stated that he should have told Ms HB that a beneficiary 'should not' act as executor rather than 'could not' as a result of what he submitted would necessarily be a position of impossible conflict of interest. He stated that he acknowledged that it was not against any rules, but that his advice would be to avoid a beneficiary acting as executor to avoid future disputes. He submitted that it was preferable for executors to be entirely independent. The First Respondent submitted that he did not formally advise Ms HB on this point in any event, as she was not his client. He accepted in his evidence that the words he had used in an email to Ms SS when advising her gave the impression that he was saying a beneficiary could not be an executor but that his advice was intended to provide maximum protection to his client and avoid any suggestion of conflicts of interest. On that basis he denied any breach of principle 6 of the Principles.

The Tribunal's Decision

27.3 The Tribunal rejected the First Respondent's position and accepted that the advice he gave was demonstrably wrong in law. Ms HB's written and oral evidence was that the First Respondent had told her twice by email that as a beneficiary under her mother's will she could not act as an executor. In an e-mail dated 2 December 2015 the First Respondent had asked her for "names and addresses of Executors (who cannot benefit under the Will)". On 7 December 2015 he had stated in a further email "[n]o problem the husband and wife teams being executors and witnesses as long as they are not left anything in your will". The Tribunal accepted that there was no rule against a beneficiary acting as an executor, and that the clear meaning of the First Respondent's words on this point demonstrated that he had misinformed Ms HB.

27.4 This was a basic and fundamental error and not a question on which a reasonable range of professional views may exist. The Tribunal rejected the First Respondent's submission that he had phrased his concern about conflict badly; his advice was wrong and it had a significant impact on Ms HB. The error meant that the sole beneficiary of the estate in question was denied any meaningful information about the legal fees being charged to the estate. The Tribunal found beyond reasonable doubt that incorrect advice on such a basic question was bound to undermine the trust the public placed in the First Respondent and the provision of legal services. That the error obscured the scrutiny of charges the Tribunal had found to be unreasonable added to the seriousness of the impact.

28. **Allegation 1.10: Between about November 2015 and about August 2016 the First Respondent failed to report to the SRA serious financial difficulties relating to the Firm, and in doing so breached Outcome O(10.3) of the Code and Principle 7 of the Principles.**

The Applicant's Case

28.1 The Applicant alleged that by 2016, the Firm was experiencing the following indicators of financial difficulty:

- On or about 3 December 2015, a winding up petition was presented by Premium Credit Limited in the High Court;
- By April 2016, the premium for the Firm's professional indemnity insurance for the period 2015/2016 had not been paid;
- On or about 9 February 2016, the sum of £211,554.89 was owed to HMRC.

28.2 The Applicant submitted that these matters amounted to indicators of serious financial difficulty for the Firm. It was acknowledged by the First Respondent in his letter to the SRA (sent in response to the SRA's letter of 29 June 2016) that "some of the Firm's major creditors were overdue for payment" and he stated that "if the creditors were patient they might be paid 100p in the pound". The Applicant submitted that the First Respondent was well aware of the Firm's inability to pay its creditors, in that he was referring to a possibility ("if" and "might"), contingent on a factor outside of his control (namely, the patience of creditors) that the Firm might be able to pay its creditors. Mr

Bheeroo noted that the First Respondent had also notified the FIO about the Firm's difficulty meeting its short term financial commitments in May 2016.

28.3 No notification of serious financial difficulty was made to the SRA by the First Respondent or the Firm until 17 June 2016, when the First and Second Respondents notified the SRA that the Firm had been unable to renew its professional indemnity insurance cover. Such notification was given only four days before a winding up order was made. In failing to report those difficulties to the SRA it was submitted that the First Respondent breached Outcome O (10.3) of the SRA Code of Conduct 2011, which required such reporting, and Principle 7 of the Principles which required co-operation with his regulatory obligations.

The First Respondent's Case

28.4 The First Respondent denied the allegation. He submitted that the Applicant's case was based on comments that he made in an interview with the first FIO when he stated that the Firm was having short term cash flow problems in December 2015. He submitted these concerns did not amount to serious financial difficulties such that notification to the SRA was required. He stated that "with a fair wind" he expected the Firm to be able to trade through the difficulties and the point it had become clear that this would not be possible was when the Firm had been unable to secure professional indemnity insurance (as a result of the actions of a former partner in the Firm). He stated that the PII cover expired in June 2016, and that a short extension of the cover had been secured. The First and Second Respondents had informed the SRA of the position in June 2016. He submitted that in that context his actions did not warrant any disciplinary action and that there was no breach of Principle 7 of the Principles or Outcome O (10.3) of the Code.

The Tribunal's Decision

28.5 The Tribunal considered that the First Respondent's submissions about the possibility of trading out of the short-term cash flow difficulties which he stated the Firm was experiencing in December 2015 may have been reasonable. However, the Tribunal accepted that cumulatively the indicators described by the Applicant amounted to serious financial difficulties such that Outcome 10.3 of the Code was engaged. The evidence was that by April 2016 the Firm had been the subject of a winding up order, its professional indemnity insurance premium for 2015/16 had not been paid and over £200,000 was owed to HMRC. The Tribunal accepted the First Respondent's submission that the position with HMRC was revised substantially. However, the Tribunal considered that these factors cumulatively amounted to serious financial difficulties such that the First Respondent was obliged to notify the SRA in accordance with Outcome 10.3 of the Code and found beyond reasonable doubt that he had failed to achieve that Outcome and also Principle 7 which required compliance with regulatory obligations. The delay until June 2016 to notify the SRA of difficulties, just four days before the winding up order was made was a clear breach of the Outcome and Principle 7.

29. **Allegation 1.11: On or after 1 March 2017, the First Respondent failed to notify the SRA within 7 days that he was the subject of bankruptcy proceedings and in doing so breached Regulation 15 of the SRA Practising Regulations 2011 and Principle 7 of the Principles.**

The Applicant's Case

29.1 On or about 1 March 2017 HMRC commenced bankruptcy proceedings against the First Respondent in the High Court in respect of a debt initially quantified as £61,383.92 but subsequently reduced to £8,091.61. The First Respondent did not notify the SRA of such proceedings until he sent a letter to the SRA on 1 August 2017 in response to a request by the SRA. It was submitted that in doing so he failed to comply with the specific obligation arising under Rule 15 of the SRA Practising Regulations 2011 and thereby Principle 7 of the SRA Principles 2011, requiring co-operation with his regulator.

The First Respondent's Case

29.2 The First Respondent denied the allegation in his written Answer. During his oral evidence he stated that he was not aware that he was obliged to inform the SRA of bankruptcy proceedings against him. His evidence was that in any event, the petition from HMRC was for an amount which far exceeded that which was due and which would not be payable once his tax rebate claim was processed by HMRC. He stated that once the rebate was processed the bankruptcy petition was duly withdrawn. In those circumstances, where there was no risk of a petition succeeding, he denied the alleged breaches. He contrasted the approach taken by HMRC which had changed its position when the rebate had been calculated to that taken by the SRA which he submitted had not taken any account of his adequate explanation.

The Tribunal's Decision

29.3 Rule 15 of the Practising Regulations 2011 states that a solicitor must inform the SRA within seven days if he is made the subject of bankruptcy proceedings. The requirement is mandatory and not subject to any qualification such as the solicitor considering they can challenge or satisfy the debt. By the First Respondent's own evidence he did not comply with the rule. The fact that the bankruptcy proceedings were subsequently withdrawn and the size of the debt was substantially reduced is clearly useful context and of significant importance to the First Respondent. The Tribunal did not consider it relevant to the default however. The Tribunal found beyond reasonable doubt that the First Respondent did not comply with mandatory Rule 15 of the Practising Regulations 2011. The Tribunal accepted the First Respondent's evidence that he was not aware of the requirement to notify the SRA within 7 days of bankruptcy proceedings but nevertheless found beyond reasonable doubt that he had also failed to comply with Principle 7 of the Principles as this was a professional obligation to which he was subject as a solicitor.

30. **Allegation 1.12: Between July 2016 and September 2017, while working at SSSL, the First Respondent practised as a solicitor while he was not authorised as a Sole Practitioner of a Recognised Sole Practice, or a manager, employee, member or interest holder of an authorised body or authorised non-SRA Firm and in doing so breached Rule 1 of the SRA Practising Framework Rules 2011.**

The Applicant's Case

30.1 Following the closure of the Firm and the First Respondent's commencement of work at SSSL it was alleged that he continued to act as a solicitor in that he undertook reserved activities – namely, the conduct of litigation – on behalf of Client BD. Copies of documents extracted from the file of Client BD, provided by the Respondent to the SRA, included:

- An order made in the Medway County Court on 18 July 2016 which records that the Claimant (Client BD) was represented by a Solicitor;
- An Allocation Notice dated 13 September 2016 and served on "Sibley LLP";
- An email from the First Respondent to Client BD dated 16 August 2016 in which he gave legal advice on the merits of Client BD's claim and on the potential costs, and costs liabilities, arising in the litigation;
- A notice of change of legal representative which states that Client BD will be acting in person, but which gives "Sibley Strategic Services" as the address for service;
- An email to Client BD from an email address given as sibley.paralegal@sibleystrategicservices.co.uk, explaining the communications between SSSL and the Court in respect of BD's claim, which states "They (the Court) will then contact us to let us know when a hearing can be arranged with a judge and I will let you know the details";
- A letter from Client BD to the First Respondent dated 14 June 2017 which stated "Thank you so much for attending Court on my behalf, and apologies again, for not having the opportunity to accompany you".

30.2 Following the closure of Sibley Law LLP, the First Respondent had not been recognised as an approved Sole Practitioner and SSSL was not an authorised or recognised body. It was alleged that he had, however, continued to provide (and had accepted that he provided) legal advice and assistance. It was also alleged that he conducted reserved activities (which was not accepted by the First Respondent). In doing so it was submitted by the Applicant that he had practised as a solicitor while not authorised to do so.

30.3 Mr Bheeroo noted that the First Respondent did not accept that he had acted as a solicitor whilst providing legal advice and assistance at SSSL. Mr Bheeroo submitted that the First Respondent's assertions were wrong in law by reference to Rules 9.2 and 9.3 of the SRA Practice Framework Rules 2011. These rules defined legal practice, which was submitted to be very broad and to include the provision of services such as provided by solicitors and extended to being implicitly "held out" as a solicitor.

Mr Bheeroo submitted that if the Tribunal accepted that the First Respondent's activities amounted to implicitly holding himself out as a solicitor, something he submitted was supported by the evidence of his activities at SSSL, then the First Respondent would have required authorisation in order to practise as a solicitor.

The First Respondent's Case

30.4 The allegation was denied. The First Respondent's case was that SSSL was not a legal firm over which the SRA had any supervisory authority. He denied both that he carried out any reserved legal activities through SSSL or otherwise practised as a solicitor.

30.5 The First Respondent submitted that the Applicant's case in this area was built on a logical fallacy: because he was providing legal advice of a type often provided by a solicitor he needed to be authorised by the SRA despite there being, he submitted, no evidence that he had held himself out as solicitor. He stated that he informed the SRA by letter on 12 January 2017 that he was not holding himself out as a solicitor. Given that he stated there was no express or implicit holding out as a solicitor, he submitted there was no basis for the FIO's conclusion that he was acting as a solicitor. There was no implicit indication in the communications he sent to clients of SSSL who he described in his evidence as experienced business-people who were never under the impression he was acting as a solicitor at SSSL.

30.6 In the absence of any such implicit or express holding out as a solicitor he submitted that Rules 9.2 and 9.3 of the SRA Practice Framework Rules 2011 relied upon by the Applicant had no application or effect. He submitted that there was no positive obligation to spell out that he was not acting as a solicitor when there was no implicit or express holding out that he was doing so and indeed that in the context of the experienced clients with whom he worked that would be unnecessary and absurd. He submitted that the only supporting evidence that the FIO had relied on was a mistaken conclusion that he was conducting litigation, a reserved legal activity, for Client BD.

30.7 The First Respondent stated that he had not carried out any reserved legal activities. He stated that he did not act as a solicitor for Client BD and that he attended court at her litigation friend only. He stated that Client BD had unexpectedly not attended Court for a hearing which left him in an invidious position. He stated that the judge was understanding when the First Respondent explained that he was unable to address the Court and had told him not to worry because he was able to give his judgment based on the documents he had without any input from the First Respondent. The First Respondent stated that he had had no involvement in securing the judgment and had been very clear with all clients, including Client BD, that he was unable to engage in reserved legal activities including litigation. He stated that following the hearing he immediately advised Client DB to instruct alternative representation, which she did. As to the documents relied upon by the Applicant, the First Respondent submitted that these had all been generated by Client BD and had no bearing on the capacity in which he was acting. His evidence was that he did not complete any work ancillary to litigation whilst advising SSSL clients.

The Tribunal's Decision

30.8 The Tribunal accepted the First Respondent's submission that there was no positive obligation on him to spell out to his clients that he was not acting as a solicitor in those terms. Provided he did not engage in reserved legal activities, which were specifically prohibited, the obligation on him was not to hold himself out (expressly or implicitly) as a solicitor.

30.9 The First Respondent's evidence was that all clients of SSSL had previously been clients of the Firm. They had followed the First Respondent from the Firm to his new venture. The Tribunal considered that in this context, where there was an existing established and successful solicitor-client relationship and where the First Respondent was continuing to provide legal services, in some cases on the same file, the context may imply that he would be acting as a solicitor when advising through SSSL. The Tribunal considered that given this context, even though he was establishing a new firm which he may not have intended to be SRA regulated and where he may not have proposed to act as a solicitor, it was incumbent on him to provide greater clarity about the capacity in which he would be advising in order to avoid implicitly holding himself out as a solicitor.

30.10 The Tribunal reviewed the letter sent from SSSL acknowledging instructions. The letters did not make clear that the First Respondent would not be acting as a solicitor when providing the legal advice requested. The SSSL terms of business to which the letter referred did make clear that the First Respondent would not be providing reserved legal activities. The Tribunal accepted the First Respondent's account of his assistance to Client BD and that he did not conduct litigation on her behalf. Nevertheless, given the context in which SSSL's clients came to the new firm, and the similarity in the advice and activities being provided by the First Respondent the Tribunal found that he had not done enough to avoid holding himself out as a solicitor. In the particular circumstances in which he was advising at SSSL, avoiding holding himself out as a solicitor required care. The Tribunal found beyond reasonable doubt that the First Respondent implicitly held himself out as a solicitor and by virtue Rules 9.2 and 9.3 of the SRA Practice Framework Rules 2011 had accordingly practised as a solicitor when not authorised to do so in breach of Rule 1 of those Rules.

31. **Allegation 1.13: In or after July 2016, when notifying clients for whom he had acted as a solicitor of the intended transfer of their matters from the Firm to SSSL, the First Respondent failed to inform clients of his intention that, while continuing to provide legal services, he would not continue to act as a solicitor and thereby breached all or any of Principles 5 and 6 of the Principles.**

31.1 On Sibley Law LLP's Firm Closure Notification Form dated 17 September 2016, the First Respondent informed the SRA that "All client files have been transferred to Sibley Strategic Services Limited or other solicitors' firms". This was submitted to be contrary to earlier suggestions made by the First Respondent to the SRA that certain files would be transferred to Firm K.

31.2 The First Respondent provided the SRA with a number of letters sent to clients on the closure of Sibley Law LLP. The First Respondent maintained in his correspondence with the SRA that such letters adequately explained to clients the basis upon which

matters were being transferred. The Applicant submitted that although the letters explained that the matter was being transferred from Sibley Law LLP to SSSL, it did not explain to clients that:

- Unlike when their matter was being handled at Sibley Law LLP, the First Respondent did not intend to act as a solicitor;
- Unlike Sibley Law LLP, SSSL was not authorised or regulated by the SRA (or any other regulator of legal or professional services);
- Clients would not (if the First Respondent was correct as to his practising status) be protected by:
    - A requirement for solicitors to have in place the minimum level of professional indemnity insurance required under the SRA Indemnity Insurance Rules 2013; or
    - The SRA's Compensation Fund scheme.

31.3 It was alleged that the First Respondent had persistently maintained that his clients knew of his change of status and that he was not acting as a solicitor following the closure of Sibley Law LLP. None of the letters sent to clients specifically stated that he did not intend to act as a solicitor. It was also submitted that words to that effect, or bearing that meaning, did not appear in the letters and that such a meaning could not be inferred from the absence of a positive assertion that the he would be acting as a solicitor, particularly where he had previously been doing so. The letters failed to explain to clients that as a result of his change of status they would not enjoy the same protections, including regulation of his firm by the SRA, a requirement for a specified minimum level of professional indemnity insurance cover, and access to the SRA Compensation Fund.

31.4 The Applicant submitted that the alleged failure to so inform clients breached Principles 5 and 6 of the Principles as it would inevitably be in the interests of each client to understand the basis on which the First Respondent was advising and consequently the protections to which they were entitled. It was further submitted that the failure to provide such information would undermine the trust placed by the public in the First Respondent as a solicitor and in the provision of legal services.

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

31.5 The allegation was denied. The First Respondent relied upon many of the points summarised in response to previous allegations. He submitted that through SSSL he provided legal services in exactly the same way that an accountant may do and did not require SRA authorisation. As noted above, he submitted he did not expressly or implicitly hold himself out as a solicitor.

31.6 He stated that SSSL did not have a website, he did not advertise his services and that SSSL's clients were all long-standing clients of his. He stated that they were all experienced and knowledgeable business people who were very aware that the implication of him advising through SSSL was that he was not acting as a solicitor. He

referred the Tribunal to SSSL's client engagement letter and submitted that it was quite clear that he was not dealing with any reserved legal matters. He accepted that he provided legal services and submitted that he was entitled to do so. In his evidence he used the analogy of someone providing employment legal advice which he submitted would not require SRA authorisation (absent any holding out as a solicitor). He submitted that none of the regulations or outcomes to which the Applicant had referred imposed a requirement for him to positively state to his SSSL clients that he was not acting as a solicitor (something he maintained was clear to them).

31.7 The First Respondent referred the Tribunal to comments from Sir Robert Megarry VC in Buckley v Law Society (No. 2) [1984] 3 All ER 313 that "the Law Society ought not to be free to intervene on inadequate grounds in the hope that what will be found will justify the intervention". He submitted that this reflected the SRA's conduct in his case and specifically what he described as a paucity of evidence which had been accumulated despite the extensive efforts of the FIO. He submitted that there was no substance to the allegations and that there was no evidence of any breach of Principles 5 and 6 of the Principles.

The Tribunal's Decision

31.8 The Tribunal had found in relation to allegation 1.12 that the First Respondent had implicitly held himself out as a solicitor when working at SSSL. Whilst he had informed clients of SSSL that he would not carry out reserved legal activities, this left a range of other services such as are typically provided by solicitors. As set out above, in the context in which the First Respondent provided services, the Tribunal considered he needed to do more to avoid implicitly holding himself out as a solicitor.

31.9 The Tribunal accepted the submissions of the Applicant that clients of SSSL were entitled to know exactly what they were getting when they engaged the First Respondent. The Tribunal considered this to be essential notwithstanding the fact that his clients may very well be experienced business-people as described by the First Respondent. Clients were entitled to know that those specific features of instructing a solicitor listed by the Applicant, including the specified minimum level of professional indemnity insurance and access to the SRA's Compensation Fund scheme did not apply to clients of SSSL. The Tribunal considered that these were significant matters which, in the circumstances, the First Respondent should have brought to the attention of SSSL clients. The Tribunal considered that a proper service to those clients required that they be so informed and found beyond reasonable doubt that the First Respondent had breached Principle 5 by failing to do so. The Tribunal also considered that the public would expect clients of SSSL to be clear about the basis on which the First Respondent and the implications of that basis. The Tribunal found beyond reasonable doubt that by failing to provide this information the First Respondent had not behaved in a way which maintained public trust placed in him and in the provision of legal services.

32. **Allegation 1.14: The First Respondent failed promptly to comply with production notices served by the Solicitors Regulation Authority pursuant to the Solicitors Act 1974 and in doing so breached Principle 7 of the Principles.**

32.1 The SRA served production notices on the First Respondent, pursuant to its statutory powers, dated 10 May 2016, 28 December 2016, 7 March 2017 and 6 July 2017. In respect of the production notice dated 10 May 2016, it was alleged that the First Respondent failed promptly to comply, and in respect of the notice dated 28 December 2016 asserted that there was no justification for the requests to disclose the requested information. In respect of the notices dated 28 December 2016 and 6 July 2017 it was necessary for the SRA to obtain orders from the High Court requiring compliance. It was submitted that the Respondent appeared to assert that the effectiveness of such notices were subject to his view as to the legitimacy of the request: he asserted that a notice was "disproportionate and unreasonable" and that there was "no justification" for its service. He further stated, in a witness statement made in proceedings to challenge the SRA's intervention into his practice, that "I fail to see that failing to comply with a Section 44B Notice to which one has a legitimate objection (as opposed to a court order concerning the same) is a disciplinary matter".

32.2 It was submitted by Mr Bheeroo by reference to Dean and Dean v The Law Society [2008] EWHC 2980 at paragraph [50] that it was the duty of a solicitor to comply with a production notice; there was no opt out. It was alleged that the First Respondent persistently failed to comply with production notices served by the SRA for the purposes of its investigations into him and asserted a right to refuse to so comply. He further failed to comply with costs orders made by the Court pursuant to the proceedings which were necessitated by his non-compliance. It was submitted that the public would expect a solicitor promptly and fully to comply with the requirements of his regulator, and that the Respondent's failure to do so breached Principle 7 of the SRA Principles 2011.

The First Respondent's Case

32.3 The allegation was denied. The First Respondent submitted that there was only one Section 44(B) Notice to which he was alleged not to have responded promptly which was dated 6 July 2017. He stated that his clients in that matter objected to him giving the requested documents to the SRA. He stated that they were content for the SRA to inspect the documents, but the SRA declined this offer and instead instigated High Court proceedings to obtain the files. He submitted that the SRA had disclosed some of the materials seized to third parties in breach of confidentiality and data protection obligations. Having made the offer of inspection of the relevant files, the First Respondent submitted that he had not breached principle 7 of the Principles. He also submitted that it could not be right that disciplinary action could be taken against a solicitor who had legitimate reasons, such as a client objection, for objecting to a Section 44(B) Notice.

The Tribunal's Decision

32.4 Principle 7 of the Principles required the First Respondent to comply with legal and regulatory obligations. The provision is mandatory for all solicitors. Section 44(B) of the Solicitors Act 1974 provides that the SRA may require a solicitor to provide information or produce documents. By virtue of section 44(BB) of the Solicitors Act 1974 such a notice may be enforced subject to the High Court being satisfied that it is likely that the information or document is in the possession or custody of, or under the

control of, the person, and that there is reasonable cause to believe that the information or document is likely to be of material significance to an investigation.

32.5 The Tribunal considered that the First Respondent fundamentally misunderstood his obligation under these provisions. Mr Justice Pitchford stated at [50] in Dean and Dean that '[o]nce properly invoked it is the duty of the solicitor to comply'. He rejected the submission, effectively the same submission made by the First Respondent, that the solicitor retained the discretion to withhold the information or documents or simply provide assertions that 'all is well'. He stated that this would frustrate the investigation. Whilst a production notice under section 44(B) of the Solicitors Act 1974 must be properly issued, once it is issued the solicitor must comply.

32.6 On his own case, the SRA was successful in applications to the High Court for orders from the High Court requiring the First Respondent's compliance with the section 44(B) notice dated 6 July 2017. That his clients may have objected to providing the requested documents to the SRA did not absolve the First Respondent of his duty to comply with the notice. The Tribunal found beyond reasonable doubt that the First Respondent had breached Principle 7 by failing to comply with a clear legal and regulatory obligation to which he was subject.

33. **Allegation 1.15: On or about 27 March 2017, the First Respondent caused or allowed the Court to be misled in that he relied upon a witness statement containing information which he knew or ought to have known was not true, and in doing so breached Outcome O (5.1) of the Code, Principle 6 of the Principles and acted recklessly**.

33.1 The First Respondent made a statement to the Court, in proceedings brought against him to enforce a production order, on a matter of fact within his own knowledge, which was alleged to be untrue. He filed a witness statement in his own name in which he stated that "I did make an application to practice as a sole registered practitioner through a limited liability Company, Edward Sibley Law Limited, immediately after the liquidation of Sibley Law LLP…"

33.2 The First Respondent subsequently accepted that no such application had been made and that the statement was incorrect. He asserted that he was mistaken. The Applicant alleged that the First Respondent had acted recklessly as it was submitted that he must have known of a risk that the statement he made, to the effect that an application had been made, was untrue and yet he went on to run that risk in a statement made in proceedings brought against him. The Applicant alleged that by making the untrue statement he breached Principle 6 of the Principles as the public and the Court would expect a solicitor to take care as to the truth of any statement made. It was also alleged that he had breached Outcome O(5.1) of the Code by misleading the Court.

The First Respondent's Case

33.3 The First Respondent accepted that the statement was an error but he submitted that it was an innocent mistake. In his evidence he stated that he had intended to apply to be a sole practitioner but did not pursue this option. He submitted that nobody was in fact misled, including the Court. He also referred the Tribunal to a statement from an SRA witness Mr JTC dated 13 March 2017 which was produced for the High Court

proceedings in which the SRA was seeking possession of SSSL files. These were the proceedings in which the untrue statement was alleged to have been made. The author of the statement wrote: "his application for a practising certificate for the year 2016/17 is being considered by the SRA". In his evidence the First Respondent stated that he had not been clear about the distinction between obtaining a practising certificate and the process of becoming an authorised sole practitioner. He stated that no-one at the SRA had told him that he needed to apply for sole practitioner authorisation in addition to a practising certificate and accepted that he had not appreciated the distinction. His comment had been a mistake and was submitted to have had no effect in any event.

33.4 He denied that the Applicant's insistence that he must of known of a risk that the statement made was untrue was applicable to what he stated was an honest mistake. He submitted that such a contention could not amount to proof of a breach of the relevant Principles.

The Tribunal's Decision

33.5 The Tribunal accepted the First Respondent's evidence that he had not appreciated the distinction between his application for a practising certificate and authorisation as a sole practitioner. It accepted his evidence that he did not intend to mislead the Court. However, the Tribunal considered that his misunderstanding and ignorance of fairly basic practice rules displayed manifest incompetence. As a solicitor contemplating applying to be an authorised sole practitioner the First Respondent should have made himself aware of the regulatory framework, certainly before it came to making assertions that he knew would be relied upon by a Court. The Tribunal considered that his failure to do would undermine the trust placed by the public in him and in the provision of legal services and found beyond reasonable doubt that he had thereby breached Principle 6.

33.6 Having accepted that the First Respondent was not aware of the distinction between his application for a practising certificate and authorisation as a sole practitioner, the Tribunal found that he did not appreciate the risk that he may mislead the Court. Accordingly it did not find that he had behaved recklessly when making his statement to the Court or that he had failed to achieve Outcome O (5.1) of the Code.

**Dishonesty**

34. **It was the Applicant's case that the First Respondent acted dishonestly in respect of the matters set out at paragraphs 1.1, 1.2, 1.8, and 1.13 above or any of them. Dishonesty was submitted not to be an essential ingredient to the allegations above but that it was open to the Tribunal to find those allegations proved with or without a finding of dishonesty.**

The Applicant's Case

34.1 The Applicant alleged that the First Respondent's actions as set out at allegations 1.1, 1.2, 1.8 and 1.13 above were dishonest in accordance with the test for dishonesty laid down in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 in that the conduct alleged was dishonest by the standards of ordinary decent people.

34.2 In relation to allegations 1.1 and 1.2, it was alleged that the First Respondent acted dishonestly by the ordinary standards of reasonable and honest people in that he was fully aware of, and initiated, the scheme whereby a client's funds would be utilised for the his own benefit, and the benefit of others, in the absence of independent legal advice to the client and where the client's assets were, in consequence of the scheme, being placed at risk.

34.3 Furthermore, it was alleged that he so acted:

- retaining to himself a discretion as to when and for how much such loans would be made;
- without causing the client to obtain independent advice;
- in circumstances in which he knew that the client would not be protected in the event of a failure to repay;
- where loans were made on terms which he subsequently asserted did not reflect the true agreement reached with the client;
- effecting loans, including to himself, which exceeded the level of authority granted by the client whose funds were being loaned;
- directly for his own benefit.

34.4 It was submitted that on an objective basis, the appropriation of clients' funds, without the clients' knowledge or consent in circumstances where such funds are not properly due, was regarded as acting dishonestly by the ordinary standards of honest people. It was submitted that although, under the Ivey test a finding of "subjective" dishonesty was not required, on a subjective basis the Respondent acted dishonestly in that he knew that he was not entitled to use, but in any event did use, client funds without the clients' knowledge or consent, and that such conduct would breach the ordinary standards of honest people.

34.5 In relation to allegations 1.8 and 1.13, concerning transfers from Client Account to Office Account which were alleged not to be fair or reasonable and the alleged failure to inform clients of SSSL that he would no longer be acting as a solicitor, it was alleged that the First Respondent acted dishonestly by the ordinary standards of reasonable and honest people. It was alleged that he was or must have been aware of his obligations:

- Not to transfer sums from Client Account to Office Account other than where such sums were properly due for work undertaken, and only where information about such transfers had been provided to clients;
- Not to transfer sums which were not properly due for work done and which were very substantially in excess of the amounts which might properly be chargeable;
- Not to exploit for his own benefit the assets of clients held by or accessible to the respondent solely by reason of his appointment as a solicitor.

34.6 It was further alleged that he acted dishonestly in that he:

- made transfers of sums from Client Account to Office Account which he knew exceeded the amount indicated to clients;

- made transfers of sums from Client Account to Office Account in respect of professional fees in the knowledge that work had not been undertaken sufficient to justify such a transfer;

- made transfers of substantial sums from Client to Office Account in respect of professional fees in the knowledge that the sums being transferred did not represent a fair and reasonable fee for the work undertaken;

- made transfers of substantial sums from Client to Office Account in respect of professional fees in the knowledge that clients had not at the time of the transfers been notified of the fact and quantum of transfers; and

- personally benefited from the matters set out above.

34.7 The Applicant submitted that on an objective basis, the taking of clients' funds, without the clients' knowledge or consent and in circumstances where such funds are not properly due, was regarded as acting dishonestly by the ordinary standards of honest people. The Applicant also submitted that although, under the Ivey test a finding of "subjective" dishonesty is not required, on a subjective basis, the First Respondent acted dishonestly in that he knew that he was not entitled to take, but in any event did take, client funds without the clients' knowledge or consent and in circumstances where those funds were not properly due, and that such conduct would breach the ordinary standards of honest people. The Applicant submitted that no honest solicitor would act in the way summarised above.

The First Respondent's Case

34.8 The First Respondent denied that he had acted dishonestly at all and submitted there was no evidence to support that conclusion let alone prove it beyond reasonable doubt. He relied upon the denials and explanations he had provided in response to each of the allegations where dishonesty was alleged.

34.9 Specifically with regards to allegation 1.8, the First Respondent submitted that no money was taken without knowledge and consent from his clients (the executors of Ms SS's estate) and that they had not objected to any of his fees. In those circumstances he submitted that the allegation of dishonesty must fail. He submitted that, if a solicitor could be guilty of dishonesty in the SRA's eyes for agreed fees tendered and paid with the full knowledge of his clients, who had a detailed knowledge of the underlying matter and work involved, then every solicitor in the country was at risk of being labelled dishonest. He described it as an extraordinary and wholly unjustified attack on his reputation.

The Tribunal's Decision

34.10 When considering the allegations of dishonesty, the Tribunal applied the test in Ivey. The test for dishonesty was set out at [74] of the judgment in that case, and accordingly when considering the issue of dishonesty in allegations 1.1, 1.2, 1.8 and 1.13 the Tribunal adopted the following approach:

- firstly, the Tribunal established the actual state of the First 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 his conduct was honest or dishonest by the standards of ordinary decent people.

34.11 Allegations 1.1 and 1.2 concerned the loans made from the funds held by the Firm for Client PW. Dishonesty was alleged with regards to the loans to the Firm and the loan to the First Respondent himself. The Tribunal noted that Client PW accepted in her written evidence that she had agreed that loans up to the value of £100,000 may be made to individuals that the First Respondent may recommend. Client PW's written evidence was that she was aware of the various loans made other than the second loan to the Firm and the loan to Mr GB.

34.12 The Tribunal found that the First Respondent considered that he had instructions to make the loans up to £100,000 with minimal if any obligation to notify Client PW about the details. He considered that he had authority under the power of attorney to make the arrangements without reference to Client PW and that the oral agreement about the power of attorney gave him such authority before the written power was entered into. The Tribunal found that such a belief was mistaken but that it was genuinely held. The Tribunal also found that the First Respondent genuinely believed that he was entitled to make the loans on commercial terms and that this was completely separate from and did not engage his duties as a solicitor. The Tribunal found that his stated belief that he considered advice from an Independent Financial Adviser on the commercial loans to be adequate to be genuinely held. Whilst the Tribunal had rejected these submissions as set out above, the Tribunal considered them to be genuinely held.

34.13 Consequently, whilst the Tribunal considered that the First Respondent's actions would undermine public trust and involved serious breaches of the Principles, it did not consider to the requisite standard of proof that ordinary decent people would regard his actions as dishonest.

34.14 Allegation 1.8 concerned transfers made from client to office account relating to fees for work on Ms SS's estate which were alleged to exceed those which might properly be chargeable. The Tribunal noted that by letter dated 7 December 2015 the First Respondent had confirmed to Ms SS that a rate of £300 would be charged for work he was due to complete for her. Three days later he wrote to the executors of Ms SS's estate and confirmed that a rate of £600 would apply to work relating to the estate. The Tribunal accepted the evidence of Ms SC that this was an unjustifiable rate to apply to this work; it was twice the rate previously applied to comparable work for Ms SS (and the rate subsequently charged from 4 February 2016).

34.15 The Tribunal considered that applying the higher rate was opportunistic on the part of the First Respondent which reflected that the fact that one of the executors was described as a life-long friend of his. This was consistent with his lack of transparency and cooperation with Ms HB, the sole beneficiary of the estate, who queried and then complained about his fees. The Tribunal considered that the First Respondent must have appreciated that the rate of £600 per hour was inappropriate. His contention that the rate was not unreasonable was described by Ms SC as 'astonishing'.

34.16 The Tribunal also considered that the overall overcharging identified by Ms SC, even allowing a considerable margin of discretion in the First Respondent's favour, was so significant that he must have been aware that his charges were not fair and reasonable. Ms SC's evidence was that the estate had been overcharged by between £78,000 and £85,000 (in the context of charges of over £92,000). The Tribunal was satisfied to the requisite standard that the estate had been overcharged to such an extent that the First Respondent could not have genuinely considered his were fees fair and reasonable. The Tribunal considered the First Respondent had exploited a situation in which there was minimal scrutiny of his fees.

34.17 Based on what it considered to be an unjustifiable and opportunistic hourly rate and overall overcharging assessed to be over five times what a reasonable fee would be, the Tribunal was sure to the requisite standard of proof that the First Respondent could not have considered the fees charged to have been fair and reasonable. The First Respondent made transfers from the Client Account in respect of these fees. The Tribunal found beyond reasonable doubt that ordinary decent people would view such conduct as dishonest.

34.18 Allegation 1.13 concerned failing to make it sufficiently clear to clients transferring from the Firm to SSSL that he would not be acting as a solicitor when working at SSSL. The Tribunal found above that the First Respondent had not made his intended status sufficiently clear in his acknowledgement of instructions and terms of business at SSSL. He did state clearly that he would not be undertaking any reserved legal activities. The Tribunal accepted that the First Respondent genuinely considered that it was clear from the context, the correspondence he put in place and the fact that his clients were experienced business people, that his clients would be clear that he was not acting as a solicitor. Whilst the Tribunal did not consider his actions in this regard sufficient, as indicated by its findings in relation to allegation 1.13 above, it did not consider that ordinary decent people would find them to be dishonest.

**Second Respondent**

35. **Allegation 3.1: Between February 2014 and October 2015 the Second Respondent caused or allowed the Firm to accept the Firm Loans with an aggregate value of about £75,000 ("the Firm Loaned Funds") from a client or former client of the Firm, PW and:**

**3.1.1. failed to cause PW to obtain independent legal advice about the Firm Loans before they were effected, and by reason of such failure breached one or both of Principles 2 and 6 of the Principles; and**

**3.1.2. caused or allowed the Firm Loaned Funds to be transferred from Client Account to Office Account other than in the circumstances allowed by Rule 20 of the SARs and in doing so acted in breach of one or both of Rule 20 of the SARs and Principle 6 of the Principles.**

The Applicant's Case

35.1 The Applicant relied upon the background allegations summarised above in paragraphs 18.1 to 18.14 relating to the various loans made from money held by the Firm for Client PW.

35.2 The Applicant invited the Tribunal to infer that the Second Respondent knew of the circumstances of each of the loans relied on in support of the allegations set out in this Statement, and particularly that he must have known the source of funds used by the Firm to support its cash-flow. In respect of each of the loans to the First Respondent or to Sibley Law LLP, it was alleged that the Second Respondent did not cause Client PW to obtain independent legal advice before the loans were effected by causing the transfer of funds from the Firm's Client Account to Office Account. Mr Bheeroo submitted that the 'junior excuse' that he was the junior partner in the Firm to the First Respondent, his father, was not plausible for the Second Respondent who had been qualified for twenty years and who had been a partner in the Firm since 2000.

35.3 Indicative Behaviour 3.8 of the Code provides that borrowing from a client, unless the client has obtained independent legal advice, may tend to show non-compliance with the SRA Principles 2011. It was submitted by the Applicant that the Second Respondent:

- should have prevented the Firm from effecting the loan unless Client PW had obtained independent legal advice. The fact that the First Respondent, a Member of the Firm, exercised a power of attorney over Client PW's assets was an aggravating rather than mitigating factor, in that such power was utilised to appropriate funds to the Firm without client knowledge of or consent to individual transfers;

- acted in a manner which undermined the trust the public places in him and the legal profession (Principle 6) in allowing the loan to be effected in circumstances where:

    - the loan was unsecured;

    - the loans were taken at a time when the Firm was experiencing serious financial difficulties;

    - there was in respect of the loan of £20,000, an inconsistency between the documented terms of the loan and those later asserted on behalf of the Firm; and

    - Client PW had not taken independent legal advice on the loan, and was known by the Firm not to have taken such advice.

35.4 It was submitted that had such advice been taken the minimum advice would have been to ensure that the fact and terms of the loan were recorded in writing and that Client PW be satisfied as to the ability to repay it.

35.5 It was alleged that the Second Respondent's actions amounted to a failure to act with integrity in breach of Principle 2 of the Principles, in accordance with the test accepted in Newell-Austin summarised above. It was submitted that the Second Respondent's conduct amounted to a failure of steady adherence to an ethical code in that he allowed the appropriation of client monies for his own benefit, as a Member of the Firm, in circumstances where steps had not been taken to ensure the protection of the client's best interests. The Second Respondent stated, in a letter sent jointly by him and the First Respondent to the SRA in response to its letter to him of 29 June 2016, that, if Client PW had been advised to seek independent legal advice, "there is no certainty that she would have sought independent legal advice such was her trust and confidence in [the First Respondent] at the time". The Applicant submitted that to the extent that the Second Respondent allowed the Firm to enter into a contract which did not reflect the true understanding of the parties, such an agreement is a sham and entering into such an agreement amounted to a failure to act with integrity, as was recited at paragraphs [115-122] of Wingate.

35.6 In respect of the loans to the Firm, it was alleged that the Second Respondent allowed the transfer of funds from Client Account to Office Account other than in the circumstances allowed for under Rule 20 of the SRA Accounts Rules and therefore in breach of that Rule. Clients and the public would expect the Second Respondent and solicitors generally to comply strictly with controls over the use to which client monies may be put, particularly in circumstances in which the Firm exercised a particular responsibility by reason of the power of attorney.

The Second Respondent's Case

35.7 The Second Respondent stated that he was the junior partner in the Firm and that the First Respondent was the principal fee-earner and driving force within the Firm. The Second Respondent's role, in addition with his fee-earning work, was described as day-to-day administrative. The Second Respondent's evidence was that in the course of a weekly partners' meeting which took place in about early February 2014 the First Respondent informed him that a client of the Firm's, PW, was about to go to Dubai for an extended work visit, wanted to invest a lump sum of money, and wanted the First Respondent to manage her investment(s) in in her absence.

35.8 The Second Respondent stated that he raised with the First Respondent the question whether PW required independent legal advice, were it to be the case that she, a client of the firm, were to be lending money to the firm. The First Respondent told the Second Respondent that PW had received independent financial advice but did not require independent legal advice. The proposal was that she would enter into a commercial agreement with the First Respondent acting as her commercial agent, not her solicitor. These were submitted to be matters outside the Second Respondent's direct experience and directly within the First Respondent's experience. The Second Respondent stated that he felt entitled to rely on the First Respondent and did so.

35.9 *Allegation 3.1.1*: The Second Respondent admitted that he failed to behave with integrity and/or in a way that maintained the trust the public places in solicitors and in the provision of legal services and thereby breached Principles 2 and/or 6 of the Principles in that he failed to ensure that the First Respondent had in fact ensured that PW obtained legal advice before effecting the Firm Loans and in so failing he did not live up to the high professional standards expected from a solicitor (Wingate).

35.10 The Second Respondent admitted that the Firm retained PW's funds in its client account and allowed funds to be paid out in circumstances in which a legal service was not being provided to PW, and thereby breached Rule 14.5 of the SARs and Principle 7 of the Principles.

The Tribunal's Decision

35.11 Allegation 3.1 was admitted in its entirety including the alleged breaches of Principles 2, 6 and 7 and Rule 14.5 of the SARs. The Tribunal considered the admissions were properly made and the allegations were proved beyond reasonable doubt.

36. **Allegation 3.2: Between about 14 February 2014 and 20 October 2015 the Second Respondent allowed client monies to be held in and paid out of the Firm's Client Account, comprising the Firm Loaned Funds, other than in respect of instructions relating to an underlying transaction or to a service relating to the Firm's normal regulated activities, and:**

**3.2.1. in doing so acted in breach of one or both of Rule 14.5 of the SARs and Principle 7 of the Principles;**

**3.2.2. in failing to remedy the breaches referred to at 3.2.1 above promptly upon discovery, acted in breach of Rule 7.1 of the SARs.**

The Applicant's Case

36.1 The Applicant again relied upon the background allegations summarised above in paragraphs 18.1 to 18.14 relating to the various loans made from money held by the Firm for Client PW.

36.2 It was alleged that the Second Respondent allowed monies to be paid from the Client Account of Sibley Law LLP to the Firm and third parties, in circumstances in which an underlying legal service was not provided to Client PW or any of the other clients involved in receiving loans. In handling client monies in this way, the Firm provided a banking facility; the payments into and out of the Client Account were not in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of the Firm's normal regulated activities. The Second Respondent therefore acted in breach of Rule 14.5 of the SARs and Principle 7 of the Principles requiring him to comply with his regulatory obligations.

36.3 The Applicant invited the Tribunal to infer that as one of only two or (at most) three members of the Firm, the Second Respondent was and must, or should, have been aware of the source of funds taken by the Firm as a loan. He failed promptly or at all to take

steps to rectify the breaches alleged above and so, it was submitted, breached his obligation to do so under Rule 7.1 of the SARs.

The Second Respondent's Case

36.4 *Allegation 3.2.1*: The Second Respondent admitted that the Firm retained PW's funds in its client account and allowed funds to be paid out in circumstances in which a legal service was not being provided to PW, and thereby breached Rule 14.5 of the SARs and Principle 7 of the Principles.

36.5 *Allegation 3.2.2*: The Second Respondent admitted that he failed to remedy the above-mentioned breach of Rule 14.5 of the SARs promptly, and thereby breached Rule 7.1 of the SARs.

The Tribunal's Decision

36.6 Allegation 3.2 was admitted in its entirety including the alleged breaches of Principle 7 of the Principles and Rules 7.1 and 14.5 of the SARs. The Tribunal considered the admissions were properly made and the allegations were proved beyond reasonable doubt.

37. **Allegation 3.3: Between about 10 November 2015 and about 5 August 2016 the Second Respondent failed to report to the SRA serious financial difficulties relating to the Firm, and in doing so breached Outcome O(10.3) of the Code and Principle 7 of the Principles**.

The Applicant's Case

37.1 The Applicant relied upon the background allegations summarised above in paragraphs 28.1 to 28.2 relating to information provided to the SRA concerning the allegedly serious financial difficulties affecting the Firm.

37.2 It was alleged that the Second Respondent did not report to the SRA the indicators of financial difficulty summarised under allegation 1.10 above at paragraph 28.1 above until he informed the SRA in June 2016 of the Firm's inability to pay its professional indemnity insurance premium. Such notification was given only four days before a winding up order was made. Mr Bheeroo submitted that the Firm was clearly at financial risk well before four days prior to a winding up order being made and there was no plausible excuse for the delay in reporting these difficulties. In failing to report those difficulties to the SRA it was alleged that the Second Respondent breached Outcome O(10.3) of the SRA Code of Conduct 2011, which required such reporting, and Principle 7 of the Principles which required co-operation with his regulator.

The Second Respondent's Case

37.3 On 3 December 2015 Premium Credit issued a winding up petition against the Firm. The Firm had overlooked paying a bill and a statutory demand. On 15 January 2016, the winding up petition was dismissed upon proof of payment of the debt. The Second Respondent stated that he did not in his judgement regard this event as an incident of serious financial difficulty of the Firm. On 9 February 2016 HMRC threatened the

Firm with a winding up petition unless £211,554.89 were paid promptly. The Second Respondent stated that he left it to the First Respondent to reach agreement with HMRC, understanding that funds would soon become available from the sale of a property he owned. The Second Respondent stated that he did not in his judgement regard this event as an incident of serious financial difficulty of the Firm.

37.4 On 18 March 2016 the deadline passed for the payment of the Firm's professional indemnity insurance renewal premium, and the premium remain unpaid. At this point and onwards the Firm was in serious financial difficulty. The SRA were informed of the Firm's inability to pay its professional indemnity insurance premium on about 17 June 2016. The Second Respondent admitted that he failed as from about 18 March 2016 until about 17 June 2016 to report to the SRA the serious financial difficulties then affecting the Firm, and thereby breached Outcome O (10.3) of the Code and Principle 7 of the Principles.

The Tribunal's Decision

37.5 Allegation 3.3 was admitted including the alleged breaches of Outcome O (10.3) of the Code and Principle 7 of the Principles as from about 18 March 2016. The Tribunal accepted that by this date, when the deadline for the payment of the Firm's professional indemnity insurance renewal premium passed without payment, the Firm was unambiguously in serious financial difficulty. Accordingly, the Tribunal considered the admission was properly made and the allegation was proved beyond reasonable doubt.

38. **Allegation 3.4: From 27 November 2017 onwards, the Second Respondent failed to cause the Firm to comply with a formal requirement of the Legal Ombudsman to make a payment to a former client and thereby breached one or both of Principles 6 and 7 of the Principles.**

The Applicant's Case

38.1 The Applicant relied upon the background to allegation 1.5 summarised above in paragraph 22.1 relating to the Legal Ombudsman's determination that the Firm should make a payment to a former client.

38.2 The Applicant alleged that the Firm failed to pay sums due to a former client as a result of adverse findings by LeO as to the service provided. It was submitted that the public would expect, and public confidence in the profession requires, that where an adverse finding is made by a regulatory body, and a payment is required as a result, a solicitor will make such a payment promptly and in full. The First Respondent subsequently argued that the Firm and its members could avoid liability by reference to an insistence that the Firm was entitled (without the agreement of LeO or the client concerned) to make payment by instalments.

38.3 It was submitted that the Firm had no entitlement unilaterally to impose instalment payments and that in failing to pay, the Second Respondent breached Principle 6 and, by failing to comply with the requirement of LeO, Principle 7 of the Principles.

The Second Respondent's Case

38.4 On 15 December 2015 the Legal Ombudsman had issued a formal decision awarding compensation to client DD in respect of service issues at the hand of a former partner in the Firm. Although the Second Respondent was the Firm's COLP at the time, the First Respondent took responsibility for the Firm's paying the compensation. Instalment payments were made but the firm went into voluntary liquidation on about 5 August 2016 before all instalments could be completed. The LeO claimed the outstanding £8,250 owed to DD in the Firm's insolvency. The Firm closed on 16 September 2016.

38.5 The Second Respondent admitted that the Firm failed to make full payment of the LeO's compensation award to DD prior to the Firm's going into liquidation, so failed to behave in a way that maintained the trust the public places in solicitors and in the provision of legal services and thereby breached Principles 6 and 7 of the Principles.

The Tribunal's Decision

38.6 Allegation 3.4 was admitted in its entirety including the breaches of Principles 6 and 7 of the Principles. The Tribunal considered the admissions were properly made and the allegations were proved beyond reasonable doubt.

39. **Allegation 3.5: By reason of the facts and matters alleged at 3.1 to 3.4 above, the Second Respondent failed to comply with his obligations as the Firm's COLP to ensure, or take adequate steps to ensure, compliance with the Firm's obligations under the Code, contrary to Rule 8.5 of the SRA Authorisation Rules 2011.**

The Applicant's Case

39.1 The Second Respondent was, from 27 March 2015, the Firm's COLP and so responsible for taking all reasonable steps to ensure the Firm's compliance with its regulatory obligations. The facts set out and referred to above in relation to allegations 3.1 to 3.4 were submitted to demonstrate his failure to do so in breach of Rule 8.5 of the SRA Authorisation Rules 2011.

The Second Respondent's Case

39.2 The Second Respondent admitted that in relation to each breach admitted above occurring after 27 March 2015 he failed to comply with his obligations as the Firm's COLP to ensure or take adequate steps to ensure compliance with the Firm's obligations under the Code, contrary to rule 8.5 of the SRA Authorisation Rules 2011.

The Tribunal's Decision

39.3 Allegation 3.5 was admitted including the breach of rule 8.5 of the SRA Authorisation Rules 2011. The Tribunal considered the admission was properly made and the allegation was proved beyond reasonable doubt.

**Previous Disciplinary Matters**

40. There were no previous disciplinary matters for either Respondent.

**Mitigation**

The First Respondent

41. With regards to the one finding of dishonesty, in relation to allegation 1.8, the First Respondent maintained that his charges were reasonable and he stated that he hoped Ms HB would have the courage to apply for his costs to be assessed. In mitigation he stated that the other allegations of dishonesty had failed and there had been no evidence of dishonesty presented. He also submitted that no evidence of recklessness had been submitted.

42. He submitted that, with the one exception of the former client who was owed money when the Firm went into liquidation, no clients of the Firm had suffered any financial loss. He also submitted that there was no evidence that he had acted as a solicitor other than his role in the litigation for Client DD.

43. He also stated that all files from the Firm had been transferred to alternative solicitors or had been returned to the clients with the exception of the estate of Ms SS where he was continuing to advise the executors but not on a paying basis. He was acting in this capacity in order to complete the administration of the estate.

44. The First Respondent stated that he had retired from practice and had no intention to return to it. He stated that he was 83 years old and had had an otherwise unblemished 55 year legal career.

The Second Respondent

45. The Second Respondent had a clean regulatory record and had placed before the Tribunal a number of testimonials which were submitted to speak to his honesty and integrity. The Second Respondent had made the admissions set out above (except the allegation of breach of Principle 2) at the first available opportunity. Mr Parker stated that the Second Respondent had admitted breach of Principle 2 as soon as it was clear to him that (i) the SRA was not prepared to entertain discussions towards an Agreed Outcome, (ii) a full hearing therefore had to take place, and (iii) he could not afford representation for a full hearing.

46 It was also submitted that the Second Respondent was the junior partner in the Firm in which the First Respondent was the dominant force. The Second Respondent submitted that he had no reason to doubt the First Respondent concerning PW's agreement to the Firm Loans and the need for her to be given independent legal advice and accordingly relied on the same.

47. The Second Respondent's breach of Principle 2 was submitted to be at the lowest end of the scale, amounting to one isolated course of dealing with one client of the Firm, handled exclusively by the First Respondent. The Second Respondent's failure to notify the SRA of the Firm's serious financial difficulties as at March 2016 was

acknowledged to be an error of judgement on his part as opposed to any desire to conceal. The Second Respondent was open and candid with the SRA's Investigation Officer once the Firm's inspections commenced on about 9 May 2016.

48. By October 2018 the Second Respondent had personally repaid certain of the Firm's creditors in an aggregate sum of £96,557.01. Under ongoing instalment arrangements he was due to conclude repaying personally a further £5,500 of the Firm's debts during 2019. Mr Parker submitted that the Second Respondent had always taken his role as COLP and his other management roles within the Firm seriously. The Firm's accounting procedures were scrupulous and robust. The Firm's reporting procedures were rigorous, to the extent of the Second Respondent's having previously reported his own (more senior) partner to the SRA in respect of an unrelated matter.

49. It was submitted that there was no danger of recurrence of matters of this type. The Second Respondent disavowed any intention ever again to be the owner or manager of a law firm and volunteered that the current restrictions on his practising certificate to such effect may persist.

50. The admitted failures were submitted to have no aggravating factors. The Second Respondent asked for his means to be taken into account by the Tribunal. He also stated that he regretted and apologised that he had been unable on the occasions where admissions were made to ensure total compliance with the Principles, the Code and the SARs.

**Sanction**

51. The Tribunal referred to its Guidance Note on Sanctions (5th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondents' culpability and the harm caused, together with any aggravating or mitigating factors.

<u>The First Respondent</u>

52. In assessing culpability, the Tribunal found that the motivation for the First Respondent was to relieve the cash-flow position of the Firm and that he had subordinated the interests of clients to this. The misconduct was not spontaneous and had required extensive planning and taking all allegations together had extended over several years. The Tribunal considered that the First Respondent had been in a clear position of trust, particularly as Client PW's attorney and that he had had direct control over and responsibility for the circumstances giving rise to his misconduct. He was self-evidently an extremely experienced solicitor with over 50 years' experience. The Tribunal considered the harm caused to have been significant, as set out in more detail below. The Tribunal did not consider that the First Respondent had deliberately misled the regulator, but his ignorance of important aspects of the regulatory landscape meant that he dealt inappropriately with his regulator in what was often a dismissive manner. The Tribunal assessed the First Respondent's culpability as high.

53. The Tribunal considered the harm caused by the misconduct to have been foreseeable. Ms SS had been deprived of her wishes, which was for her daughter to be the executor of her estate. This was significant in itself but also had an obvious impact on her

daughter and, as indicated by the Tribunal's findings in relation to allegations 1.6 to 1.9, also contributed to financial loss to the estate. Client PW had gone to the lengths of issuing a statutory demand in order to recover money she considered was owed to her as a result of the loans effected by the First Respondent. Ms AM had also been caused considerable distress as was clear from her evidence to the Tribunal. These were serious consequences of his misconduct and the Tribunal considered that the reputation of the profession would also be harmed, particularly given the First Respondent's experience. The Tribunal assessed the harm caused as high.

54. The Tribunal then considered aggravating factors. A finding of dishonestly overcharging for legal work had been found proven. Other serious findings had been made which extended over a significant period of time and the First Respondent had subordinated the consequences of his actions on others to his own interests. Those affected or involved were not vulnerable, but one of the executors and one of the recipients of Client PW's loans were described as close personal friends. The First Respondent had failed to take the extra care that advising in such circumstances required.

55. The Tribunal also considered mitigating factors. The First Respondent had taken significant steps to make good the financial losses. He also had an otherwise unblemished record in a long and successful career.

56. The overall seriousness of the misconduct was high, it could not be otherwise given the dishonesty finding. In addition, there were multiple findings that the First Respondent had lacked integrity and failed to uphold public trust in the provision of legal services in various different ways. Even without dishonesty the Tribunal would regard the misconduct as very serious. As the First Respondent had been found to have been dishonest, the Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the roll. The Tribunal was not persuaded that any exceptional factors were present, such that the normal penalty would not be appropriate.

57. Having found that the First Respondent had acted dishonestly and in view of the other serious findings made against him, the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".

The Tribunal determined that the findings against the First Respondent, including dishonesty, required that the appropriate sanction was strike off from the Roll.

The Second Respondent

58. The Tribunal first considered the Second Respondent's culpability. The Tribunal considered that the only motivation was a reluctance to intervene and challenge the First Respondent in the way that the Second Respondent had since accepted was

required as COLP. The Tribunal considered that the Second Respondent's conduct was attributable to the length of the First Respondent's experience and his role in the Firm. The Second Respondent himself was an experienced solicitor who should have been aware of the need for independent advice for clients in some situations. The Tribunal did not consider his misconduct to have been planned, it was something he allowed to happen rather than something he set out to do. He had a reasonable degree of control over the circumstances as the Firm's COLP. Given his experience and role as COLP, the Tribunal assessed the Second Respondent's culpability as high.

59. The Tribunal considered the harm caused by the Second Respondent's misconduct. His failure to prevent various actions by the First Respondent allowed some of the harm described above to happen. Given the lack of challenge from the Second Respondent as COLP, the First Respondent acted in a relatively unchecked way which the Tribunal considered contributed to the harm caused to Client PW and others. The Second Respondent should have realised the potential for harm. As noted above, the impact on Client PW and Ms AM was significant as was the potential for harm to the reputation of the profession.

60. The Tribunal considered aggravating factors. The admitted misconduct took place over a fairly extended period of time. The Tribunal also considered that the Second Respondent should have been aware that the admitted misconduct was in material breach of his obligations to protect the public and the reputation of the legal profession, particularly given his role as COLP.

61. When considering mitigation, the Tribunal noted that the Second Respondent had taken extensive steps to make good those losses suffered by those involved with the Firm, to his own significant financial detriment. Whilst admitting a delay which amounted to misconduct, the Tribunal noted that he did report the Firm's financial difficulties to the SRA eventually. The Tribunal accepted that the Second Respondent had genuine insight into the misconduct and the circumstances giving rise to it. He had made open and frank admissions to the SRA. He had also provided several very positive character references which the Tribunal reviewed carefully.

62. The Tribunal assessed the Second Respondent's conduct to be serious misconduct. Having done so, the Tribunal considered the appropriate sanction commencing with No Order. The Tribunal did not consider No Order to be an adequate sanction in view of the high degree of culpability and the seriousness of the conduct. In view of the foreseeability of harm, the contribution to the harm caused, the breach of Principle 2 and the default with regards to the Second Respondent's obligations as COLP, the Tribunal did not consider that a Reprimand was an adequate sanction. Such a sanction would be insufficient to protect the reputation of the profession and would not reflect the seriousness with which conduct lacking integrity is taken. The Tribunal considered that in the light of these factors a substantial fine coupled with a Restriction Order was appropriate to reflect the Second Respondent's serious misconduct and the need to protect the public and the reputation of the profession.

63. The Tribunal took then into account the mitigation presented including the evidence of means and the anticipated scope for payments to be increased from March 2019. The Tribunal determined that a fine of £15,000 was the appropriate sanction. In addition, and as it had been invited to by the Second Respondent himself, the Tribunal

determined that a Restriction Order mirroring the restrictions currently on his practising certificate was appropriate. Accordingly, The Tribunal ordered that he may not practise as a sole practitioner, manager or owner of an authorised or recognised body; be a partner or member of a Limited Liability Partnership, Legal Disciplinary Practice or Alternative Business Structure or other authorised or recognised body; be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration; hold client money or be a signatory on any client account without leave of the Tribunal.

**Costs**

The First Respondent

64. The Applicant sought costs against the First Respondent in the sum of £59,255 as set out on a costs schedule dated 3 October 2018. The First Respondent confirmed that he had no objection to the sums claimed for supervision or to the sums claimed by Capsticks Solicitors. He submitted that the costs claimed by the FIOs were unreasonable on the basis that despite extensive investigation and multiple visits each investigator had produced only a minute amount of evidence that had featured in the hearing. He also submitted that the total of the costs claimed should be reduced to reflect the fact that a proportion of the time and costs incurred related to the Second Respondent. Finally, he stated that he was currently bankrupt as a result of a bankruptcy order obtained by the Applicant.

65. In reply Mr Bheeroo submitted that it was inaccurate to say the FIOs contributed only minute parts of the evidence; the first investigation report dealt mainly with events concerning Client PW and the second investigation included whether or not the First Respondent was practising as a solicitor at SSSL. Both were significant and time-consuming matters to investigate in Mr Bheeroo's submission. He also stated that the Applicant's costs had been apportioned between the two Respondents on the costs schedules.

The Second Respondent

66. The Applicant sought costs against the Second Respondent in the sum of £27,242 as set out on a costs schedule dated 3 October 2018. On behalf of the Second Respondent, Mr Parker submitted that any costs order made against the Second Respondent should be a low fraction of the overall claim for costs. This was on the basis that (I) most of the allegations concerned the First Respondent and were submitted to be unrelated to the Second Respondent, (ii) the Client PW matter was exclusively within the First Respondent's control, (iii) the Second Respondent's means and (iv) the Second Respondent himself sought the costs of the case resulting from what was submitted to be an irrational and unreasonable approach towards the possibility of an agreed outcome taken by the Applicant.

67. The Second Respondent sought costs from the Applicant of £19,000. He had incurred costs of £44,485.50 - £46,485.50 plus VAT as set out in a schedule dated October 2018. In support of this application, Mr Parker referred to without prejudice save as to costs correspondence between the Applicant and the Second Respondent from August 2018. He stated that a different Division of the Tribunal had, in a case management hearing on 30 May 2018, indicted that Agreed Outcomes could be explored for one or both

Respondents. A draft Agreed Outcome was sent to the Applicant on 1 August 2018. The First Respondent had confirmed to the Applicant that he had no objection to an Agreed Outcome being explored in relation to the Second Respondent. The Second Respondent made the further admissions, of the breach of Principle 2, by letter dated 13 September 2018 in response to Capsticks Solicitors stating that the Applicant required full admissions to be made including the lack of integrity.

68. In the light of the Second Respondent's extensive early (and subsequently full) admissions, it was submitted that the Applicant's lack of engagement with the possibility of an Agreed Outcome was unreasonable and irrational and that he should be awarded his legal costs from the point at which savings could have been made by way of an Agreed Outcome. In light of the legal costs which would have been involved in concluding an Agreed Outcome in August or September 2018 the Second Respondent sought his costs since 1 August 2018 of £19,000.

69. Turning to the Applicant's schedule of costs, Mr Parker submitted that the costs claimed were excessive. He invited the Tribunal to consider whether there was any element of duplication between the FIOs' and the Applicant's own legal team's costs. He submitted that some of the Applicant's own legal costs appeared excessive, such as two lawyers attending an investigatory meeting. Mr Parker took no issue with the apportionment of costs to the Second Respondent for FIO costs and for the Applicant's own supervision costs, both of which amounted to around 20% of the total costs. Mr Parker submitted that it was, however, illogical that around 30% of Capsticks Solicitors fees were apportioned to the Second Respondent when no higher proportion of work was required than for the supervision or FIO costs.

70. In the event that the Tribunal did not make any award to the Second Respondent, Mr Parker invited the Tribunal to take into account what he described as the Applicant's refusal to engage and also the Second Respondent's means, of which details were provided.

71. In reply Mr Bheeroo stated that he had never encountered a scenario where a Respondent who had made admissions and findings were made had been awarded their costs. He invited the Tribunal to apply its usual approach as set out in paragraph 63 of the Sanctions Guidance. He submitted that awarding costs to a Respondent is generally only contemplated when they have been successful and that this was on the basis that the Applicant exercising its regulatory function was in a different position from a party in a typical commercial dispute. He stated that he was surprised that the Second Respondent described the Applicant's fees as excessive when his own fees incurred were significantly higher. He also submitted that the roles of those who had both attended meetings were different. He also stated that applying the Applicant's costs claimed to the hours spent on the case gave an hourly rate of £144 which he submitted was reasonable. He also submitted that the Applicant was not obliged to enter into discussions about an Agreed Outcome and, unlike in civil litigation, the parties were not able to reach agreement themselves and the Tribunal would need to approve any proposed agreed sanction.

**The Tribunal's Decision**

72. The Tribunal assessed the costs of the hearing.

The First Respondent

73. The Tribunal considered that the costs claimed, including those for the FIOs were reasonable. The investigations were wide ranging and the reports produced were detailed. In all of the circumstances the Tribunal Ordered that the First Respondent pay the costs of and incidental to the application assessed in the sum of £59,255.

The Second Respondent

74. The Tribunal considered the costs claimed, including the proportion of the overall Capsticks Solicitors' fee apportioned to the Second Respondent, were reasonable. The Tribunal did not attach great weight to the submissions made about the Agreed Outcome that the Second Respondent sought to explore. His full admissions were made late in the proceedings, in mid-September 2018, and there was no compulsion on the Applicant to enter into detailed discussions about a potential Agreed Outcome. In all of the circumstances the Tribunal Ordered that the Second Respondent pay the costs of and incidental to the application assessed in the sum of £27,242.

**Statement of Full Order**

75. The First Respondent

1. The Tribunal ORDERED that the First Respondent, EDWARD SIBLEY, 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 £59,255.

76. The Second Respondent

1. The Tribunal ORDERED that the Second Respondent, [NAME REDACTED], solicitor, do pay a fine of £15,000, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £27,242.00.

2. The Tribunal further ORDERED that the Second Respondent be subject to the following conditions:

2.1 The Second Respondent may not:

2.1.1 Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;

2.1.2 Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;

2.1.3 Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

2.1.4 Hold client money;

2.1.5 Be a signatory on any client account.

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 14th day of January 2019
On behalf of the Tribunal

J Martineau
Chair