The Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 14 November 2018. The appeal was heard by Mr Justice Lane on 12 June 2019 and Judgment handed down on 10 July 2019. The Respondent's appeal was dismissed. Prescott v Solicitors Regulation Authority [2019] EWHC 1739 (Admin).

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11783-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RICHARD CHARLES PRESCOTT Respondent

Before:

Mr R. Nicholas (in the chair)
Ms H. Dobson
Mrs N. Chavda

Date of Hearing: 12-14 November 2018

Appearances

Rory Mulchrone, barrister employed by Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

Angus Gloag, Counsel of Ely Place Chambers, 13 Ely Place, London EC1N 6RY instructed by the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that:

1.1 On 30 October 2016 a shortage of at least £149,126.54 existed upon the client account of Prescotts Solicitors, the Respondent's Firm and sole practice, which remained unremedied as at 15 May 2017 (at the earliest). In consequence, the Respondent breached any (or all) of Principles 7 and 10 of the SRA Principles 2011 ("the Principles") and Rule 7 of the SRA Accounts Rules 2011 ("SAR").

1.2 During the period May 2009 to 4 July 2017 (being the date of Intervention into the Respondent's firm) the Respondent breached any (or all) of Rules 14, 17, 20 and 29 of the SAR and Principle 10 of the Principles in that he:

1.2.1 Retained office money in client account contrary to Rule 14.2 of the SAR

1.2.2 Failed to transfer costs from the client account to the office account within 14 days contrary to Rule 17.1(c) of the SAR

1.2.3 Took payment of his fees from money held in client account without first sending a bill of costs or other written notification of costs to his clients contrary to Rule 17.2 of the SAR

1.2.4 Caused and/or permitted incorrect transfers from client account in breach of Rule 20.1 of the SAR.

1.2.5 Withdrew office money from client account otherwise than in accordance with Rule 20.3 of the SAR

1.2.6 Failed to keep a proper record of all dealings with client and office money contrary to Rule 29.1 of the SAR

1.2.7 Failed to record monies received on client ledgers contrary to Rule 29.2 of the SAR

1.2.8 Failed to enter the details of costs and/or invoices to the office side of ledgers contrary to Rule 29.4 of the SAR

1.2.9 Failed to protect client money and assets contrary to Principle 10 of the Principles

1.3 On 1 December 2014 the Respondent incorrectly effected or permitted a transfer from client account to office account of £2,089.75 comprising residual estate funds of Client CB contrary to: -

1.3.1 Rule 20.3 of the SAR and without sending an invoice to the client contrary to Rule 17.2 of the SAR; and/or

1.3.2 In circumstances where he could not be certain there was a legitimate basis for doing so contrary to Principles 2 and 6 of the Principles

1.4 On or around 23 February 2016 and 31 October 2016 he borrowed at least £44,690.84 from Client RR's interim damages and thereby breached all or any of:-

1.4.1 Principle 2 of the Principles

1.4.2 Principle 3 of the Principles and/or Outcome 3.4 of the SRA Code of Conduct 2011("the 2011 Code")

1.4.3 Principle 4 of the Principles

1.4.4 Principle 10 of the Principles

1.5 Between 9 July and 4 September 2009, he provided loans of an indeterminate amount (at least £5,000) to his Client O whilst acting for him in a personal injury matter and thereby breached Rule 3.01 of the Solicitors Code of Conduct 2007("the 2007 Code") by acting where there was a conflict of interest.

1.6 Having received monies for the purpose of discharging professional disbursements he failed to either pay those disbursements to the appropriate recipients and/or in the absence of such payments, transfer the monies from office to client account in breach of Rule 17.1 (1)(b) and (c) of the SAR and Principles 2 and 6 of the Principles.

1.7 On dates including 6 May and 25 August 2016, in the course of litigation, he filed Defences (endorsed by Statements of Truth) which were disingenuous and misleading in response to claims made by professionals for their unpaid fees, contrary to all (or any) of Principles 2 and 6 of the Principles and Outcome 5.1 of the 2011 Code.

1.8 From 21 March 2016, by failing to pay Counsel's fees, the Firm was added to the Bar Council's List of Defaulting Solicitors and Other Authorised Persons, and in so doing he breached Principles 6 and 8 of the Principles.

1.9 On an unknown date before 11 December 2013, he failed to serve one or more claim forms on behalf of Client A in proceedings at the Dudley Count Court, resulting in Client A's claim being struck out and costs being awarded against the claimant, and in doing so he breached Principles 4 and 5 of the Principles.

1.10 Between 15 February 2017 and 23 March 2017:

(a) without obtaining the authorisation of his co-beneficiaries and co-executors, Sister A and Sister B, he arranged for the transfer of £14,656.77 from the estate of his deceased mother to be received from a Barclays Bank account into the Firm's client account; and/or

(b) Without informing Sister A and Sister B as to the movement of the money, he transferred not less than £14,656.77 from client account to office account and in doing so he breached Principles 2 and 6 of the Principles.

2. Dishonesty was alleged with respect to the allegations at paragraphs 1.6, 1.7 and 1.10, however proof of dishonesty was not an essential ingredient for proof of those allegations.

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included:

- Notice of Application dated 5 February 2018
- Rule 5 Statement and Exhibit SM1 dated 31 January 2018
- Rule 7 Statement and Exhibit GXT1 dated 21 August 2018
- Respondent's Answer to the Rule 5 Statement and Exhibits in support dated 15 May 2018
- Respondent's Answer to the Rule 7 Statement and Exhibits in support dated 21 September 2018
- Applicant's Schedule of Costs dated 8 November 2018
- Testimonials on behalf of the Respondent dated 6, 7 and 10 November 2018

Preliminary Matter

4. The Applicant applied to amend the Rule 7 statement as the year cited in allegation 1.9 was incorrect. The Respondent did not object to that amendment. The Tribunal granted the application to amend so as to reflect the correct year.

Factual Background

5. The Respondent was born in 1964 and was admitted as a solicitor in October 2004. His name remained on the Roll. He had a current Practising Certificate subject to the following conditions:

- He may only act as a solicitor in employment. That employment must first be approved by the SRA.

- He is not a manager or owner of an authorised body or authorised non-SRA firm.

- He may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body, or head of legal practice (HOLP) or head of finance and administration (HOFA) in any authorised non-SRA firm

- He does not hold or receive client money, or act as a signatory to any client or office account, or have the power to authorised transfers from any client or office account.

6. Prescotts Solicitors ("the Firm") was the sole practice of the Respondent and was based in Kidderminster. The Respondent was the Firm's COLP and COFA. He was also the Firm's sole manager and solicitor fee earner. The Firm's office and client accounts were operated solely by the Respondent.

7. Mr Babra, a SRA Forensic Investigation Officer ("FIO"), commenced a forensic inspection of the firm on 28 November 2016 and produced a report ("FI Report") dated 15 May 2017. The FIO's final report (FI Report) was dated 15 May 2017.

8. The FIO identified a cash shortage in the client bank account as at 30 October 2016 of £149,126.54. As at the date of the FI Report there remained an ongoing shortage of at least £66,356.63. The FIO concluded that the cash shortage in the client bank account had been caused by incorrect transfers from the client account to office account totalling £134,454.50 and funds received for the payment of professional disbursements being incorrectly transferred to (and held in) the office bank account totalling £14,672.04 (unpaid professional disbursements).

9. The Respondent had received numerous claims and complaints from Counsel and other experts instructed by the Firm. In March 2016 the Firm was added to the Bar Council's List of Defaulting Solicitors.

10. The SRA also received numerous complaints from various experts including Counsel who were instructed by the Respondent but had not been paid their fees. The total of the sums owed as set out in the letters from the complainants was approximately £203,995.54.

11. On 4 July 2017, an Adjudication Panel of the SRA resolved to intervene into the practice of the Respondent pursuant to paragraph 1(1)(a) and (c) of Schedule 1 to the Solicitors Act 1974 on the grounds of suspected dishonesty and the Respondent's failure to comply with specified rules. The Respondent was also referred to the Solicitors Disciplinary Tribunal on 4 July 2017 by the Adjudication Panel.

12. The Respondent contested the Intervention in the High Court but his application was ultimately disposed of by way of a Consent Order dated 28 December 2017.

Witnesses

13. The following witnesses provided statements and gave oral evidence:

- Richard Charles Prescott – the Respondent

14. The written and oral evidence of the 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, made notes of the oral evidence, and referred to the transcript of the hearing. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

15. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the

Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the written and oral evidence before it, together with the submissions of both parties.

16. **Allegation 1.1 – On 30 October 2016 a shortage of at least £149,126.54 existed upon the client account of the Firm which remained unremedied as at 15 May 2017 (at the earliest). In consequence the Respondent breached any or all of Principles 7 and 10 of the Principles and Rule 7 of the SAR.**

Allegation 1.2 - During the period May 2009 to 4 July 2017 (being the date of Intervention into the Respondent's firm) the Respondent breached any (or all) of Rules 14, 17, 20 and 29 of the SAR and Principle 10 of the Principles in that he retained office money in client account contrary to Rule 14.2 of the SAR; failed to transfer costs from the client account to the office account within 14 days contrary to Rule 17.1(c) of the SAR; took payment of his fees from money held in client account without first sending a bill of costs or other written notification of costs to his clients contrary to Rule 17.2 of the SAR; caused and/or permitted incorrect transfers from client account in breach of Rule 20.1 of the SAR; withdrew office money from client account otherwise than in accordance with Rule 20.3 of the SAR; failed to keep a proper record of all dealings with client and office money contrary to Rule 29.1 of the SAR; failed to record monies received on client ledgers contrary to Rule 29.2 of the SAR; failed to enter the details of costs and/or invoices to the office side of ledgers contrary to Rule 29.4 of the SAR; failed to protect client money and assets contrary to Principle 10 of the Principles.

Applicant's Submissions

16.1 As at 30 November 2016 there were 45 client ledgers showing credit balances on the office side of the client ledgers. The office credit balances had been caused by the failure to enter details of the Firm's invoices issued to clients onto the office side of the client ledgers. The amount of the office credits varied from £230.40 to £149,307.81 and dated back to 16 September 2009.

RR

16.2 In this matter, no details of invoices or costs had been entered onto the office side of the client ledger. However, the client ledger showed that between April 2014 and December 2014 costs totalling £138,000.00 had been received and paid directly into office bank account. A further £73,884.84 was also transferred from client bank account to office bank account; and as at 30 November 2016 the office side of the client ledger showed a credit balance of £149,307.81. In addition, office money had been incorrectly retained in the client bank account.

Mr N

16.3 In this matter, client funds had been received but had not been recorded on the relevant client ledger. The FIO's table showed that there were at least 47 client matters where Counsel's fees had been incurred and the relevant client ledger could not be identified.

16.4 The Respondent stated that he was unaware of the issues with the books of accounts until they had been raised with him by the FIO during the investigation. He provided an assurance that he would correct the accounts issues as soon as possible and apologised for any errors that had been made. In a letter to the FIO dated 27 April 2017, the Respondent stated that he anticipated that "it will be possible to rectify the office ledger within the next three months, but bearing in mind the cashier only works part time, it is difficult to give a precise estimate."

Client Account Shortage

16.5 The FIO identified liabilities to clients totalling £9,395.64, which accorded with the balances shown in client ledgers. The FIO concluded that further liabilities existed in the sum of £149,126.54 which were not shown in the books. As at 15 May 2017 the shortage on client account was in the sum of £66,356.33. During his interview the Respondent accepted that this shortage existed. He explained that he was unable to remedy the shortage and that money received which ought to have been used to rectify it had been used for other purposes. It was submitted that the Respondent had failed to protect client money and assets in breach of Principle 10, and that by failing to promptly remedy the shortfall and in failing to comply with his regulatory obligations, the Respondent breached Rule 7 of the SAR and Principle 7 (allegation 1.1).

16.6 The Respondent accepted that the shortage was caused by incorrect transfers from client account to office account for costs totalling £134,454.50 and funds received purportedly for the payment of professional disbursements being incorrectly transferred from the client account to office account totalling £14,672.04 (unpaid professional disbursements).

16.7 The FIO noted that funds were transferred from client to office account without the Firm providing the client with an invoice or other written notification of their costs (as required by Rule 17.2 of the SAR) in respect of a number of matters. The matter of JM, below was exemplified.

Estate of JM

16.8 The client file showed that on 12 May 2016 an interim invoice was raised for costs of £600.00. The client ledger showed that £600.00 was transferred from client bank account to office bank account on the same day. The invoice was not addressed to the client and there was no evidence on the client file that it had been sent to the client. The Respondent accepted that if there was no evidence of the invoice being sent to the client there was a shortage in the client bank account of £600.00 as the client had not been notified of the costs.

16.9 From the £12,649.71 in funds collected in the client bank account, the client ledger showed that between 7 and 29 September 2016 an additional £10,444.00 was transferred from the client bank account to the office bank account. The Respondent accepted during a meeting with the FIO on 17 January 2017 that there was a cash shortage on this matter as at 31 October 2016.

Respondent's Submissions

16.10 The Respondent accepted the facts as regards allegations 1.1 and 1.2. He denied that he had breached the Principles (Principles 7 and 10) or Rule 7 of the SAR.

16.11 The Respondent accepted during the interview with the FIO on 20 April 2017 when discussing the RR matter that the failure to enter details of the costs or invoices to the office side of the client ledgers was a breach of Rule 29.4 of the SAR (allegation 1.2.8). He also accepted that he had retained office money in the client bank account in breach of Rule 14.2 of the SAR (allegation 1.2.1); and failed to transfer the costs from the client bank account to the office bank account within 14 days as required by Rule 17.1(c) (allegation 1.2.2). Those matters were also admitted by the Respondent in his Answer dated 15 May 2018.

16.12 The Respondent accepted during the interview with the FIO when discussing the Mr N matter that funds received were not recorded on the client ledger in breach of Rule 29.2 of the SAR (allegation 1.2.7), and he further accepted that he had breached Rule 29.1 of the SAR (allegation 1.2.6), in that he had failed to keep a proper record of all dealings with client and office money. Those matters were also admitted by the Respondent in his Answer dated 15 May 2018.

16.13 The Respondent accepted during the interview with the FIO when discussing the Estate of JM that when the transfers from the client account to the office account were made, he had failed to comply with Rule 17.2 of the SAR (allegation 1.2.3) and the transfers were made in breach of Rule 20.3 of the SAR (allegation 1.2.5). Those matters were also admitted by the Respondent in his Answer dated 15 May 2018.

16.14 In his Answer, the Respondent admitted that he had caused and/or permitted incorrect transfers from client account in breach of Rule 20.1 of the SAR (allegation 1.2.4).

16.15 The Respondent accepted that there had been a shortage on client account as alleged. He explained that the reduction from approximately £150,000 to approximately £66,000 in a 6 month period demonstrated his commitment to reducing that shortage. By the time of the intervention, the shortage had been reduced to approximately £15,000. The shortage whilst accepted, was not an "actual" shortage as it was caused by the accounting errors in the Firm. The Respondent explained that the usual process for the Firm in respect of monies owed would be to pass the file to the Firm's cashier (SH) who would ensure that all liabilities were settled and would raise an invoice in respect of the Firm's costs. Commencing in October 2012, SH had to take significant periods of time off work. This led to issues in terms of the Firm's accounting processes.

16.16 The shortage had been remedied in large part by correcting the accounting errors and preparing invoices. The Respondent submitted that as no client had lost out, and there were no client complaints, he had not failed to protect client monies. Had there been an actual shortage then client monies may have been at risk, however the shortage was due to accounting errors. The shortage was remedied as soon as possible by dealing with the accounting errors.

The Tribunal's Findings

16.17 The Tribunal found beyond reasonable doubt, (as had been admitted by the Respondent) that there had been a shortage on client account as alleged. The Tribunal found that as a consequence of having a shortfall of approximately £150,000 on his client account, the Respondent had plainly failed to protect client money and assets in breach of Principle 10. Whilst it was to his credit that he had reduced the shortage, as at May 2017 there still remained a shortage on the client account in the region of £66,000. It was evident, (given that shortage) that the Respondent had failed to remedy the shortage promptly, and thus was in breach of Rule 7 of the SAR. By failing to remedy the shortage promptly and by failing to protect client money and assets, the Respondent had failed to comply with his legal and regulatory obligations in breach of Principle 7. Accordingly, the Tribunal found allegation 1.1 proved beyond reasonable doubt.

16.18 The Tribunal found beyond reasonable doubt, (as had been admitted by the Respondent) that he had breached the SAR as regards allegations 1.2.1 – 1.2.8 as alleged. The Tribunal further found that by virtue of the admitted breaches of allegations 1.2.3, 1.2.4, 1.2.5, 1.2.6 and 1.2.7, all of which related to the Respondent's records and withdrawal of client monies, the Respondent had failed to protect client money and assets in breach of Principle 10. The SAR were to protect client money. The continued, multiple and extensive breaches of the SAR disclosed an obvious breach of Principle 10. Accordingly, the Tribunal found allegation 1.2 proved beyond reasonable doubt.

17. **Allegation 1.3 - On 1 December 2014 the Respondent incorrectly effected or permitted a transfer from client account to office account of £2,089.75 comprising residual estate funds of Client CB contrary to Rule 20.3 of the SAR and without sending an invoice to the client contrary to Rule 17.2 of the SAR and/or in circumstances where he could not be certain there was a legitimate basis for doing so contrary to Principles 2 and 6 of the Principles.**

Applicant's Submissions

17.1 CB died on 10 May 2009 and under her Will, dated 25 March 2004, she appointed the Respondent's father as her sole executor. CB left her estate to various persons and organisations, including a gift to the Respondent's father of £5,000.00.

17.2 The Respondent's father passed away in December 2008 and the Grant of Probate for the estate of CB was granted to the Respondent on 13 August 2010. On 3 December 2010 the client ledger showed that the Respondent transferred £1,000.00 from client account to himself in respect of part of the legacy given to his late father under CB's Will.

17.3 The Respondent was asked for his comments regarding the above rules during the interview on 20 April 2017. He stated that he did not deal with the matter at the time the Will was drafted and never had any dealings with CB personally. The Respondent could not explain how he had satisfied himself that the gift to his father was due to him or that the beneficiaries had given informed consent to him receiving the gift from the estate.

17.4 Mr Mulchrone submitted that in any event, as the Respondent's father had predeceased CB, the gift to him in her Will lapsed.

17.5 The estate accounts indicated that after payment of all liabilities due under the estate there remained a balance of £10,074.75 to distribute to the beneficiaries. Each beneficiary was to receive a percentage, ranging from 21.5 to 22.5 per cent, of this remaining balance. The Firm was able to locate and pay sums totalling £7,985.00 to 22 of the 26 beneficiaries on 12 April 2011. As at 13 April 2011 there remained an outstanding balance of £2,089.75 which was due to persons/organisations that could not be located and should have either been retained in the client bank account or re-distributed to the beneficiaries that had been located.

17.6 The Respondent admitted during the interview on 20 April 2017 that 'technically' the funds should have been re-distributed amongst the beneficiaries that could be located, but that they did normally hold back funds on probate matters in case there were any further bills.

17.7 The client ledger showed that on 1 December 2014 the sum of £2,089.75 was transferred from client bank account to office bank account. The FIO noted that there was no evidence on the client file of an invoice for this amount having been sent to the client. Further, the client file and ledger showed the costs due to the Firm, as set out in the estate accounts, had already been transferred to the office account back on 7 October 2010 and 18 November 2010 respectively. The purpose and legitimacy of the £2,089.75 in residual estate funds that the Respondent transferred to office account therefore could not be identified by the FIO.

17.8 In a letter to the FIO dated 13 April 2017, the Respondent explained: "We usually retain a small balance to cover sums which we may be advised of at a later stage. I do not have the probate file, but believe that my late Father was left the sum of £5,000.00 in [CB's] Will. This sum was therefore transferred as costs."

17.9 However, during the interview on 20 April 2017, the Respondent offered a contrasting basis for the transfer stating that the Firm had carried out "some additional work" and this was the reason they had "billed that", yet conceding that if no invoice had been raised there was a shortage in the client bank account of £2,089.75 as the firm had not complied with Rule 17.2 of the SAR and the transfer from the client bank account breached Rule 20 of the SAR.

17.10 The Respondent stated that he was not dealing with this matter personally, however his professional obligations were clear in any event given the circumstances and the effects of Rule 3.04 of the 2007 Code (in force from 31 March 2009 to 5 October 2011) which stated that: -

> "Where a client proposes to make a lifetime gift or a gift on death to, or for the benefit of:
>
> (a) you;
> (b) any manager, owner or employee of your firm;
> (c) a family member of any of the above,

> and the gift is of a significant amount, either in itself or having regard to the size of the client's estate and the reasonable expectations of the prospective beneficiaries, you must advise the client to take independent advice about the gift, unless the client is a member of the beneficiary's family. If the client refuses, you must stop acting for the client in relation to the gift."

17.11 Indicative behaviour 1.9 of the 2011 Code which came into force on 6 October 2011 states: "refusing to act where your client proposes to make a gift of significant value to you or a member of your family, or a member of your firm or their family, unless the client takes independent legal advice;". This should have given the Respondent pause for thought and caused him to consider carefully the disposal of the residual estate funds.

17.12 The Respondent offered contradicting explanations to the FIO as to the basis for the transfer. In effecting or permitting a transfer of the residual estate funds from client to office account where he could not be certain there was a legitimate basis for doing so, he failed to act with integrity and failed to behave in a way that maintained the trust the public places in him and in the provision of legal services.

Respondent's Submissions

17.13 The Respondent did not dispute the facts as detailed by the Applicant. He accepted that the transfer was in breach of the SAR as alleged as the monies had been transferred when no invoice had been sent to the client (allegation 1.3.1). He denied that the money was transferred with no legitimate basis for doing so, as the money was transferred to satisfy the Firm's fees. In his Answer, the Respondent explained that he only transferred money in the belief that he was entitled to do so. The real failure was in not ensuring that the client was sent written notification of costs. During cross examination, the Respondent stated that the reference in his father's legacy in his letter to the FIO of 13 April 2017 was a mistake; the monies were taken to satisfy the outstanding costs due to the Firm due to additional work undertaken.

17.14 Mr Gloag submitted that it was accepted that there was no proper audit trail as regards the additional work and notification of costs to the client. As regards the Applicant's submissions into the proper processes when a client leaves money to his solicitor, this should be seen in its proper context. The relationship was between CB and the Respondent's father. The Respondent was being judged on 2011 principles for a gift that was made before the 2011 Code was produced; indeed the gift was made prior to the 2007 Code. Further, that gift was made by CB to the Respondent's father, not to the Respondent.

The Tribunal's Findings

17.15 The Tribunal concluded that on the Respondent's case, he was in breach of the SAR in transferring the monies as he had failed to provide any written notification of costs. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct was in breach of the SAR as alleged and admitted.

17.16 The Tribunal noted that the Respondent was unable to provide any details as to the nature of the additional work that had been undertaken on the matter. Further, the Respondent had already received costs on the matter as detailed in the estate accounts. He stated that VP (his PA and paralegal) had informed him that there was outstanding work on the file to be billed. The Tribunal also noted that the additional work undertaken was said to be in the exact amount of the residual balance. When asked by Mr Mulchrone if the cost of the additional work "just happens to be identical to what was left over?", the Respondent replied "Yes". The Tribunal found that the Respondent's explanations implausible. He had provided no evidence of any additional work, nor had he provided a statement from VP who had supposedly informed him of the additional work. The Tribunal did not accept that there was any additional work carried out on the file entitling the Respondent to be paid the exact residual sum. Thus the Tribunal determined that the Respondent had no legitimate basis for transferring the monies.

17.17 The Tribunal found beyond reasonable doubt that even on his own case the Respondent had breached Principle 6. The sending of bills or other notification of costs to clients was a fundamental part of any solicitors practice. It was the mechanism by which a client was aware of what was being charged and provided the client with the ability to challenge any costs. Members of the public would expect a solicitor to deliver a bill before transferring client money. In failing to do so, the Respondent had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services.

17.18 The Tribunal found that no solicitor acting with integrity would use monies which he knew belonged to beneficiaries and which he knew ought to have been distributed to those beneficiaries. The Tribunal found that in so using the monies, the Respondent's conduct had lacked integrity in breach of Principle 2. Accordingly, the Tribunal found allegation 1.3 proved beyond reasonable doubt.

17.19 The Tribunal observed that the Applicant, as part of the allegation, referred to the £1,000 transfer made by the Respondent as part of his father's legacy. It also referred to the 2007 and 2011 Codes. The Tribunal determined that as the £1,000 did not form part of the £2,089.75 on which the allegation was based, it was not required to make any findings as to any breaches of either Code, or the legitimacy of that transfer.

18. **Allegation 1.4 - On or around 23 February 2016 and 31 October 2016 he borrowed at least £44,690.84 from Client RR's interim damages and thereby breached all or any of Principles 2, 3, 4 and 10 of the Principles and Outcome 3.4 of the 2011 Code.**

Applicant's Submissions

18.1 The Respondent was instructed in early 2010 to act for RR in a claim for compensation for personal injuries he suffered in a motorcycle accident in October 2009. Due to the injuries suffered by RR his father (RR senior) was acting on his behalf as his litigation friend.

18.2 The claim was settled in January 2016 by consent where it was agreed that the defendants would pay a lump sum plus periodical payments and the Firm's costs subject to detailed assessment. The client ledger showed that the Firm had received two interim payments of damages, as follows: - £75,000.00 on 17 April 2014; and £200,201.85 on 28 November 2016.

18.3 The client ledger showed that the Firm had received costs from 17 April 2014 to 28 November 2016 totalling £247,000.00. The client ledger also showed a number of transfers from client account to office account totalling £44,690.84. These funds had been taken from an interim damages payment received by the Firm on behalf of the client on 17 April 2014 in the sum of £75,000.00. No invoices had been raised in relation to the monies transferred.

18.4 The Respondent explained in a letter dated 2 February 2017, that RR Senior had agreed to the firm using the damages received to pay the firms costs on the understanding that the firm would reimburse the monies once costs and disbursements had been settled. The £44,690.84 therefore represented a loan advanced by the client to the Respondent. The Respondent produced a telephone attendance note dated 30 March 2016 which detailed a telephone conversation between VP and RR Senior which stated:

> "I called and spoke to [RR Senior] and discussed this matter in view of the unfortunate death of [R Junior]. As there will be a delay in finalising the matter with a view to the costs, RR agreed that we could use the moneys held in client account to pay some of the bills."

18.5 However, the transfers from the client account to office account commenced on 23 February 2016, prior to VP obtaining the authority of RR Senior on 30 March 2016.

18.6 In his interview with the FIO of 20 April 2017, the Respondent accepted that without giving notification of costs, there was a shortage of £44,689.84 on the RR matter.

18.7 On 28 April 2017 the Respondent provided an undated letter from RR Senior which stated:

> "In March 2016 [the Respondent's] secretary [VP] spoke to me, I agreed to allow [the Respondent] to use the balance of the interim payment to pay some bills. This was on the understanding that the money be repaid to [RR junior's] estate once the claim for costs has been concluded."

18.8 Mr Mulchrone submitted that in fact, RR Senior was not able to give permission for the use of the monies as the monies belonged to the estate of RR Junior, and it was the beneficiaries of that estate that should have provided permission. By borrowing a significant sum from a client (by way of his litigation friend) without ensuring they had received independent legal advice or setting out the amount advanced, the repayment terms or the duration of the loan; the Respondent failed to act in his client's best interests, allowed his independence to be comprised and acted where his interests conflicted with those of his client. The Respondent also failed to protect

client money and assets. In taking this loan without properly advising his client and benefitting from the financial arrangement the Respondent failed to act with integrity.

Respondent's Submissions

18.9 The Respondent admitted that he had borrowed monies in the amount alleged; he did not dispute the facts as detailed by the Applicant. He denied that in doing so he had breached the Principles or Outcome as alleged or at all. He explained that RR Senior was a friend, and that permission had been given by him to use the monies. He was confident that he would be able to repay any monies borrowed as the Firm was due to receive costs on the matter in excess of the amounts borrowed. The final costs received by the Firm was in the region of £630,000.00. He recognised and fully accepted that the use of the funds was "contrary to the rules and wrong", however he was confident that he could replace the funds. He had only used the funds following permission from RR Senior. The Tribunal was referred to the undated letter from RR Senior in which he confirmed that he had consented to the Respondent using the interim payment to pay some bills. Due to their friendship there were no formal arrangements in place.

18.10 Mr Gloag referred the Tribunal to the letter from RR Senior dated 7 November 2018, in which RR Senior stated that he had found the Respondent very easy to work with and very sympathetic. He believed that the Respondent "really cares" and would certainly instruct the Respondent again. Mr Gloag submitted that it was very much to the Respondent's credit that RR Senior provided a reference in support of the Respondent for these proceedings. The Respondent had not sought to defraud or in any way disadvantage RR Senior; any suggestion to the contrary was incorrect and not supported by the evidence. The Respondent's misconduct lay solely in his merging of his professional obligations with his personal relationship with RR Senior.

The Tribunal's Findings

18.11 The Tribunal found, (as had been admitted by the Respondent) that he had borrowed sums in the amount alleged. The Respondent accepted that he had put himself in debt to RR Junior's estate, and that he acted for the estate. He had not advised RR Senior to take independent legal advice, nor had he created, or caused to be created any loan documentation. He had not informed RR Senior of the amounts that he would borrow or any repayment terms. The Tribunal noted that there had been no complaint made by RR Senior, and that he was supporting the Respondent. The Tribunal determined that the lack of any complaint did not mean that the Respondent's conduct complied with the Principles.

18.12 Outcome 3.4 required that a solicitor did not act where there was a client conflict or a significant risk of a client conflict. The Tribunal found that there was a significant risk of conflict between the Respondent (as the person borrowing the money) and the estate of RR Junior (the lender of the money and the Respondent's client). In the event of the Respondent defaulting, the interests of his client may favour taking steps to obtain payment out of the income or the assets of the Respondent which would be contrary to the Respondent's interests. By borrowing money from his client in the way that he did, the Respondent had put himself in the position where his interests, as the borrower, were potentially in conflict with the interest of his client as the lender.

18.13 There had been no specificity as to the amount to be borrowed or the repayment terms. The Respondent had placed his client's monies at risk. Those monies ought to have remained in his client account. The Tribunal determined beyond reasonable doubt that in borrowing money from his client in the way that he did, and in acting where there was a significant risk of a conflict, the Respondent had allowed his independence to be compromised in breach of Principle 3, had failed to act in the client's best interests in breach of Principle 4, and had failed to protect client money and assets in breach of Principle 10.

18.14 The Tribunal considered that the Respondent had subordinated the interests of his client to his own financial interests. A solicitor acting with integrity would not conduct themselves in such a manner. Thus the Tribunal found beyond reasonable doubt that the Respondent had failed to act with integrity in breach of Principle 2. Accordingly, the Tribunal found allegation 1.4 proved beyond reasonable doubt.

19. **Allegation 1.5 - Between 9 July and 4 September 2009 the Respondent provided loans of an indeterminate amount (at least £5,000) to his client O whilst acting for him in a personal injury matter and thereby breached Rule 3.01 of the 2007 Code by acting where there was a conflict of interest.**

Applicant's Submissions

19.1 Note 40 to Rule 3.01(2)(b) of the 2007 Code stated that:

> "In conduct there is a conflict of interests where you in your personal capacity sell to, or buy from, or lend to, or borrow from, your client. In all these cases you should insist the client takes independent legal advice. If the client refuses you must not proceed with the transaction."

19.2 Mr O instructed the Firm in April 2007 in a personal injury matter. On reviewing the file the FIO noted that the client ledger showed that between 9 July 2009 and 4 September 2009 the Respondent had loaned Mr O £5,000.00. The loan was settled when £8,000.00 was transferred from the client bank account to the Respondent on 4 January 2011. The funds used to settle the loan were taken from an interim payment of damages, received by the firm on 2 August 2010, of £15,000.00.

19.3 The Respondent advised the FIO on 6 April 2017 that he had loaned money to Mr O as he was unable to work following his accident. The loans were made to assist Mr O to pay his household bills; and not all of the money that had been loaned to Mr O was posted to the client ledger. In a letter dated 13 April 2017, the Respondent advised the FIO that the agreement to loan monies to Mr O was oral, and that he was not charged interest.

19.4 During his interview on 20 April 2017, the Respondent stated that it was his understanding that he could lend money to his client, but having heard what the rule stated there was potentially a conflict of interest.

Respondent's Submissions

19.5 The Respondent admitted allegation 1.5. He had lent money to his client who was suffering from difficult financial circumstances following his personal injury. He had not intended to, and did not, make any financial gain from the arrangement. Mr Gloag submitted that the Respondent had not done anything to try to disguise the transaction. There was a clear audit trail. The loan had been made to the client almost 10 years ago. Not only was there no client complaint, but the client had provided a reference in support of the Respondent in these proceedings.

The Tribunal's Findings

19.6 Note 40 to Rule 3.01(2)(b) of the 2007 Code was clear. The Respondent ought to have insisted that Mr O take legal advice, and had Mr O refused, the Respondent should not have loaned him the monies. The Note also made clear that there was a conflict of interest between the Respondent and Mr O, his client.

19.7 Accordingly, the Tribunal found allegation 1.5 proved beyond reasonable doubt. The Tribunal. The Tribunal considered and accepted that the Respondent's actions were out of compassion for the predicament his client faced. It accepted the reference dated 10 November 2018 from Mr O on behalf of the Respondent.

20. **Allegation 1.6 - Having received monies for the purpose of discharging professional disbursements he failed to either pay those disbursements to the appropriate recipients and/or in the absence of such payments, transfer the monies from office to client account in breach of Rule 17.1 (1)(b) and (c) of the SAR and Principles 2 and 6 of the Principles.**

Applicant's Submissions

20.1 The SAR 2011 defines a professional disbursement as:-

> "professional disbursement means, in respect of those activities for which the practice is regulated by the SRA, the fees of Counsel or other lawyer, or of a professional or other agent or expert instructed by you, including the fees of interpreters, translators, process servers, surveyors and estate agents but not travel agents' charges."

20.2 The Respondent informed the FIO during a meeting at the Firm on 28 November 2016 that the Firm had received claims for unpaid fees from various Counsel. The FIO identified on a number of matters that the Firm had settled its costs and disbursements and had received payment. The funds received for the purpose of paying the professional disbursements had then been transferred from the client to office account, but payment to the appropriate third party had not subsequently taken place. Therefore, the correct recipient of the funds had not been paid and the Firm had the benefit of funds that were properly owed to others.

20.3 The FI Report exemplified the matter of H. Mr H's claim was settled by consent on 10 May 2016. The Firm instructed costs lawyers to prepare its bill and negotiate its costs with the defendant. On 13 July 2016 the costs lawyers wrote to the Firm

confirming that costs had been agreed in the sum of £45,000.00. The breakdown of costs provided by the costs lawyers included the amount agreed for Counsel's fees. The Firm received an interim payment of £30,000 on 5 July 2016, with the remainder of £15,000 being received on 1 August 2016. By 16 August 2016, the costs received had been transferred from client account to office account. In his letter of 13 April 2017, the Respondent confirmed that Counsel's fees had not been paid. In his interview of 20 April 2017, the Respondent confirmed that those fees had still not been paid.

20.4 The FIO also exemplified the matter of WJ where costs having been received post the commencement of the investigation, professional disbursements were unpaid. On 27 February 2017 the Firm received £6,387.20 for costs and disbursements, which was paid into client bank account. Between 8 and 21 March 2017, £6,237.20 was transferred from client to office account. Counsels' fees totalling £2,880.00 was due. However, there was no evidence that either of the Counsel had been paid or that the funds relating to their fees had been transferred back to the client account from the office account.

20.5 In his letter of 13 April 2017, the Respondent stated that the "...claim settled following judicial mediation, as you will be aware, there is no Order for costs in these matter (sic). Any outstanding Counsel's fees will be paid as soon as possible."

20.6 In the circumstances, it was submitted, the Respondent conceded implicitly that there had been a breach of Rule 17.1(b) and (c) of the SAR by retaining funds received for the payment of professional disbursements in the Firm's office account and then failing to pay the proper recipient (or transfer the funds back to client account).

20.7 The FIO prepared a schedule of all unpaid professional disbursements which showed that the Firm potentially owed fees to Counsel of at least £146,215.42 plus costs and interest. The Respondent accepted that the FIO's schedule was accurate during the interview on 20 April 2017.

20.8 The Respondent explained that on a number of matters the Firm had instructed Counsel on the basis that Counsels fees would be payable on the conclusion of the matter. However, they had received requests for payment after 30 days which the firm had not agreed to and he has written back to Counsel asking them to provide evidence that he had agreed to make payment within 30 days. Mr Mulchrone submitted that even if that were the case, the Respondent had received costs on a number of matters which had concluded and had still not paid Counsels fees. The Respondent ought to have either paid Counsel, or retained the sums due to Counsel in the Firm's client account.

20.9 The FIO noted that four Judgments, totalling £50,425.72 had been made against the Firm in respect of claims made by Counsel. The Respondent stated that he was in the process of appealing these Judgments.

<u>Other professional disbursements</u>

20.10 The SRA had received complaints for unpaid fees, excluding Counsels fees, totalling some £43,322.48. The Respondent provided details to the FIO about other claims

made against the Firm by other Third parties totalling £13,811.00. Mr Mulchrone submitted that in that context, the matters of H and WJ represented examples of a common practice of withholding payment of disbursement monies which had been received by the Firm but not paid out. The Respondent was bound contractually and by his professional code of conduct to pay third parties their fees and by declining to make these payments he enjoyed the benefit of funds that were properly due to others.

20.11 Mr Mulchrone submitted that by transferring or permitting the transfer of professional disbursement monies to the Firm's office account and utilising them other than for a correct purpose, the Respondent failed to act with integrity contrary to Principle 2 and failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services contrary to Principle 6. In addition, by failing to either pay disbursements monies on to the appropriate recipients and in the absence of such payments, the failure to transfer those monies from office to client account, the Respondent had breached Rule 17.1 (1)(b) of the SAR and failed to act with integrity in breach of Principle 2 of the Principles.

Dishonesty

20.12 Mr Mulchrone submitted that the appropriate test for dishonesty was that formulated by Lord Hughes in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

20.13 Mr Mulchrone submitted that the financial position of the Firm was relevant to considerations of motive and honesty when assessing the Respondent's conduct as they illustrated the financial position of the Firm when or before the Respondent failed to pay or transfer disbursement monies.

20.14 Documents obtained during the intervention indicated the financial difficulties facing the Respondent and the Firm from approximately December 2013:

20.14.1 A memorandum from the Respondent addressed to all staff dated 19 December 2013 stated that "due to lack of funds it is extremely unlikely that December's salaries will be paid by the 24 December 2013";

20.14.2 On 4 and 5 August 2014 respectively, HSBC wrote to the Respondent at the Firm's address in connection with an account 402608 31705407. The letters confirmed that HSBC had been unable to pay a number of cheques

and direct debits (one as small as £9) as "you do not have sufficient cleared funds available within your agreed overdraft limit";

20.14.3 The Firm received a letter from a supplier giving the Firm notice that it was in arrears on payments due. The amount of the shortfall was £310.02. The outstanding balance on the account as at 5 September 2014 was £2,276.22;

20.14.4 On 20 April 2015, a Business Development Manager at Goldcrest Finance sent an email addressed to a Firm address. The subject was the address of the Respondent's mother's family home. The email confirmed that the company would consent to a Further Advance of £30,000 which it was understood was to "assist with the families [sic] ongoing business cash flow";

20.14.5 The Firm received a letter from the Customer Service Section of HMCTS, addressed to the Respondent trading as the Firm, indicating that a cheque paid into the Court on 18 October 2016 for £140 (as payment for an application in relation to the case of JDR v the Respondent) had been returned by the Firm's bank unpaid, and that the sum was in deficit to the Court.

20.15 Mr Mulchrone submitted that the matters detailed above pointed to persistent and/or recurring cash-flow problems at the Firm, of which the Respondent, as sole practitioner and manager, would have been aware.

20.16 A credit check against the Respondent of 28 July 2017 showed 19 County Court Judgments in connection with the Respondent's name or aliases and linked to the Firm's address. The earliest judgment disclosed was in respect of a £5,534 sum in Worcester on 14 July 2015. There were additional judgments throughout 2016 and 2017, with 13 judgments recorded against the Firm in the period from 7 June 2017 to 20 July 2017. Whilst the latter judgments post-dated the FIR and inspection, they were illustrative of financial difficulties facing the Respondent throughout the relevant period.

Respondent's Submissions

20.17 The Respondent accepted that he had breached the SAR; he denied that his conduct was in breach of the Principles or was dishonest. The Respondent accepted the facts as detailed by the Applicant. He explained that it had always been the case that Counsels' fees were not due until the end of the case. That was what he had been taught by his father, and that was the way that the Firm had operated for years. The practice was for files to be given to SH who would draft the bill, transfer the costs and pay any disbursements. As she was rarely in the office, that system broke down. The Respondent did obtain locum cover in her absence, however, as SH felt her job was under threat, he released the locum. The failure to pay professional disbursements was not intentional and was a result of the chaotic nature of the accounts department following SH's extended leave.

20.18 As to the Mr H matter and his defence of Counsel's claim, he was not contending that the fees were not due, but that they were not due until the conclusion of the case. He accepted that Counsel should have been paid.

20.19 Mr Gloag submitted that whilst transferring monies for professional disbursements from client to office account and then not paying that disbursement was in breach of the SAR, some members of the Bar would be "amazed" that such conduct could be considered to be dishonest. The debt owed did not go away

The Tribunal's Findings

20.20 The Respondent accepted that he had breached the SAR as alleged. The exemplified matter of H provided clear evidence of the Respondent's breach of the SAR. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached the SAR as alleged and admitted. The Respondent accepted that it was his responsibility to ensure that professional disbursements were paid in accordance with the Rules. He also accepted that the table detailing £146,215.42 of unpaid Counsel's fees was accurate. Further he accepted that in a number of cases he had failed to pay Counsel's fees after receipt of the monies to pay those fees. He explained that the non-payment was "not intentional" but was due to "the problems with accounts". It was clear that in the exemplified matter of H, the Respondent was fully aware of the amount of costs received, and the disbursements which ought to have been paid. The Tribunal did not accept that the failure to pay those fees was a result of "accounting errors". The Respondent knew that SH, who usually dealt with those matters, was only at the office sporadically. He was the sole operator of the Firm's accounts and it was he who had transferred the monies from client to office account. He did so knowing that the disbursements needed to be paid but he failed to do so.

20.21 The Tribunal considered the chronology in the H matter:

20.21.1 8 April 2016 - Counsel in that matter had issued proceedings against the Respondent (albeit that the proceedings wrongly named the Respondent's Firm as the defendant).

20.21.2 6 May 2016 - the Respondent filed a defence to the claim.

20.21.3 10 May 2016- Mr H's matter was settled by consent.

20.21.4 5 July 2016 - the Respondent received £30,000 as an interim payment towards the costs.

20.21.5 13 July 2016- the Respondent was informed by his costs lawyers that costs had been agreed in the sum of £45,000.00. That letter included a breakdown of those costs, including the sums agreed for Counsel.

20.21.6 1 August 2016 - the Respondent received the balance of costs in the sum of £15,000.

20.21.7 16 August 2016 – by this date the monies received had been transferred from client to office account.

20.21.8 30 September 2016 – Counsel obtained judgment against the Respondent

20.21.9 25 October 2016 – the Respondent obtained permission to appeal

20.21.10 10 January 2017 – HHJ Lochrane ordered that the Respondent's permission to appeal be set aside.

20.22 The Tribunal determined that the Respondent knew that the monies were owed to Counsel. He was aware, having filed a defence, of the proceedings issued by Counsel for the outstanding fees. Indeed, it was only 4 days after having filed his defence that the matter was settled. The Tribunal determined that at the time of the settlement, the Respondent was fully aware of the amounts owed. It was inconceivable that having settled the matter so soon after filing his defence, the Respondent did not recall that he was being sued for outstanding fees by Counsel in the case. It was also inconceivable that on receipt of the letter from his costs lawyers and receipt of the funds, the Respondent did not realise that he needed to pay Counsel's fees. Even on the Respondent's own case, namely that fees were not due until the matter was concluded, he ought to have paid Counsel in August when he received costs in full. He did not do so. Counsel successfully obtained Judgment on 30 September 2016. At this point the Respondent still did not pay Counsel's fees despite having received the monies to do so over 8 weeks prior to that date. Instead, on 25 October 2016, some 12 weeks after he had received the funds, he obtained permission to appeal against the Judgment. Even as at 20 April 2017, 9 months after receipt of funds to pay, the Respondent had not paid Counsel.

20.23 The Tribunal noted that the Respondent had accepted, both in interview and during his oral evidence that there were other matters where funds to pay professional disbursements had been received, transferred from client to office account, but had not thereafter been used to pay the disbursement.

20.24 That the Respondent had breached Principle 6 was plain on the evidence. Members of the public would expect a solicitor to use monies for the purposed for which those monies were provided. Such conduct did not maintain the trust the public placed in him and in the provision of legal services. Thus the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 6 as alleged.

20.25 The Tribunal considered that it had become the Respondent's practice to use professional disbursement monies to support his Firm. That much was clear from the level of the shortage on client account. As to the Respondent's position that Counsel's fees should be treated differently to monies received from a client personally, and that the proposed amendments to the SAR would no longer treat monies for professional disbursements as client monies, the Tribunal considered this was a non-point. The Rules, as they stood at the time of the Respondent's conduct (and still stand as at the time of the Tribunal's consideration) were that monies received for professional disbursements are client monies. This was abundantly clear. The Tribunal found beyond reasonable doubt that no solicitor, acting with integrity, would use client money to support his business in breach of the SAR. Thus it found that the Respondent had breached Principle 2 as alleged.

20.26 The Tribunal agreed that the appropriate test for dishonesty was that detailed in Ivey. The Tribunal determined that the Respondent knew that he was using client money to support his business. His position as to the chaotic nature of the accounts did not explain his conduct as regards, for example, the payment to Counsel in the H matter above. Not only did he not pay Counsel in the clear knowledge that the money had been received, he continued to dispute that monies were owed. Not only was this conduct lacking in integrity, such conduct was dishonest. The Respondent knew he had received the monies to pay Counsel's fees, transferred that money into his office account and then utilised those monies for his own purposes. Reasonable and decent people would consider such conduct to be dishonest.

20.27 Accordingly, the Tribunal found allegation 1.6 proved beyond reasonable doubt, including that the Respondent's conduct had been dishonest.

21. **Allegation 1.7 - On dates including 6 May and 25 August 2016, in the course of litigation, he filed Defences (endorsed by Statements of Truth) which were disingenuous and misleading in response to claims made by professionals for their unpaid fees, contrary to all (or any) of Principles 2 and 6 of the Principles and Outcome 5.1 of the 2011 Code**

Applicant's Submissions

21.1 The Firm had received a number of claims where proceedings had been issued relating to unpaid fees. The Respondent contested these claims and submitted Defences.

MSA

21.2 A claim made by MSA was heard on 9 December 2016. In that case DJ Jones ordered the Firm to pay £1,397.28 plus costs of £202.55. The Order in that matter stated as follows:

> "Upon the Court noting that Judgment has been entered against this firm of solicitors in circumstances where:-
>
> a) There is clear evidence of liability.
>
> b) Liability is denied in a defence endorsed with a statement of truth signed by a solicitor defendant.
>
> c) The denial is contradicted by the written commissioning of the work and a subsequent unfulfilled promise of payment.
> ...
>
> f) This is the second time this Claimant has obtained Judgment in this Court against this Defendant in similar circumstances.
>
> AND having regard to the Solicitors Code Of Conduct 2011 and, in particular the requirement that a solicitor:-

a) acts with integrity
b) behaves in a way that maintains the trust the public places in him and the provision of legal services and
c) complies with his legal obligations.

The Court Manager is directed to refer the Court files in this case and [another case] to the Solicitors Regulation Authority to consider what, if any, further action or investigations may be appropriate."

21.3 In his interview the Respondent explained that his Defence was that the claim was not admitted rather than being denied. The costs related to a matter for which the Firm's costs were subject to assessment.

CPL

21.4 The Respondent received a claim form, dated 9 August 2016, in which CPL claimed they were due the following: -

- £2,820.00 - the balance of unpaid fees.
- £70.00 - compensation for the late payment of fees.
- £216.06 - interest; and
- Further interest at £0.66 per day.

21.5 The Respondent submitted a defence dated 25 August 2016, in which he stated: "It is not admitted that the Defendant entered into any agreement, written, verbal or otherwise with the Claimant" and "It is not admitted that the Defendant has failed to pay the sums due in respect of professional services provided by the Claimant and the Claimant is put to strict proof in relation thereto"

21.6 SPC, of CPL, complained to the SRA on 14 March 2017. Attached to the complaint were the following:

- Letter from the Firm to SPC, dated 29 May 2015, instructing him to prepare a report on liability and causation.
- Letter from CPL to the Firm, dated 29 March 2016, requesting payment of their fees
- Letter from CPL to the Firm, dated 29 April 2016, requesting payment of their fees
- Email from the Respondent to SPC, dated 18 May 2016, in which he stated: "We thank your (sic) recent telephone call and apologise for the delay regarding your fees. Our cashier is currently on holiday but we confirm that we will pass your fee note to her when she returns."
- Letter from CPL to the Firm, dated 23 June 2016, chasing for payment of their outstanding fees; and
- Email from the Respondent to SPC, dated 8 July 2016, which stated: "We thank you for your recent telephone call and sincerely apologise for the delay regarding your fee. We will speak to the cashier and ask her to send a cheque to you today or on Monday."

21.7 Mr Mulchrone submitted that the Respondent's Defence was plainly misleading and sought to evade liability for payment of professional fees which the Respondent was patently aware of. A Solicitor filing a Defence, endorsed by a Statement of Truth, cannot act with integrity or maintain the trust the public placed in him and in the provision of legal services if that Defence is disingenuous and misleading.

21.8 In interview with the FIO the Respondent stated that the claim was not admitted rather than being denied and the claimants were put to strict proof. However, the Respondent denied in his Defence that an agreement existed between him and the Firm and also that he had failed to pay sums due. This can only be regarded as advancing a positive case and one which was untrue and misleading in light of the evidence provided by Dr Conway.

H Matter

21.9 This chronology and background to this matter are detailed in paragraphs 20.3 and 20.21 above. In his Defence to the claim, the Respondent 'denied' that he had entered into any agreement 'written verbal or otherwise' with the claimant (Counsel). During his interview on 20 April 2017 the Respondent conceded that Counsel was instructed. He stated it would have been more appropriate to say the claim was not admitted rather than denied. Essentially the dispute was over the terms of the payment; and Counsel was claiming payment was due in 30 days whereas the Respondent's position was that the agreement between them was that Counsel's fee was due once the claim had been concluded.

21.10 It was clear that costs in respect of this matter were settled on 13 July 2016 for £45,000.00 and were paid in full by 1 August 2016. Mr Mulchrone submitted that the Respondent's Defence was untrue and misleading and he thereby failed to act with integrity contrary to Principle 2 and failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services contrary to Principle 6. Furthermore by advancing the Defence that he sought to rely on in the proceedings, the Respondent recklessly or knowingly mislead the Court contrary to Outcome 5.1.

Respondent's Submissions

21.11 The Respondent denied this allegation. In the MSA matter the Respondent denied liability as he did not believe that payment was due. The Respondent submitted that to deny liability in the face of clear evidence could not amount to misleading the Court, and did not give reason to suspect dishonesty. The Respondent submitted that if his denial of a claim contrary to the evidence amounted to misleading the Court, then it followed that every solicitor conducting litigation for a client who denied a claim contrary to the evidence was also misleading the Court. This, it was submitted, would be a remarkable outcome and not what was intended by Outcome 5.1.

21.12 As regards the CPL matter, the Defence filed required proof of the agreement and a denial of any indebtedness. The Defence also reserved the right to amend the Defence once the Respondent had received replies to his request for further information. The Respondent explained that he considered that payment was only due at the conclusion of the case. His Defence was not misleading, nor was it cause to suspect dishonesty.

21.13 In relation to the H matter, the Tribunal was referred to the Respondent's Defence and Counsel's Particulars of Claim. The Applicant submitted that the Respondent was denying entering into any contract with Counsel, however a proper examination of the documents showed that this was not the case. In paragraph 2 of his Defence, the Respondent admitted paragraphs 2 and 3 of the Particulars of Claim. Those paragraphs stated:

> "2. At all relevant times the Defendant was a firm of solicitors.
>
> 3. By written instructions dated 15th October 2014 the Defendant, by its principal Richard Prescott, instructed the Claimant to act on behalf of its client [MH] in relation to his consolidated, multi-track claims for personal injury loss and damage …"

21.14 Mr Gloag submitted that it was clear that the Respondent accepted that he had instructed Counsel. Part of his defence was that the fees to Counsel were not due for payment as the case had not concluded. The Respondent did not accept that he had instructed Counsel on the basis that fees would be paid 30 days after submission of Counsel's invoice. Further, the Respondent's technical defence, namely that Counsel had sued the wrong entity, was perfectly valid. None of this could be considered to be misleading or disingenuous let alone dishonest.

21.15 Mr Gloag submitted that this was not a case where the Respondent had given false evidence to the Court; he had provided no witness statement signed with a statement of truth. The Respondent had provided a pleaded case where he either challenged the entity named in the action, or the time by which payment was due. To challenge the terms of engagement was not an act of dishonesty.

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

21.16 The Tribunal considered each of the exemplified matters.

21.17 The Tribunal noted that in the MSA matter, the Respondent had denied liability. He had not made clear in that Defence that he disputed the time for payment as opposed to liability for the payment. The Tribunal found that to deny liability for the fees when the Respondent knew that the fees were owed was misconduct. That liability had been denied was evident from the Order of DJ Jones. The Tribunal found the Respondent's submission that as he was acting as a litigant in person Outcome 5.1 did not apply, unattractive. As a solicitor of the Supreme Court, the Respondent was under a duty not to knowingly or recklessly mislead the Court at all times, not just when he was acting as an Advocate or exercising a right to conduct litigation.

21.18 The Tribunal noted that in the CPL matter the Respondent had instructed SPC on 29 April 2016, and had emailed him on 18 May and 8 July 2016 promising to settle the invoice. In his Defence to the claim he did not admit that he had entered into any agreement or that he had failed to pay the sums due in relation to the provision of any professional services. He denied that he was indebted to CPL as alleged or at all. His defence of this matter was, in essence, the same as his defence to the MSA matter above.

21.19 The Tribunal found beyond reasonable doubt that in denying liability, when the Respondent knew that he owed the monies claimed and had made an unfulfilled promise to pay, the Respondent had knowingly attempted to mislead the Court. Nowhere in the Defences did the Respondent explain that whilst the services had been provided, the monies were not due as the case had not been concluded. Nor was such an issue raised with SPC when he emailed promising to settle the invoice. Such conduct breached Principle 6 – Members of the public would not expect a solicitor to file a Defence, on his own account, which he knew to be untrue. That such conduct lacked integrity was plain. No solicitor acting with integrity would file a misleading Defence. The fact that the denials of liability were contained only in the pleadings and not in witness statements was immaterial. The Defences signed by the Respondent contained a statement of truth. Having found that the Respondent had knowingly attempted to mislead the Court, it was evident that the Respondent's conduct had been dishonest. Reasonable and decent people operating ordinary standards of honesty would consider that in knowingly attempting to mislead the Court, the Respondent's conduct was dishonest.

21.20 The Tribunal noted the Defence in the H matter. Whilst it was not clear that the Respondent was challenging the time in which payment was due, it was clear that he did not dispute instructing Counsel on that matter. It was plain that he denied that the entity named in the Claim was the correct Defendant, as he had denied that the "Defendant named in the Claim form" had entered into any agreement. The Tribunal did not find this to be misleading or disingenuous. Consequently, the Tribunal also found that the Respondent's conduct as regards this matter was not dishonest. Accordingly allegation 1.7 as regards the H matter was dismissed.

21.21 Accordingly, the Tribunal found allegation 1.7 proved beyond reasonable doubt including that the Respondent's conduct was dishonest save for the H matter, in

22. **Allegation 1.8 - From 21 March 2016, by failing to pay Counsel's fees, the Firm was added to the Bar Council's List of Defaulting Solicitors and Other Authorised Persons, and in so doing he breached Principles 6 and 8 of the Principles.**

Applicant's Submissions

22.1 The Respondent was added to the Bar Council's List of Defaulting Solicitors and Other Authorised Persons in March 2016.

22.2 According to paragraph 6(1) of the Rules relating to the List of Defaulting Solicitors and Other Authorised Persons 2012, the inclusion of a person's name on the List indicates that they are defaulters: "who have in the past failed to pay barristers' fees in accordance with contractual terms on which the barrister was engaged or with the Terms of Work 1988, or that they have been subject to a successful complaint to the Bar Council under the Scheme for Complaining to the Bar Council".

22.3 On 4 June 2015, the Vice-Chairman of the General Council of the Bar wrote to the Respondent at the Firm. The Respondent was referred to the unpaid fees of Barrister A and was asked to pay these fees at once or in any event within 14 days. It was explained that in the event of non-payment "the name of your firm will be

included on the Bar Council's List of Defaulting Solicitors and Other Authorised Persons. Furthermore, the Chairman will report the facts to the Solicitors Regulation Authority with a request that it should commence proceedings against your firm before the Solicitors' [sic] Disciplinary Tribunal."

22.4 The Fees Service of the Bar Council wrote a further letter to the Respondent on 25 August 2015, raising the matter of unpaid fees in respect of Barrister B, requesting payment within 14 days. The total fees in question included on the schedule in respect of both Barrister A and Barrister B were £7,681.

22.5 On 15 September 2015, the Fees Service informed the Respondent that: "As payment has failed to be forthcoming, the file will now be referred to the Fees Collection Panel for determination was to whether your firms name should be placed on the List of Defaulting Solicitors and Other Authorised Persons."

22.6 On 29 September 2015, the Respondent was thanked by a set of Chambers for part-payments of outstanding fees in the sum of £7,072. However, Chambers had asked the Bar Council to continue with its action on the fees which had not been paid.

22.7 In addition, on 30 October 2015, the Respondent received an email from another set of Chambers informing him that it had instructed the Bar Council to proceed with an application for placing the Firm on the List, due to his failure to pay Counsel's fees.

22.8 Mr Mulchrone submitted that payment of outstanding professionals' fees was important to the maintenance of trust in the legal profession and the efficient provision of legal services. By allowing the Firm to be placed on the Bar Council's List through his non-payment of fees, the Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Persistent non-payment of fees was likely to undermine public confidence in solicitors and in the provision of legal services, in breach of Principle 6. Furthermore, by failing to ensure that he was able to satisfy outstanding fees, the Respondent failed to run his business effectively and in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8.

Respondent's Submissions

22.9 The Respondent admitted allegation 1.8. He explained that the debts owed to Counsel were as a result of changes in charging practices. Whereas previously Counsel was paid at the end of the matter, Counsel began insisting on being paid 30 days after the invoice date. It often took a long time for personal injury matters to be determined and costs received. As a result it was quite easy to accrue substantial fees due to Counsel during a case.

22.10 Mr Gloag submitted that it was clear from the correspondence that the Respondent had been engaging with the Bar as regards the outstanding fees. It was also clear that he was attempting to satisfy those fees. He had made payments to Chambers, however it was decided that notwithstanding the payments, Chambers wished to proceed with the application to place the Respondent on the Bar Council's List of Defaulting Solicitors and Other Authorised Persons.

The Tribunal's Findings

22.11 The Tribunal found that the Respondent had failed to pay Counsels fees as alleged. This was evident from the Firm's inclusion on the Bar Council's List of Defaulting Solicitors and Other Authorised Persons. The Tribunal found beyond reasonable doubt that in failing to pay Counsel's fees, the Respondent had failed to run his business or carry out his role in the business effectively and in accordance with sound financial and risk management principles in breach of Principle 8. The Tribunal determined that in failing to pay Counsels fees and being entered onto the Bar Council's List of Defaulting Solicitors and Other Authorised Persons, the Respondent had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Members of the public would expect a solicitor to pay his bills. The Respondent had been warned a number of times that failure to pay would result in his being placed on the defaulters list, however he still failed to pay Counsels fees. The Tribunal found beyond reasonable doubt that such conduct was in breach of Principle 6. Accordingly the Tribunal found allegation 1.8 proved beyond reasonable doubt on the facts and evidence. The Tribunal considered that the Respondent's admission was properly made.

23. **Allegation 1.9 - On an unknown date before 11 December 2013, the Respondent failed to serve one or more claim forms on behalf of Client A in proceedings at the Dudley Count Court, resulting in Client A's claim being struck out and costs being awarded against the claimant, and in doing so he breached Principles 4 and 5 of the Principles**.

Applicant's Submissions

23.1 The Respondent acted for Client A in proceedings at Dudley County Court. Barrister C was instructed by the Respondent to act on behalf of Client A at a hearing on 11 December 2012. On that date, Deputy District Judge Dawson ordered that the Claimant's claim be struck out, pursuant to the Civil Procedure Rules, for failure to serve a claim form. No application to extend time having been made. The Claimant was ordered to pay the Defendant's costs summarily assessed at £716.

23.2 The background to the hearing of 11 December 2013, and its likely consequences, was addressed in correspondence between the Firm and Counsel. At no point in this correspondence was it suggested that not serving a claim form was a strategic decision taken in the client's interests.

23.3 Mr Mulchrone submitted that by omitting to serve a claim form without good reason, the Respondent failed to secure his client's ability to prosecute his claim successfully against the defendant. In addition, by allowing the claim to be struck out, the Respondent incurred costs.

23.4 Service of claim forms was a basic part of litigation and plainly within the scope of the Respondent's practice. By not preventing the claim being struck out, the Respondent failed to act in the best interests of his client, in breach of Principle 4. Furthermore, by failing in a basic requirement of litigation, he failed to provide a proper standard of service to his client, in breach of Principle 5.

Respondent's Submissions

23.5 The Respondent admitted allegation 1.9. He explained that Client A had two matters. The position was resolved by submitting a claim for the second matter only. That matter was successfully concluded. Client A had made no complaint about the omission.

23.6 Mr Gloag submitted that this matter was only discovered following the intervention when the Respondent's files were reviewed. There was no extant complaint, and the Respondent accepted that he had made a mistake in this matter. Thereafter he had continued to represent the client who was happy with the outcome.

The Tribunal's Findings

23.7 The Tribunal found that in failing to serve the claim form in time or applying for an extension of time for service, the Respondent had failed to act in his client's best interests in breach of Principle 4, and had failed to provide him with a proper standard of service in breach of Principle 5. Accordingly the Tribunal found allegation 1.9 proved beyond reasonable doubt. The Tribunal was concerned that the Applicant considered that this was a matter that should be before the Tribunal. The Respondent had made a mistake which he had rectified to the Client A's satisfaction. On its own, this was not a matter that the Tribunal expected to adjudicate on.

24. **Allegation 1.10 - Between 15 February 2017 and 23 March 2017: (a) without obtaining the authorisation of his co-beneficiaries and co-executors, Sister A and Sister B, he arranged for the transfer of £14,656.77 from the estate of his deceased mother to be received from a Barclays Bank account into the Firm's client account; and/or (b) without informing Sister A and Sister B as to the movement of the money, he transferred not less than £14,656.77 from client account to office account and in doing so he breached Principles 2 and 6 of the Principles**

Applicant's Submissions

24.1 The Respondent's mother died on 2 July 2016. The Respondent and his Sister A and Sister B were all joint executors and joint beneficiaries under the terms of the Will. The Respondent had assumed responsibility for the administration of the estate, although at this point no Grant of Probate had been taken out.

24.2 On 4 August 2017, Solicitor A, who represented the Respondent's sisters, sent an email to the Applicant's intervention agent. Solicitor A confirmed that there was an outstanding mortgage over the Respondent's mother's main estate asset (i.e. the family home). The lending had been used by the Respondent to fund the Firm.

24.3 The Respondent's mother had an account at Barclays Bank, which contained some of the estate assets. In the course of submitting Inheritance Tax forms, Solicitor A and Sisters A and B were contacted by Barclays on 4 August 2017 to be informed that the Respondent's mother's account had been closed some time before, at the Firm's direction, with the balance transferred to the Firm's client account.

24.4 Solicitor A has confirmed that her clients had not authorised the Respondent to transfer the estate assets to the Firm's client account. At the time of writing the email of 4 August 2017, Sisters A and B did not know whether or not the monies were still in the Firm's client account.

24.5 In her further email of 8 August 2017, Solicitor A stated that the Firm was holding itself out to third parties as being instructed on behalf of the estate. She also confirmed that banking details obtained from Barclays: the bank had paid out £14,656.77 to the Firm on 15 February 2017.

24.6 On 24 August 2017, Solicitor A proceeded to make a claim to the Applicant's compensation fund in respect of the £14,656.77. In support of the claim, Solicitor A attached copies of the Respondent's mother's death certificate and Will.

24.7 Documents obtained from the Firm during the intervention show the movement of the estate money. On 15 February 2017, the monies were received into the Firm's bank account. Those funds were reduced to 0 over the course of 5 transfers between 10 and 23 March 2017. Descriptions of the transfers, entered on the leger, were "Office Receipt – Client Transfer… On a/c costs".

24.8 Solicitor A has confirmed that her clients had received no invoices in respect of these transfers and that they were unaware of the whereabouts of the estate assets, believing them still to be in the Barclays account until 4 August 2017.

24.9 Mr Mulchrone submitted that by moving estate monies without the authorisation of his sisters as co-beneficiaries/co-executors, and by moving the funds into his office account via the client account, without informing or accounting for the movement of the monies, the Respondent was wrongly appropriating funds from the estate and failing in fiduciary duties owed towards Sister A and Sister B.

24.10 In so doing, the Respondent failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. A solicitor acting with integrity would have been open about his dealings with estate assets. The Respondent therefore breached Principle 2. Furthermore, the public would expect a solicitor dealing with a personal matter through the auspices of his Firm to act transparently. However, the Respondent failed to behave in a way that maintained the trust the public places in him and in the provision of legal services, in breach of Principle 6.

<u>Dishonesty</u>

24.11 The Respondent would have been aware that, under his mother's Will, he was only one of three co-executors/co-beneficiaries in respect of the estate. He would have known that Sister A and Sister B were interested in the administration of the estate by virtue of the correspondence described by Solicitor A. By moving the assets to the Firm without informing his sisters or obtaining their authorisation, the Respondent appropriated funds which he must have known did not belong to him. It was only when IHT forms were to be submitted that the closure of the Barclays account was discovered by Solicitor A. Mr Mulchrone reminded the Tribunal of the financial difficulties faced by the Respondent and the Firm detailed in paragraphs 20.14 –

20.16 above. By the standards of ordinary, decent people, the Respondent's conduct was dishonest.

Respondent's Submissions

24.12 The Respondent explained that he had obtained permission from Sister A to the Firm's using the money on the basis that the money was returned. His PA had spoken to Sister A to obtain permission. He had dealt with his mother's estate in the same way that he had dealt with his father's estate. There was no file note of the conversation with Sister A as this was a family matter and he did not expect to have to make file notes in that regard. He did not accept that he was not instructed. The Firm was a family firm and had dealt with the probate after his father had died. The Respondent referred to his email to Sister B dated 10 August 2017 in which he had stated that as far as he was concerned both sisters had asked that he deal with the estate.

24.13 As regards the use of the estate funds for business purposes, the Respondent agreed that the funds had been so used, but only with the permission of Sister A. The Respondent denied that he had breached the Principles as alleged, and denied that his conduct had been dishonest.

24.14 Mr Gloag submitted that the estate of the Respondent's mother had caused an acrimonious family dispute between the Respondent and his sisters. The Tribunal was being asked to adjudicate on a family dispute when the witnesses were alive and well and had not attended to give evidence. There was no challenge to the evidence of Solicitor A, who had reported her instructions, however the Respondent was unable to challenge the evidence of the sisters as they had not provided statements in their own account and were not witnesses in the case.

The Tribunal's Findings

24.15 It was the Respondent's case that he had only informed one sister about moving the money from the Barclays account to the Firm's account, and obtained permission from that sister to use the money. On his own case he had failed to obtain consent from both sisters. He explained that as one sister was not based in the UK communication with her was difficult. He assumed that permission from one sister meant permission from both. The Respondent was unable to provide any contemporaneous documentation confirming that he was instructed to act in the administration of his mother's estate, or that he had been given permission by Sister A to use the monies that were formerly in the Barclays account. The Tribunal found that in failing to obtain the permission of both sisters to (a) transfer the monies from the Barclays account and (b) in failing to inform both sisters that he was moving the monies from client account to office account, the Respondent had breached the Principles as alleged. Notwithstanding that this was a family matter, members of the public would expect the Respondent to follow proper procedures when dealing with the assets of his late mother's estate. This included obtaining the appropriate authorities to move and utilise estate funds. The Tribunal found beyond reasonable doubt that in failing to do so, the Respondent had breached Principle 6. A Solicitor acting with integrity would not arrange for the transfer of estate monies into his Firm's client account nor would he use estate monies for his own purposes without

first obtaining all necessary consents. The Tribunal found beyond reasonable doubt that in failing to do so the Respondent's conduct lacked integrity in breach of Principle 2.

24.16 The Tribunal found that the Respondent genuinely believed that he had the consent of his sisters to transfer the monies and to use it for the Firm as long as he replaced those monies. He had dealt with his father's estate in a similar way with no complaint. His mother had always provided the Firm with financial support when needed. The Tribunal also noted that in her email to the Respondent of 15 August 2017, Sister B stated: "Mum would be heartbroken that we could not sort this all out without resorting to an external lawyer." The Tribunal concluded that given that statement, it could not be sure that the Respondent was not instructed to act in the administration of his mother's estate. On the contrary, it seemed to be implicit that he was expected to act. The Tribunal considered that reasonable and decent people operating ordinary standards of honesty would not find that the Respondent's conduct had been dishonest. He believed that he was instructed to deal with the estate. He had the authorisation (albeit from Sister A) to use the monies in the way that he did. Reasonable and honest people would not find that someone who used monies believing that he had permission to use them had acted dishonestly. Accordingly, the Tribunal found allegation 1.10 proved beyond reasonable doubt. It did not find that the Respondent's conduct had been dishonest and thus dismissed the allegation of dishonesty as regards allegation 1.10

Previous Disciplinary Matters

25. No previous matters at the Tribunal.

Mitigation

26. Following the intervention into the Firm, the Respondent had been re-admitted to practice subject to conditions. There had been no issues in relation to his practice over the last 14 months and his practising certificate had been renewed.

27. The Firm was chaotic towards the end. It was to the Respondent's credit that he had been able to provide references from client's some of whose matters had formed the basis of allegations found proved by the Tribunal.

Sanction

28. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

29. The Tribunal found that the Respondent was fully culpable for his conduct. His motivation had been to keep the Firm in business. He had used client monies in order to do this. The fact that the client monies used was monies that ought to have been paid to third parties, and were not monies belonging to actual clients, did not ameliorate his misconduct. His actions were not spontaneous but were planned and

numerous. He was in breach of the trust placed in him to safeguard client monies and to pay third parties when monies had been received specifically for that purpose. The Respondent was an experienced solicitor who had taken no action to ensure that the Firm was compliant with its obligations. He had failed to ensure that when his cashier was away for extended periods, there was someone else at the Firm who would take on her duties. He had transferred monies which he knew was to pay disbursements from client to office account and then had failed to pay those disbursements, instead using the monies for the benefit of the Firm.

30. The Respondent's conduct had caused harm to the reputation of the profession. He had been successfully sued by Counsel and other professional suppliers for outstanding fees. His sisters had applied to the compensation fund for the return of the monies improperly used by him. The dishonesty findings also caused harm to the reputation of the profession, as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

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

31. The Tribunal found that the Respondent's misconduct was aggravated by his proven dishonesty. It was deliberate, repeated and had continued over a period of time. The Respondent's conduct was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession. In mitigation, the Respondent had shown insight into the SAR breaches, but his insight was limited. Notwithstanding his admission to the SAR breaches, he had denied that they breached the Principles in circumstances where the breaches of the Principles were obvious as a result of the admitted SAR breaches.

32. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

33. The Respondent did not submit, and the Tribunal did not find, any exceptional circumstances in this case. The only appropriate and proportionate sanction, in order to protect the public, and maintain public confidence in the integrity of the profession and the provision of legal services, was to order that the Respondent be struck off the Roll.

Costs

34. Mr Mulchrone applied for costs in the sum of £43,815.54 . Of that figure £21,516.54 were the internal SRA costs comprising of the costs of the investigation, supervision

costs and legal department costs. Capsticks fee was a fixed fee in the sum of £18,500 + VAT. Taking into account the preparation and hearing time, the fixed fee represented a notional figure of £150 per hour, which was a reasonable hourly rate.

35. Mr Gloag submitted that the Respondent was a single man who did not own a property. He lived in his mother's property. His income as the sole partner of the Firm was modest. As regards the Applicant's application for costs, the majority of the work had been undertaken by the SRA. Capsticks fee was based on a fixed fee. The total claim was in excess of the expected claim for a case of this nature.

36. The Tribunal noted that the estimate submitted by the Applicant had included costs for a 5 day hearing and associated travel when the hearing had in fact only taken 3 days. This was not a complex matter, with the Respondent having admitted during his interview the vast majority of accounts rules breaches. The Tribunal agreed that the majority of the work had been undertaken by the SRA. In the circumstances, the Tribunal considered that the application for costs was excessive. The Tribunal determined that £32,000 was a reasonable and proportionate assessment of the costs in this matter.

Statement of Full Order

37. The Tribunal Ordered that the Respondent, RICHARD CHARLES PRESCOTT, 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 £32,000.00.

Dated this 28th day of November 2018
On behalf of the Tribunal

R. Nicholas
Chairman