SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11905-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JONATHAN LESLIE HORNER Respondent

Before:

Mr J. Evans (in the chair)
Ms J. Devonish
Mr S. Marquez

Dates of Hearing: 13-17 June 2019 and 30 July 2019

Appearances

Grace Hansen, barrister of Capsticks Solicitors LLP of 1 St George`s Road, London, SW19 4DR, for the Applicant.

Paul Parker, barrister of 4 New Square, Lincoln's Inn, London WC2A 3RJ for the Respondent.

JUDGMENT

Allegations

1. The Allegations contained within the Rule 5 and Rule 7 Statements were that while in practice as a Partner at Sussex Law Limited ("the Firm"):

1.1. On one or more occasions between January 2011 and November 2016, when preparing wills for clients under which significant gifts on death were made to him and/or members of his family and/or members of the family of an employee of the Firm, he failed to advise or cause clients to obtain independent advice, and continued to act for such clients notwithstanding such failure. By reason of such conduct, he acted in breach of, or failed to achieve, any or all of the following:

1.1.1. Insofar as such conduct took place between 1 July 2007 and 5 October 2011, Rules 1.02, 1.04, 1.06, 3.01 and 3.04 of the Solicitors Code of Conduct 2007 ("the 2007 Code");

1.1.2. Insofar as such conduct took place on or after 6 October 2011, Outcome 1.2 and 3.4 of the Solicitors Code of Conduct 2011 ("the 2011 Code") and Principles 2, 4 and 6 of the SRA Principles 2011 ("the 2011 Principles").

1.2. On 21 November 2016 he caused or allowed a will that he had prepared for Client MA to be executed when Client MA's mental capacity was in doubt. In doing so he acted in breach of, or failed to achieve any or all of the following Principles 2, 4 and 6 of the 2011 Principles and Outcome 1.12 of the 2011 Code.

2. On or around 13 January 2011 he asked Ms SC to assess Client FF's capacity to amend her will when on or around 5 November 2010 Mr IM had advised that Client FF lacked capacity to amend her will. In doing so he acted in breach of any or all of Rules 1.02, 1.04, 1.06, 3.01 and 3.04 of the 2007 Code.

3. By reason of the facts and matters set out at paragraphs 1.1, 1.2 and 2 above he acted dishonestly but dishonesty was not a necessary ingredient to prove those Allegations.

The allegation of dishonesty in relation to Allegation 1.1 was limited to the following wills:

- EK – 9 March 2012
- FF – 15 January 2011
- CF – 12 June 2016
- SS – 23 July 2015
- MA – 21 November 2016

Preliminary Matters

4. Non-release of audio recordings

4.1 The standard procedure at the Tribunal is that the hearing is audio-recorded and that copies of that recording are available to any member of the public or party on request unless the Tribunal directs otherwise. This is consistent with the requirement to ensure open justice.

4.2 This case dealt with very sensitive matters concerning the personal and financial affairs of a number of clients, some of whom were now deceased. It is for that reason that clients are anonymised in this Judgment.

4.3 At the start of the hearing, and on numerous occasions throughout, the Chair reminded the parties and witnesses to adhere to the anonymisation during the course of evidence and submissions. Unfortunately there were a number of instances where a mistake occurred and clients were named. The Tribunal accepted that these were genuine errors and made no criticism of those responsible. However the position was reached whereby the number of errors made any attempt at editing the audio recordings impractical.

4.4 The Tribunal did not consider it to be in the interests of justice for audio recordings to be released which would enable the identification of clients, in circumstances when it had been the intention of the Tribunal and both parties that this not occur.

4.5 The Tribunal therefore took the unusual but necessary step of directing that the audio recordings of these proceedings not be released without leave of the Tribunal.

5. Application to adjourn

5.1 *Applicant's Submissions* - On the morning of the first day of the hearing Ms Hansen applied for an adjournment. Ms Hansen told the Tribunal that the reason for the application was that one of the Applicant's witnesses, SC, was not present. The previous evening she had received Mr Parker's opening note and it was apparent from that that her evidence was central to the case.

5.2 The reason that the witness was not present was that she did not want to attend to give evidence. This issue has been raised previously at a Case Management Hearing the previous month, by which time Applicant had served a Civil Evidence Act notice in relation to SC. A direction was given that a counter notice would be dependent on medical evidence. Ms Hansen referred the Tribunal documents which she submitted expressed real concerns about SC's fitness to give evidence. However Ms Hansen accepted that it did not conclude that she was medically unfit to give evidence.

5.3 Ms Hansen told the Tribunal that the second issue with SC's attendance was that she was on holiday at present. The Applicant did not consider it appropriate for SC to give evidence by telephone or video link as it was unable to provide the support to her that she might need. Ms Hansen told the Tribunal that the holiday was booked before the dates of this hearing were known to SC. Ms Hansen accepted that the Applicant had not notified SC of the hearing dates prior to the booking and fully accepted that SC

could have been notified sooner. Ms Hansen apologised that the way matters were at this stage, but submitted that having reviewed Mr Parker's note it was necessary to fairly decide the case against the Respondent, which contained serious allegations. Ms Hansen sought an adjournment to allow the Applicant time to consider how to address SC's evidence.

5.4 *Respondent's Submissions* - Mr Parker told the Tribunal that the application was opposed. He submitted that the suggestion that the adjournment application was on account of his Opening Note was "preposterous". The Opening Note had been served 24 hours late, for which Mr Parker apologised. However at the Case Management Hearing on 23 May 2019 a direction had been made that the Respondent notify the Applicant which witnesses were required for cross-examination and he had complied. The Civil Evidence Act counter notices had also been served in compliance with directions.

5.5 The Applicant was on notice of the importance of SC since the Respondent had served his Answer on 8 January 2019. Mr Parker submitted that in the absence of evidence as to when SC's holiday was booked, what was left was the "so-called" medical evidence. This did not say that SC was unfit to attend. The reality of the position was that SC did not wish, and never had wished, to attend. There was no good reason to adjourn on any of the grounds cited and Mr Parker invited the Tribunal to refuse the application.

The Tribunal's Decision

5.6 The Tribunal considered carefully the submissions of both parties and had regard to the Policy/Practice Note on Adjournments (2002). Although that guidance was written with applications by Respondents in mind, the principles were nevertheless relevant to any application to adjourn.

5.7 The Respondent had made his position clear in respect of the Allegations in his Answer dated 8 January 2019. The Applicant had been on notice since then that SC, if relied upon, would be required to give evidence. This was reinforced by the notifications made by the Respondent pursuant to directions. The Tribunal rejected the implication by Ms Hansen that there was anything contained in Mr Parker's Opening Note which changed the nature of the Respondent's defence. The fact was that SC was a witness upon whom the Applicant relied and whom it knew was required to be cross-examined as SC's evidence was not accepted. The Applicant was therefore required to ensure that the witness attended the hearing.

5.8 The witness and had not attended on the grounds of ill-health and her absence on a holiday. The ill-health submission was not supported by the type of evidence that the Tribunal would expect to see in support of an application to adjourn, namely the reasoned opinion of an appropriate medical examiner. The Applicant had known of SC's reluctance for some time and it had neither obtained a witness summons to compel her attendance nor notified the Tribunal of any difficulty before the hearing.

5.9 The absence of SC on holiday was not a reason to adjourn the matter at this point. Ms Hansen had conceded that the Applicant could have notified SC sooner and had not done so. In any event this could have been brought to the Tribunal's attention

much sooner and it was not adequate for an application on that basis to be made at the start of a hearing listed for four days.

5.10 The Tribunal acknowledged that the Applicant may be disadvantaged by the witness not being present. However in addition to the points above, there was no indication that an adjournment would achieve anything given SC's wish not to attend any hearing.

5.11 The Allegations against the Respondent were very serious and the matter had been listed for several months. It was in the interests of justice for the matter to proceed so that a determination could be made as soon as possible.

5.12 The application to adjourn was therefore refused.

6. Application to exclude evidence of SC

6.1 *Respondent's Submissions* - Mr Parker applied for the evidence, and references to the evidence, of SC to be excluded.

6.2 He told the Tribunal that he was concerned about SC's conduct, in that she had given a witness statement but did not wish to be challenged on it. Mr Parker submitted that in the circumstances set out in the adjournment application, the Tribunal could draw the conclusion that this was a witness who had made a statement that she was not prepared to testify to.

6.3 Mr Parker submitted that her evidence should be excluded as there was no sustainable and proper reason for non-attendance. The only fair course was to exclude SC's evidence in its entirety, which would have a knock-on effect on the Forensic Investigation Report ("FIR"), where passages of SC's statement had been quoted.

6.4 *Applicant's Submissions* - Ms Hansen told the Tribunal that it was aware of the reasons for SC's non-attendance. She confirmed that the Respondent's counter-notices had been served on time.

The Tribunal's Decision

6.5 The Respondent had notified the Applicant by appropriate methods and at the appropriate time that SC's evidence was not agreed and that, if the Applicant wished to rely on her evidence, she would need to attend the hearing to be cross-examined.

6.6 The witness had not attended and the Tribunal had refused the application for an adjournment for the reasons set out above. It would be contrary to the interest of justice to allow the evidence of SC to remain before the Tribunal in circumstances where the Respondent had made clear that the evidence was disputed and where the Applicant had failed to produce the witness for cross-examination. The Tribunal therefore granted the application to exclude SC's evidence.

6.7 It followed that where other documents contained references to SC's evidence, particularly where it was quoted, these should be redacted to give effect to the Tribunal's decision to exclude that evidence. Following the announcement of this ruling, the relevant redactions were made to the material in the bundle.

7 Application for SC to give evidence by telephone

7.1 *Applicant's Submissions* - Following the Tribunal's rulings on the application to adjourn and to exclude SC's evidence, Ms Hansen applied for SC to be permitted to give evidence by telephone from her holiday destination. Ms Hansen accepted that the way matters had developed on the morning of the hearing were not desirable. SC had flown on holiday earlier in the morning and had now been contacted. SC had indicated that she was willing to give evidence by telephone.

7.2 Ms Hansen told the Tribunal that SC was a "useful witness" who could give relevant evidence. This evidence could be tested by telephone. Ms Hansen accepted that there were some practical difficulties as SC did not have a laptop and she could not have documents put to her. She would, however, have access to her witness statement and she may well be able to speak to the relatively small number of documents relating to her experience and qualifications without the bundle in front of her.

7.3 *Respondent's Submissions* - Mr Parker described the situation as becoming a "bit of a farce" and noted that half a day had been spent dealing with applications about this witness. Mr Parker submitted that this application could have been made weeks or months ago, as the holiday was booked by March 2019 when she was notified of the hearing date. He told the Tribunal that he could not understand why SC would have gone on holiday with access to her witness statement.

7.4 Mr Parker reminded the Tribunal of the email from SC's daughter, which had made clear that the notion of giving evidence at all was said to be very damaging to SC's health. The Tribunal was now being told that she was willing to give evidence by telephone. Mr Parker told the Tribunal that he had documents to put to SC and he could not challenge her in the way he should be able to if she did not have access to them. The Tribunal would not be able to assess her demeanour, which was a "significantly important part of the process".

The Tribunal's Decision

7.5 The Tribunal was not impressed with the application being made at such a late stage in the proceedings.

7.6 The position, as it stood at the point of consideration of the application, was that SC was not a witness and her evidence had been excluded. There was therefore no basis to hear from someone who was not a witness in the proceedings. The Tribunal was therefore able to dismiss the application at that point.

7.7 However out of fairness to the Applicant, the Tribunal considered whether it would have granted such an application had it not excluded her evidence previously.

7.8 The Tribunal noted that the Applicant's position, when making the adjournment application, had been that it would not be appropriate for SC to give evidence by telephone (or video link). The Tribunal agreed. This case was document-heavy and it was a prerequisite of any witness giving evidence that they had access to the witness bundle. It would be wholly unfair to the Respondent for his barrister to be precluded from taking any witness to documents that formed part of the evidence in this case. This would put him at a grave disadvantage and the Tribunal could not countenance such a situation.

7.9 The application for SC to give evidence was therefore also refused on these grounds.

8. Application to amend the Rule 5 Statement

8.1 Ms Hansen applied to amend the Rule 5 statement to remove aspects that contained allegations relating to Client BP or to advice given by PG. She also applied to amend the Rule 5 to remove the criticism that PG and SC were not solicitors. Ms Hansen told the Tribunal that the Applicant accepted that they did not need to be solicitors, they only needed to be qualified to give the advice.

8.2 Mr Parker did not object to this application. The Tribunal granted leave for these amendments to be made.

9. Application by R to adduce telephone recordings relating to MA

9.1 *Respondent's Submissions* - Mr Parker applied for leave to adduce the audio recordings of the transcripts of telephone conversations and messages between Client MA and the Respondent. The transcripts had already been exhibited in the bundle. The recordings were relevant to the question as to whether MA had been caused distress and anxiety by the Respondent contacting her, as was the evidence of Jane Cole. The recordings would assist the Tribunal in assessing if her attendance note was accurate.

9.2 Mr Parker told the Tribunal that he accepted that the service of the recordings was beyond the deadline in the directions by seven days. This was as matter of great regret and Mr Parker apologised for the delay. He accepted that the Respondent had been in possession of the recordings for some time. Mr Parker submitted that there was no prejudice to the Applicant by the material being adduced and that the delay should not therefore affect its admissibility.

9.3 *Applicant's Submissions* - Ms Hansen told the Tribunal that she had received the recordings at the end of the previous week. She reminded the Tribunal of the directions for service of evidence. Ms Hansen submitted that whether MA was distressed on the phone may not have bearing on the matters before the Tribunal as it was a side-issue to the main Allegation. In the circumstances Ms Hansen opposed the application.

The Tribunal's Decision

9.4 The Tribunal considered the submissions of both parties and granted the Respondent's application to adduce this evidence.

Factual Background

10. The Allegations related to a number of clients for whom the Respondent had acted in the preparation and execution of wills. The wills contained legacies in favour of one or more of; the Respondent; family members of the Respondent; family members of SC. The table below sets out the relevant client matters:

Client	Date of relevant will	Legacy	Nature of advice given
EK	9.3.2012	£10,000 to Respondent	Advice given by SC
JDC	27.5.2016	£10,000 to Respondent	Advice given retrospectively
JDC	16.8.2016	£20,000 to Respondent	No advice given
FF	15.1.2011	Entire estate to Respondent, or to his children in the event of his death	Advice given by SC
CF	12.6.2013	£17,000 to Respondent, or to his children in the event of his death	Advice given by SC
DP	26.2.2011	£2,000 to Respondent	No advice given
JRLC	16.9.2014	£5,000 to each of the Respondent's two children	No advice given
SS	23.7.2015	£5,000 to Respondent and his partner (in total)	No advice given
FT	12.5.2016	£10,000 to each of the Respondent's two children	Advice given retrospectively
MA	21.11.2016	£100,000 to Respondent; £5,000 to each of the Respondent's two children; £10,000 to SC's daughter	No advice given

Live Witnesses

11. In addition to those witnesses whose statements that were not the subject of the challenge, the following witnesses gave evidence:

12. Cary Whitmarsh (FI Officer)

12.1 Mr Whitmarsh confirmed that his report was true to the best of his knowledge and belief.

12.2 Mr Whitmarsh confirmed that the source of the information that he amassed during the course of his investigation was Mrs Cole. He told the Tribunal that some of the files did not contain the totality of the information that he would have expected. He had copied those that were pertinent to the investigation. It therefore followed that if other documents that were pertinent to the investigation had subsequently come to light and been produced in these proceedings, it must mean that they had not been in the files that he was shown. This may be because of the files were in archive or new evidence had come to light.

13. Jane Cole

13.1 Mrs Cole confirmed that her witness statement was true to the best of knowledge and belief.

13.2 In cross-examination Mrs Cole confirmed that she had telephoned her insurers the day before she gave evidence to find out if the Respondent's defence was being funded by an insurance company. She told the Tribunal that she had wanted to know if this was being claimed on her policy. She was concerned that it might affect her insurance and the fact that he was being funded by insurers had come as a surprise. Mrs Cole denied seeking to prevent the Respondent being funded.

13.3 Mrs Cole denied that she had driven the Respondent out of the firm but she had concluded that it would be better for him not to be there. Mr Parker put to Mrs Cole that she had tried to have restrictions imposed on his practising certificate. Mrs Cole denied this, stating that this had been a matter for the SRA. Mr Parker put to her that she had written to the SRA asking them to impose that restriction. Mrs Cole confirmed that she had written a letter as she was concerned that the Respondent was going into the bank to obtain his dividend payment. Mrs Cole conceded that he was, nevertheless, entitled to that payment.

13.4 Mr Parker put to Mrs Cole that she had taken against the principle of the fact that the Respondent has been left legacies. Mrs Cole stated that her reaction was one of requiring investigation and that was what she had done. She believed that she had a duty to report the matter to the SRA and she had done so. It was not for her to decide or have an opinion on the matter. Mr Parker asked Mrs Cole whether she believed that it was misconduct to receive a legacy from a client. Mrs Cole stated that the Law Society had set out a practice note and she had also referred to the code of conduct. She was guided by these documents. She told the Tribunal that it was not a 'yes or no' answer and her job as the Compliance Officer for Legal Practice ("COLP") was to consider whether there was something that needed to be reported, which is what she had done. She accepted that the practice note did not state that it was misconduct to receive a legacy. She further agreed that it depended on a full analysis of the independent legal advice given to someone with full capacity. She stated it also depended on all the issues involved including the amount. Mrs Cole agreed that she was not in a position to make a determination until she had carried out an investigation into whether the testator had lacked capacity and whether independent legal advice had been given. Mrs Cole denied that she had made up the comments about the Respondent offering her his half of the business in exchange for her not reporting the matter to the SRA. She told the Tribunal that the Respondent most certainly did make such an offer. Mrs Cole accepted that her witness statement was

wrong in that it stated that she had told the Respondent in the letter of 13 February 2017 that she had a duty to report the Respondent to the SRA. She also accepted that the letter had not detailed her findings in full, as stated in the witness statement.

13.5 Mrs Cole told the Tribunal that she had taken advice from a solicitor who had advised to make contact with the clients. A number of letters were sent to clients on 3 March 2017 including to Client SS. Mrs Cole confirmed that she had told SS that it was essential that the will was remade. Mr Parker put to Mrs Cole that that was not what she had told the SRA had been the advice from her solicitor. Mrs Cole told the Tribunal that the advice from the SRA had been lacking and she had needed to make decisions based on the circumstances at the time and that she had tried her best to act appropriately. Mrs Cole told the Tribunal that she believed that it was essential for a client to remake their will if there was a possibility that the earlier one had not been done correctly. Mr Parker asked Mrs Cole if she accepted that the clients should have had the opportunity to change their mind, but not be told that they had to change it. Mrs Cole told the Tribunal that she was not telling clients to change their minds. Their wills did not have to be re-worded but they did have to be re-done.

13.6 In respect of Client FT, Mrs Cole told the Tribunal that he had come into the office primarily to deal with his conveyancing matter but that there had also been telephone conversations beforehand concerning his will. Mr Parker put to her that there was no suggestion of prior discussions in her witness statement. She did not believe that her witness statements inaccurately reflected the position. Mrs Cole denied that she had "sprung" the will on him at the meeting. Mr Parker put to Mrs Cole that she had referred to the bequests to the Respondent's children in a way that suggested that she believed it was inappropriate. Mrs Cole told the Tribunal that she had asked FT how he had come to make a gift to the Respondent's children but she had not suggested anything other than that. Mr Parker asked why, when it was clear that FT had received independent advice from NE that she had nevertheless gone into the minutiae of the will. Mrs Cole stated that it was in the context of all the wills as a whole and of her concerns that there may have been a breach of the code of practice in that the advice had not been given at the appropriate time.

13.7 Mr Parker put to Mrs Cole that FT had been perfectly properly advised and that she had received confirmation of that fact but was nevertheless determined to try to talk him out of it. Mrs Cole stated that FT was not somebody to be bullied and was not a timid person and she denied Mr Parker's suggestion that she had been bullying him. She told the Tribunal that her concern was that FT had not received independent advice each time the will was written and, the way the dates fell, it was not clear that he received the advice at the appropriate time. Mr Parker asked Mrs Cole whether, given that FT had given the amounts that he wanted to, there was any disadvantage to him by the correct procedure not being followed, if indeed that was the case. Mrs Cole told the Tribunal that she was not considering the question of disadvantage, she was considering whether it was appropriate. When she had looked at FT's will, in light of the fact that he did not know the Respondent's children, she had cause for concern and that was why she had raised it. If FT's decision had been to keep the legacies in the will then they would have stayed there and she would have still reported the matter to the SRA. Mr Parker referred Mrs Cole to the complaint letter from FT dated 5 July 2017 in which he had stated that he felt pressured into changing

his will. Mrs Cole told the Tribunal that she had no idea why he would feel like that and she was quite surprised by his comments. She had always tried to handle every elderly client with the utmost care, including FT.

13.8 In respect of MA, Mrs Cole was asked whether she had given an explanation to the client as to why the Respondent was no longer at the firm. Mrs Cole told the Tribunal that she couldn't recall. She stated she was very concerned about these elderly clients and she had "tiptoed round people". She confirmed that she and MA had discussed the possibility of a property purchase and she had made a detailed attendance note. Mrs Cole told the Tribunal that she had found MA "a little muddled". Mrs Cole explained that she had believed that MA had failed to think through the implications of property purchase. In addition MA had not been able to remember Mrs Cole's name. Mr Parker asked Mrs Cole whether, given her apparent belief that MA was muddled, this might have been a good time to explore the test in Banks v Goodfellow [1870] 5 lR QB 549 Mrs Cole stated that she had done so to a degree. She agreed that this was not recorded in her attendance note. Mrs Cole denied that she had gone straight to the question of the will. She stated that she was there to discuss MA's will and she had let her into that topic very gently because she was concerned not to upset or confuse MA any further. Mrs Cole disputed that the attendance note read as though she had "ploughed straight in". Mr Parker referred Mrs Cole to her witness statement in which she had stated that the issue of capacity arose during that visit. However the attendance note did not say that. Mrs Cole agreed with that but denied that she had become confused. She told the Tribunal that she had thought that she had done comprehensive notes but that not everything could be in there. The thrust of the meeting was contained within the note.

13.9 Mr Parker put to Mrs Cole that the date of her next attendance, 23 March 2017, MA was having a "bad day". Mrs Cole told the Tribunal that she could not say what MA was feeling on that day. Mr Parker put to her that these were not the circumstances in which to carry out a wholesale assessment of MA's capacity as she was at a very low ebb. Mrs Cole told the Tribunal that she had not been trying to assess capacity on that visit. Mr Parker put to Mrs Cole that MA had wanted to know what was going on concerning the Respondent and that she had not told her. Mrs Cole explained that all that she could say was that the Respondent was not at the firm but that everything was under control. Mr Parker put to Mrs Cole that MA was a 92-year-old lady who had had a lengthy professional relationship with her solicitor on whom she relied. Following his departure from the firm Mrs Cole had not told her where he had gone and that this created a feeling on the part of MA of being confused and let down by the Respondent. Mrs Cole told the Tribunal that MA had the Respondent's mobile telephone number as he was still her attorney. She had the ability to see the Respondent. At the time Mrs Cole had been receiving conflicting advice as to what to tell people and she had chosen a neutral way so as to try not to say much at all. Mrs Cole denied telling MA to change her will. She also denied telling MA not to give the Respondent "a penny".

13.10 Mrs Cole agreed with Mr Parker that the will was not invalid by reason of an incorrect procedure having been followed, albeit it was not conceded that the procedure had been incorrect.

13.11 Mr Parker took Mrs Cole to the reference to "fluctuating capacity" in the statement of the Office of the Public Guardian to the Court of Protection dated 9 April 2018. Mr Parker put to Mrs Cole that the evidence was that capacity was variable. Mrs Cole stated that she recalled that in this document the doctor also stated that if he had been asked to go back he would have said his decision would be the same.

13.12 In relation to Client CF Mrs Cole told the Tribunal that she had also sent a letter on 3 March 2017 to this client. She confirmed that she had told CF that it was essential to remake her will. She agreed that when she went to see CF on 25 October 2017, the client had not met either Mrs Cole or her colleague ST before, and so they were complete strangers to her. Mr Parker asked if it was normal for an elderly lady to receive a visit from the police, as she had done prior to this visit, enquiring about a will she had made four years previously. Mrs Cole stated that she could not dictate what the police did. Mrs Cole denied engaging in scare tactics to get CF to change her will. She told the Tribunal that she had done nothing other than to try and reassure CF. She denied pushing CF to write the Respondent out of her will.

13.13 In re-examination Mrs Cole told the Tribunal that the advice she had received was that all clients that could have been affected should be written to. Clients who may have been affected included those in which the Respondent had been left a legacy in the will. Mrs Cole was asked what concerns she had about the advice given by SC. Mrs Cole told the Tribunal that SC had been the Respondent's secretary at his previous firm and that she did not have the appropriate qualification.

13.14 In relation to MA, Mrs Cole referred to the Capacity Assessment by Dr SH, a consultant psychiatrist, dated 28 January 2018 and prepared for the Court of Protection. At paragraph 11.6 it stated that "it is not clinically even speculative that [MA] had the capacity to make her Lasting Power of Attorney in June 2017".

14. <u>The Respondent</u>

14.1 The Respondent made some minor corrections to his witness statement and confirmed that it was true and that he wished for it to stand as his evidence in chief.

14.2 The Respondent agreed that he was an experienced solicitor in relation to wills and that he had been familiar with the Law Society practice note at the time it came out and with the Code of Conduct. The Respondent told the Tribunal that he was aware of the requirement not to act when there was an own interests conflict.

14.3 The Respondent agreed with Ms Hansen that a legacy would still be valid in law even if the client had not taken independent advice. However even though the legacy would still have been valid, the Respondent told the Tribunal that to have taken it in those circumstances would resulted him in him being struck off as a solicitor and possibly facing criminal and civil penalties.

14.4 Ms Hansen put to the Respondent that SC was not qualified to provide clients with independent legal advice as she was an assistant and not a practitioner in wills and estates. The Respondent disagreed with this description and told the Tribunal that SC was qualified to give the necessary advice. The Respondent also denied that SC was not independent on the basis that she was from the Respondent's old firm. The

Respondent told the Tribunal that he had left that firm three years previously. He confirmed that this had been his immediate previous firm and had been no other firm in between the two. Ms Hansen put to the Respondent that SC was also not independent on account of her having been the Respondent's assistant at that previous firm. The Respondent did not accept this. The Respondent did not agree that because he had arranged the advice to be given by SC that it was not independent. Ms Hansen put to the Respondent that he could have told clients to obtain the advice themselves in order to find someone who was truly independent. The Respondent told the Tribunal that an elderly person would likely need assistance in this process and that it was not in their interests to leave them "floundering". It was therefore reasonable to ask if they needed assistance in obtaining the independent advice. The Respondent agreed that he could have given the clients a list of firms. Ms Hansen asked the Respondent how the advice could be independent if the bill for the provision of such advice had come to the Respondent. The Respondent told the Tribunal that the bill was not linked to the independence of the advice.

Client FF

14.5 The Respondent confirmed that Client FF was a widow with no living children. The Respondent confirmed that he has assisted Client FF in the preparation of the previous wills and that in none of those had he been a beneficiary. Ms Hansen referred the Respondent to the attendance note dated 10 June 2010 in which it had been recorded that the Respondent had discussed Client FF's will with her and that she had wanted to change the beneficiary. The attendance note had recorded that the Respondent would diarise a date to give her time to think about it. The Respondent agreed that at this point Client FF was unsure as to who the beneficiary should be. Ms Hansen then took the Respondent to the attendance note of 16 July 2010, which recorded that again Client FF had not decided on the beneficiary. The Respondent confirmed that he had written on the attendance note that Client FF was "a little confused". Ms Hansen then referred to the attendance note dated 1 November 2010 when the client's will was again the subject of discussion. It was at this point that the attendance note recorded that Client FF wanted to leave her estate to the Respondent and to another individual, ES. The Respondent agreed that there was now a proposed legacy to him in Client FF's will and that he had known that this created an own interest conflict. He had therefore been under a duty to ensure that she received independent legal advice. The Respondent had emailed a solicitor, IM on 2 November 2010. On 5 November 2010 IM had written to the Respondent to explain that Client FF was not in a fit state to provide instructions. Ms Hansen put to the Respondent that IM had suggested a medical report about the client's capacity. The Respondent agreed that IM had stated that Client FF needed a medical report but did not agree that questions had been raised about her capacity. The Respondent told the Tribunal that at the meeting Client FF had been "very poorly". The Respondent had tried to stop the meeting with IM as it was obvious to him that it would have been a waste of time due to her being unwell. However IM was already on his way and so the Respondent had stayed to introduce him to Client FF when he was there. The Respondent agreed that it was clear that IM was expecting to see Client FF again in relation to her will. Instead the Respondent had seen her again in 2011 and on that occasion Client FF had changed her instructions to remove ES from the will.

14.6 Ms Hansen asked the Respondent why he had not arranged for Client FF to see IM again. The Respondent told the Tribunal that he had tried to contact IM but could not get hold of him. The Respondent agreed that there was nothing in the file which indicated this and told the Tribunal that it would have been by telephone rather than by email. Ms Hansen referred the Respondent to a copy of the client care letter that IM had sent to Client FF in 2010. The Respondent told the Tribunal that he believed that this was a copy of the document that IM would have asked Client FF to sign when she was fit and well but he did not think that IM had sent Client FF the letter as she was too unwell at the time. Ms Hansen put to the Respondent that he had not attempted to contact IM in January 2011. The Respondent stated that there was no reason for him not to do so. Ms Hansen put to him that the reason was that IM had recognised that the client lacked capacity when he saw Client FF in 2010 and that the Respondent had deliberately asked SC to see the client rather than IM, who was an experienced solicitor, as he was concerned that it would be less likely that the legacy would remain if the client was seen by IM. The Respondent denied this and denied putting his own financial interests ahead of the best interests of his client. The Respondent denied influencing Client FF to leave legacies to him or taking advantage of FF. He told the Tribunal that Client FF was independently advised by SC and was clear about what she wanted to do. At the time that she gave instructions, and at the time that SC saw her, she had testamentary capacity. The Respondent referred to his attendance note of 16 July 2010, which showed that the client had knowledge of the value of her overall estate and so the Banks v Goodfellow elements were present. The Respondent again denied putting pressure on Client FF as denied acting dishonestly.

Client DP

14.7 The Respondent confirmed that Client DP was a widow and that the will contained a gift to him of £2,000, the same value as the gifts that DP had left to her grandchildren. The Respondent denied that it was a significant gift. Ms Hansen put to the Respondent that he was the only non-descendant beneficiary and was in the same category as the grandchildren. The Respondent told the Tribunal that he did not see the connection between the grandchildren and the amount and stated that £2,000 was not significant in all the circumstances. Ms Hansen put to him that 'all the circumstances' included the amounts going to the other beneficiaries. The Respondent stated that he took the point and he also agreed that consideration of 'all the circumstances' also included consideration of the size of the estate, which in 2017 had been approximately £196,000. Ms Hansen asked the Respondent whether he ought to have enquired about the size of the estate when he was assessing whether the legacy that was being left him was significant. The Respondent told the Tribunal that he had based his decision on the information that he had and he had not gone further although he could have done. The Respondent had not considered it a significant gift and therefore had not considered that independent legal advice was necessary. The Respondent agreed that a solicitor with integrity would have arranged independent legal advice if they thought the gift was significant. The Respondent had not believed it to be so at the time and was still of that view. The Respondent confirmed that when DP has died he had disavowed the legacy, but he denied that it was because he knew had acted where there was an own interests conflict.

Client EK

14.8 The Respondent confirmed that Client EK had made a number of wills. The Respondent had been the executor in most of them and there had been no legacy to him in those. At the time of the will in March 2012 Client EK was a widow with no children. The Respondent had taken her instructions and then typed them up into this will before coming to see her. He agreed with Ms Hansen that it therefore followed that if something was not in the typed-up will than it had not been in her instructions previously given to the Respondent. In the case of this will, the only part that was not typed up was the clause giving the Respondent a legacy. The Respondent agreed that the first time that it had been raised was on 9 March 2012. The Respondent told the Tribunal that he realised that this presented an own interest conflict given that £10,000 was involved. He therefore recognised that Client EK would require independent legal advice for that gift to stand. Ms Hansen put to the Respondent that he had not told the client that he could not execute the will at that point because it contained a gift to him. The Respondent reiterated that he had advised the client to take independent legal advice. The Respondent agreed that Client EK had not taken that advice at the point at which the will was executed. The Respondent accepted that Client EK could, for example, have taken that advice and then changed her mind. The Respondent told the Tribunal that the independent advice was taken the next day.

14.9 Ms Hansen put to the Respondent that the proper course of action would have been to execute the will without the legacy to him in it, adding it later as a codicil once EK had received the independent legal advice. The Respondent did not consider his actions to have been improper or in breach of the code of conduct, but he accepted that it would have been best practice to handle matters in the way suggested by Ms Hansen. The Respondent told the Tribunal that it was in the best interests of the client to have her wishes carried out and he repeated that he could not have accepted the legacy without Client EK having taken independent legal advice. Ms Hansen put to the Respondent that he was an experienced solicitor and that he ought to have advised the client to take independent legal advice before the client took the action of executing the will, not after. The Respondent stated that he believed he was able to carry on acting on the basis that he had advised Client EK to take advice on the gift. The Respondent denied that the advice could not be meaningful if it was received after the execution of the will. The Respondent denied that the reason why the legacy of £10,000 "suddenly appeared" was because of his influence upon Client EK. The Respondent also denied that the reason that he did not wait before executing the will was to make sure that it was dealt with before she changed her mind or before she died. The Respondent stated that if she had died before taking the advice that he would not have taken the gift. The Respondent reiterated that he believed that he was acting in his client's best interests by following her instructions. The Respondent denied deliberately ensuring that the will was executed before the receipt of independent legal advice, denied that SC was not independent and denied that he had acted dishonestly.

Client CF

14.10 The Respondent confirmed that he had previously prepared a will for Client CF in January 2011. At that time she had been a widow with no children and the Respondent was an executor and not a beneficiary. The Respondent confirmed that he

had then prepared a new will in which the residue of the estate, worth approximately £40,000, would go to him. He had asked a solicitor, JB, to go and see CF. There was then a change in the client's instructions as a result of receiving the advice from JB and the legacy to the Respondent was reduced to £2,000. The Respondent confirmed that he had then prepared a will dated 12 June 2013 and had discussed his legacy with the client, which he had recorded in an undated attendance note. The legacy increased from £2,000 to £17,000. The attendance note contained the name 'Jonathan' with various numbers crossed out. The Respondent denied that he had been influencing client CF to leave him more money. He accepted that she needed to obtain independent legal advice and Ms Hansen put to the Respondent that he could have asked someone such as JB to go and see her again. The Respondent told the Tribunal that CF had not liked JB and that she had found his visits distressing and refused to see him again. CF had told the Respondent that JB had made her feel like a criminal and that she might go to prison. The Respondent stated that he would have otherwise been happy for the client to see JB. Ms Hansen put to the Respondent that he had decided not to arrange for her to see someone like JB as there was a risk that he would not receive the full £17,000. The Respondent denied this and stated that the client had received independent legal advice. He had considered it "strange" that Client CF wanted to give him this much money and he had therefore wanted her to have "very robust" advice. The Respondent told the Tribunal that he had not known the client for very long, particularly at the time of the first legacy. Ms Hansen put to the Respondent that he could simply have said to Client CF that it was not appropriate as there was no relationship to justify a legacy of that sort. The Respondent stated that he would have said that and that the client had insisted that those were her wishes. Ms Hansen put to the Respondent that rather than getting JB to provide the advice the Respondent had arranged for his former secretary to do so. The Respondent confirmed that that SC provided the independent legal advice.

14.11 SC had attended the next day and the Respondent agreed that this has happened quite quickly. The Respondent disagreed with Ms Hansen's suggestion that the reason for this was to make sure that Client CF did not change her mind. The Respondent denied influencing CF to increase the amount of the legacy and stated that he would never put his own interests ahead of his clients'. He stated that he was absolutely not dishonest.

Client JRLC

14.12 The Respondent confirmed that Client JRLC had been a widow with no children and that in her will she had left a legacy of £5,000 to each of the Respondent's children. The Respondent agreed that this created an own interest conflict and that he ought to have advised her to receive independent legal advice prior to the execution of the will. The Respondent agreed that a client leaving cash legacies was a significant matter that needed to be considered. Ms Hansen put to the Respondent that he had not advised the client to receive independent legal advice. The Respondent stated that this was probably correct. There was no note of him having done so on the file and no advice was provided. The Respondent stated that this was an oversight for which he apologised. He told the Tribunal that the client had subsequently increased the legacy and had received independent legal advice. Ms Hansen put to the Respondent that in September 2014 he must have realised that he had an own client conflict. The Respondent told the Tribunal that this was "probably right". He gave the same

response when it was put to him that he knew that he had to advise Client JRLC to get independent legal advice. The Respondent denied acting without integrity stating that it was an oversight that was corrected shortly afterwards. Ms Hansen put to the Respondent that there were a number of opportunities for him to have remembered to advise the client to take independent legal advice. The Respondent accepted that every time he saw her had presented such an opportunity.

Client SS

14.13 Client SS had left £5,000 to the Respondent and his partner. The Respondent told the Tribunal that he did not consider this gift significant. He accepted that he had not recorded his consideration as to whether or not it was significant in an attendance note and that it would have been sensible to do so. The Respondent had stated in an undated letter to the SRA sent by his then-solicitors that the estate was worth approximately £230,000 and that therefore £2,500 represented just over 1%. Ms Hansen put to him that it was in fact a gift of £5,000 and was therefore certainly more than 1% of the overall estate. The Respondent agreed with that and told the Tribunal that at the time he had not thought the gift to be significant and he thought it was a matter for his professional judgement. Ms Hansen put to him that the Law Society advice was that he should have assumed that it was significant. The Respondent stated that he had not believed it to be significant and neither had Client SS. The Respondent denied acting dishonestly.

Client FT

14.14 The Respondent confirmed that he had prepared previous wills for Client FT, none of which included gifts to his children. The will that was the subject of his allegations included £10,000 to each of them. The Respondent confirmed that this was a will that had been typed after taking the client's instructions about the legacy to his children. The Respondent believed that it had all taken place on the same day. The Respondent agreed that this was a significant gift, giving rise to an own interest conflict. The Respondent told the Tribunal that he had advised FT to take independent legal advice and he had agreed that he would do so and on that basis he had proceeded. The Respondent told the Tribunal that the gift would not stand if he had not done so. Upon questioning by Ms Hansen the Respondent clarified his answer and accepted that it would be a valid will, but in practice he would not have accepted the gift. Ms Hansen put to the Respondent that for the advice to be meaningful it had to be taken before the execution of the will. The Respondent stated that the code of conduct did not say this. The Respondent did not accept that he should have stopped and waited until the advice had been taken and he also denied any lack of integrity.

Client JDC

14.15 The Respondent accepted that there was nothing in his attendance note that indicated that he had advised the client that due to an own interest conflict he could only act for him if he had taken independent legal advice. The Respondent confirmed that at the time the will was executed on 27th of May 2016 the advice had not been received. The first time that it was recorded that client JDC had been advised to take independent advice was in a letter dated 12 July 2016. The Respondent denied that he had failed to tell the client that he would need to take independent legal advice at the

time of the execution of the will. The Respondent denied having an own interest conflict or acting with a lack of integrity. Ms Hansen referred the Respondent to the further will which was made in August 2016 which changed the legacy to the client from £10,000 to £20,000. She asked the Respondent if he accepted that the client should have taken legal advice again. The Respondent stated that this was correct and that he had told the client that he would have to take the independent advice again, which he had agreed to do so. The Respondent agreed that it was not unreasonable to conclude that as at 16 August 2016, the date of the execution of the will, Client JDC had not received advice on the £20,000 legacy. The Respondent denied that there was an own interest conflict on that date and further denied that he had acted with the lack of integrity.

Client MA

14.16 The Respondent confirmed that Client MA had been diagnosed with dementia since 2014. The Respondent was her attorney in relation to property and financial affairs. Ms Hansen asked the Respondent if this was because MA lacked capacity to do that herself. The Respondent stated that on one occasion she had not had capacity. Ms Hansen referred the Respondent to a letter he had sent to MA's financial advisers dated 27 January 2016, in which he had told them that MA was "now not of sound mind". The Respondent stated that this had related to a previous occasion when MA had withdrawn sums of money from her ISA. Ms Hansen took the Respondent to a letter from the same financial advisers dated 14 June 2016 in which it was stated that Client MA was "highly unlikely" ever to recover her full mental capacity. The Respondent confirmed that this was what the letter said. Ms Hansen put to the Respondent that his observations had been made in January 2016 and so they would still have been present in June 2016. The Respondent denied this and stated these observations were not still present in June 2016. Ms Hansen asked the Respondent if he had therefore corrected the financial advisers if he thought it was not true. The Respondent stated that he may well have done but could not recall. The decision that she had made concerning her finances in January 2016 had been made at a time when she was unwell. By March 2016 however she had recovered from her illness. Ms Hansen put to the Respondent that by November 2016 there had been concerns raised about MA's capacity. The Respondent stated that they had concerns about the encashment of the ISA but that that had been a specific decision.

14.17 The Respondent confirmed that Client MA had no living spouse or children but had had a sister, AC. AC was a co-attorney who had died in October 2016. Ms Hansen put to the Respondent that in November 2016 Client MA was in a vulnerable situation in that she had just lost her sister. The Respondent stated that it was obviously a few months after the January episode and he accepted that her position was that she was obviously saddened by the death of her sister. However the Respondent stated that he saw no marked decline in the client following this. Ms Hansen took the Respondent to the report of MA's nurse, quoted in the psychiatric report to the Court of Protection dated 28 January 2018, in which she had stated that there had been a "marked decline in her cognitive functions" after the death of her sister. The Respondent stated that there was no evidence of this and he did not think that there had been any decline at all. The Respondent told the Tribunal that if anything MA's health improved as AC had been quite controlling and MA was no longer having "run-ins with her sister". The Respondent accepted that MA was upset but denied that she was more

vulnerable. Ms Hansen put to the Respondent that it would have been easy to influence Client MA, being as she was someone with dementia whose sister had just died. The Respondent denied this.

14.18 The Respondent confirmed that in MA's will she had left a gift to the daughter of SC. Ms Hansen asked the Respondent if he had suggested this. The Respondent stated that SC's daughter was known to MA through discussions about whether or not MA could give her the table and chairs from AC's flat. When MA had asked if there was anyone that she could help he had put forward SC's daughter's name. The Respondent confirmed that by this point SC was an employee of the firm and he accepted that this created an own interest conflict. Ms Hansen put to the Respondent that a solicitor with integrity would not have recommended to the client someone with whom that solicitor had a conflict of interest. The Respondent denied this and stated that the decision had been taken by MA. He told the Tribunal that MA had also left legacies to her cleaner and carers in the sum of £10,000. The estate was worth approximately £1 million.

14.19 Ms Hansen referred the Respondent to the attendance note in which various amounts had been crossed out in relation to the Respondent's legacy. Miss Hansen asked the Respondent if it was his suggestion that the legacy be increased. The Respondent denied this and stated that MA had been going through things carefully with the Respondent and she had wanted to increase the legacy to him. The Respondent denied influencing Client MA to increase the legacy repeatedly and stated that she was looking to distribute an estate of approximately £1 million. The Respondent denied telling MA that his children had a disability and told the Tribunal that she was aware that they did not. The Respondent told the Tribunal that he had arranged independent legal advice straight away and it was booked for three weeks hence. MA was anxious about her will, the Respondent had instructions on this will which was valid and contained a large number of other beneficiaries. He was under a duty to get it signed. Ms Hansen put to the Respondent that he could have removed the legacies that were the subject of an own interest conflict and added them by way of a codicil at a later stage after the advice been received. The Respondent accepted that this could have been done.

14.20 Ms Hansen put to the Respondent that he had acted where there was an own interests conflict. The Respondent stated that he had acted knowing that the advice was coming soon and that he was acting in the best interests of his client. The Respondent denied executing the will so that his legacy would not get removed and noted that she had confirmed the legacy to GW and to Mrs Cole.

14.21 Ms Hansen took the Respondent to the note of a telephone call from GW in which he had said that MA was confused and incorrectly thought that the Respondent's children were disabled. The Respondent stated that as far as the gifts to him were concerned, she had been very clear about them. Ms Hansen pointed out to the Respondent that GW had stated that he could not advise her effectively. There was therefore no confirmation that he had provided the advice. The Respondent stated that he had made a mistake by not providing GW with MA's previous will and therefore he had no point of reference. The Respondent stated that Client MA had a normal cognition and her dementia had mainly been limited to short-term memory issues. The Respondent stated that he did not have any concerns whatsoever about Client MA's capacity and noted that the test for testamentary capacity was lower than general capacity in order

to enable elderly people to amend their wills. The Respondent denied putting his interests ahead of the client's. He told the Tribunal that he would always act in a client's best interests and would always say that the gift was unnecessary and that they should take independent legal advice. He told the Tribunal that he would never take advantage of such a situation and he denied acting dishonestly.

14.22 In re-examination the Respondent confirmed that although the bills for independent advice had, in some cases, been issued to him, those bills had been settled by the clients who had received the advice.

14.23 In respect of FF, EK, and CF the Respondent told the Tribunal that the attendance notes made by SC satisfied the Banks v Goodfellow criteria.

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.

16. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of both parties, which are briefly summarised below.

17. **Applicant's Submissions**

17.1 **Allegation 1.1 - On more than one occasions between January 2011 and November 2016, when preparing wills for clients under which significant gifts on death were made to him and/or members of his family and/or members of the family of an employee of the Firm, he failed to advise or cause clients to obtain independent advice, and continued to act for such clients notwithstanding such failure. By reason of such conduct, he acted in breach of, or failed to achieve, any or all of the following:**

1.1.1 Insofar as such conduct took place between 1 July 2007 and 5 October 2011, Rules 1.02, 1.04, 1.06, 3.01 and 3.04 of the Solicitors Code of Conduct 2007 ("the 2007 Code");

1.1.2 Insofar as such conduct took place on or after 6 October 2011, Outcome 1.2 and 3.4 of the Solicitors Code of Conduct 2011 ("the 2011 Code") and Principles 2, 4 and 6 of the SRA Principles 2011 ("the 2011 Principles").

17.1.1 Ms Hansen referred the Tribunal to the submissions contained in the Rule 5 and Rule 7 statements. The Tribunal also took note of the case advanced by Ms Hansen in the course of cross-examination of the Respondent.

17.1.2 The Respondent had relied upon the involvement of SC, which Ms Hansen submitted was not independent advice. SC was the Respondent's former Legal Secretary and so she was not independent of him. SC was also instructed directly by the Respondent.

17.1.3 In relation to advice given after the execution of the will, Ms Hansen submitted that for the independent advice to be effective and for the Respondent to meet his obligations to his clients, it would have been necessary for such advice to be obtained prior to the execution of a will.

17.1.4 Ms Hansen submitted that the Respondent was aware of the requirement to advise clients to obtain independent advice, given that he did do so on some occasions.

17.1.5 Ms Hansen submitted that by failing to ensure that the clients had independent advice, the Respondent failed to act with integrity, in that a solicitor acting with integrity would not have executed a will including substantial legacies to that solicitor, their family, or members of the family of a member of the firm, prior to the client obtaining independent advice from a person qualified to give such advice. In respect of FF and MA a solicitor of integrity would have satisfied himself as to the mental capacity of the client. The Applicant's case was that the "number, nature and circumstances of the gifts give rise to the inference that the Respondent, while acting in a position of trust, unduly influenced his clients to leave him gifts in their wills, for his own financial benefit or that of family members, and to the detriment of clients, their estates or intended beneficiaries". A solicitor acting with integrity would not attempt to influence clients to leave them a gift. Ms Hansen therefore submitted that the Respondent had breached Principle 2 of the SRA 2011 Principles and Rule 1.02 of the 2007 Code.

17.1.6 Ms Hansen further submitted that the Respondent therefore breached Principle 4 of the SRA 2011 Principles and Rule 1.04 of the 2007 Code, in that he failed to act in his clients' best interests, and preferred his own interests over his clients, by failing to cause them to obtain independent legal advice before preparing wills for them which included substantial gifts to him, and by failing to take steps to establish that a client had capacity where this was in doubt.

17.1.7 Ms Hansen also submitted that the public confidence in the Respondent, and in the provision of legal services, was undermined where solicitors prefer their own interests over those of their clients and use the preparation of wills as an opportunity to advance their own financial interests by securing substantial gifts from clients. The Respondent had therefore breached Outcome 1.2 of the 2011 Code, Principle 6 of the SRA 2011 Principles and Rule 1.06 of the 2007 Code. He had also breached Rule 3.01 if the 2007 Code and Outcome 1.12 of the 2011 Code.

17.2 **Allegation 1.2 - On 21 November 2016 he caused or allowed a will that he had prepared for Client MA to be executed when Client MA's mental capacity was in doubt. In doing so he acted in breach of, or failed to achieve any or all of the following Principles 2, 4 and 6 of the 2011 Principles and Outcome 1.12 of the 2011 Code.**

17.2.1 In respect specifically of Client MA, Ms Hansen submitted that the client's mental capacity had been called into question by Mr GW. Since that time Client MA had been assessed as lacking mental capacity, a report prepared for the Court of Protection concluded that Client MA lacked capacity to make a Lasting Power of Attorney on 14 June 2017. That report noted that Client MA had had a diagnosis of dementia since 2014 and that her cognitive function had decreased since the death of her sister in

October 2016. Ms Hansen invited the Tribunal to draw an inference Client MA's mental capacity to make a will in November 2016 was in doubt.

17.3 **Allegation 2 - On or around 13 January 2011 he asked Ms SC to assess Client FF's capacity to amend her will when on or around 5 November 2010 Mr IM had advised that Client FF lacked capacity to amend her will. In doing so he acted in breach of any or all of Rules 1.02, 1.04, 1.06, 3.01 and 3.04 of the 2007 Code.**

17.3.1 Ms Hansen submitted that by asking SC to assess Client FF's capacity when IM had advised that Client FF lacked capacity to amend her will, the Respondent had failed to act with integrity. Ms Hansen invited the Tribunal to conclude that the size, nature and circumstances of the gift gave rise to an inference that the Respondent, while acting in a position of trust, unduly influenced Client FF to leave him a gift for his own financial benefit or that of family members. Ms Hansen submitted that the Respondent had therefore breached Rule 1.02 of the 2007 Code.

17.4 **Allegation 3 (Dishonesty)**

17.4.1 Ms Hansen submitted that the Respondent's conduct was dishonest in relation to EK, FF, CF, SS and MA in that he deliberately did not advise his clients to obtain independent advice, in the knowledge that he should have done so. By failing to advise clients to seek independent advice, he knowingly increased the prospects of him or his family receiving a legacy. The Respondent was aware of the need to obtain independent legal advice, as would be expected of an experienced probate solicitor. Ms Hansen submitted that the Respondent's conduct amounted to a serious breach of that position of trust, motivated by financial gain. This had been to the detriment of clients or their estates or intended beneficiaries and would be viewed, by the standards of ordinary decent people, as dishonest.

17.4.2 In relation to MA specifically, Ms Hansen submitted that in allowing Client MA's will to be executed when her capacity was in doubt the Respondent had been dishonest, in that the he had been motivated by his own financial interests as well as those of his children and SC's daughter.

17.4.3 In relation to FF specifically, Ms Hansen submitted that the Respondent had acted dishonestly in requesting that SC attend FF to witness the will, in circumstances where less than three months earlier IM had given an opinion that FF lacked the capacity to do so. Ms Hansen invited the Tribunal to infer that the Respondent had requested that SC attend to fulfil the role which IM was originally asked to do because the Respondent at the very least suspected that if he asked IM to attend, the Respondent would not receive the legacy. Ms Hansen submitted that this would be considered dishonest by the standards of ordinary decent people.

18. **Respondent's Submissions**

18.1 Mr Parker referred the Tribunal to his Opening Note in which he set out the legal framework of his submissions.

18.2 Mr Parker submitted that when it came to accepting gifts, solicitors were required to exercise their independent judgement. The guidance in the 2007 Code in relation to 'own interest' conflicts and on accepting gifts did not impose an absolute prohibition on accepting gifts.

18.3 Rule 3.01 of the 2007 Code stated as follows:

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

18.4 Indicative Behaviour I9 of the 2011 Code stated as follows:

> "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."

18.5 In his Opening Note, Mr Parker invited the Tribunal to approach the case in the following way:

> "In explaining the Respondent's case, it is necessary first to examine
>
> - The purpose of the giving of independent advice; and
> - The source and manner of such independent advice.
>
> Then consideration can be given to the notion of a "significant" gift, before finally turning to the charges of dishonesty and want of integrity which have been unfairly and wrongly levelled against the Respondent."

18.6 Mr Parker noted that while case law emphasised need for independent advice to be provided, it did not need to be from a lawyer, a point that had been conceded by the Applicant.

18.7 What was required was someone who was sufficiently experienced in the field who could possibly assess capacity so as to enable the donor to exercise free will. Mr Parker submitted that every gift in this case had been the exercise of independent free will on the part of the donor. In all but two instances there had been an independent assessment made.

18.8 Mr Parker submitted that while it was better if the independent advice was given before the execution of will, this was not the only way of going about it. Nowhere were there express words that stated that it had to be before. It was therefore a matter of professional judgement on the part of the solicitor.

18.9 Mr Parker submitted that there was a potential tension in this case, in that there were "endless cases" of solicitors being sued by estates or disappointed beneficiaries in circumstances where the will took too long to be executed and the testator died or changed their mind. On the other hand there was the requirement for independent advice to be given. The Respondent was best placed to exercise a judgment due to his intimate knowledge of each of the circumstances of each client.

18.10 Mr Parker reminded the Tribunal of the Banks v Goodfellow test, which had been affirmed in Walker v Badmin [2014]. He referred the Tribunal to the following passages from Walker:
At [17]:

> "The common law test as to testamentary capacity is of course established in Banks v Goodfellow…at [68]:— "*It is essential to the exercise of such a power that a testator [a] shall understand the nature of the act and its effects; [b] shall understand the extent of the property of which he is disposing; [c] shall be able to comprehend and appreciate the claims to which he ought to give effect; and with a view to the latter object, [d] that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties — that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made*."

At [32]:

> "I also think that Ms. Taylor is right to submit that, traditionally, the threshold for testamentary capacity has been kept fairly low, so as not to deprive elderly persons of the ability to make wills in their declining years. Several U.S. decisions were cited in Banks to this effect, including Stevens v. Vancleve 4 Washington at 267:- "*The testator must, in the language of the law, be possessed of sound and disposing mind and memory. He must have memory; a man in whom the faculty is totally extinguished cannot be said to possess understanding to any degree whatever, or for any purpose. But his memory may be very imperfect; it may be greatly impaired by age or disease; he may not be able at all times to recollect the names, the persons, or the families of those with whom he had been intimately acquainted; may at times ask idle questions, and repeat those which had before been asked and answered, and yet his understanding may be sufficiently sound for many of the ordinary transactions of life. He may not have sufficient strength of memory and vigour of intellect to make and to digest all the parts of contract, and yet be competent to direct the distribution of his property by will. This is a subject which he may possibly have often thought of, and there is probably no person who has not arranged such a disposition in his mind before he committed it to writing. The question is not so much what was the degree of memory possessed by the testator? as this: Had he a disposing memory? was he capable of recollecting the property he was about to bequeath; the manner of distributing it; and the objects of his bounty? To sum up the whole in the most simple and intelligible form, were his mind and memory sufficiently sound to enable him to know and to understand the business in which he was engaged at the time he executed his will*?"

At [50]:

> "For these reasons, I consider that the correct and only test for testamentary capacity, where what is in issue is the validity of the will executed by the deceased, is the common law test set out in Banks."

18.11 Mr Parker noted that lack of integrity was alleged in respect of every client and dishonesty was alleged in relation to most. In relation to dishonesty he submitted that the question for the Tribunal was whether the Respondent held a genuine belief that what he was doing was the right thing to do. If he did, would ordinary decent people think the same way. Mr Parker submitted that the Respondent had not been evasive in his evidence but had been calm, clear, rational and honest in his answers. He had demonstrated a willingness to concede certain points. Mr Parker submitted that this was not the evidence of a dishonest man.

18.12 In relation to integrity, the question for the Tribunal was whether the Respondent had in mind the ethical standards of his own profession and whether he adhered to them. Mr Parker submitted that the Respondent genuinely believed he was doing the right thing in the right way. It therefore could not be said that he was acting in breach of his obligation to act with integrity.

18.13 Mr Parker submitted that the way the case, personified by the evidence of Mrs Cole, had been put was to the effect there had been no appropriate safeguards being in place and those clients had not wished to give the Respondent the legacies. Mr Parker strongly urged the Tribunal to reject that analysis. Mrs Cole was a "wholly unreliable witness" and the Tribunal was invited not to place any reliance on her evidence.

18.14 Mr Parker told the Tribunal that SC had been portrayed as someone who had very recently been the Respondent's secretary and who knew very little about these things. This could not be further from the reality of the matter. Mr Parker invited the Tribunal to consider SC's level of experience as described in the Respondent's witness statement as well as his answers in cross-examination. Mr Parker submitted that there was nothing to suggest she was not suitably qualified.

18.15 In relation to Client FF, Mr Parker submitted that SC had provided timely advice and had made an entirely proper and sufficiently comprehensive attendance note. This advice had therefore been provided by a competent, experienced and qualified person. In those circumstances all the ingredients of Banks v Goodfellow were present and all the necessary tests had been satisfied. Mr Parker submitted that none of the various allegations were made out and the allegation of dishonesty "could not be further off beam".

18.16 In relation to Allegation 2, Mr Parker reminded the Tribunal of the letter from IM dated 5 November 2010 in which he stated that he was unable take instructions because FF was not well enough. That was not a statement of testamentary capacity, merely that she was unwell. This was not a case of the client losing capacity with it never to return, simply that she was not in a fit state to deal with it at that point. By the time of the actual signing of the will she had regained her state of health and state of mind as was clear from SC's attendance note.

18.17 Mr Parker described as "speculative" the suggestion of a deliberate decision to by-pass IM and get a friendly adviser. Timely advice was given and SC and IM's notes read together indicated the capacity issue had resolved itself by January 2011. Mr Parker submitted that this Allegation fell away too.

18.18 In relation to Client DP, no advice was sought or given. DP was a friend and neighbour. The Respondent had taken into account all of the circumstances and made the judgement that £2,000 was not a significant sum in the context of an estate worth at least £196,000. This was a case that pre-dated the Law Society practice note. Mr Parker submitted that it was impossible to come to a conclusion that his exercise was unreasonable to the requisite standard as he had been entitled to come to that conclusion. Mr Parker reminded the Tribunal that the Respondent had ultimately disclaimed the gift.

18.19 In relation to Client EK, independent advice was given by SC the day after the will was executed. Again, Mr Parker submitted that the criteria in Banks v Goodfellow had been met. Mr Parker reiterated his earlier submission about the timing and submitted that the fact that the advice was the day after the will was executed was not crucial and not in itself a breach of codes. The will had been signed and ratified in a reasonable timeframe afterwards. That was enough to satisfy the "loose wording" of the Code. In any event it satisfied the Respondent as he had understood it. Mr Parker submitted that it would be wrong in principle to find him guilty of a lack of integrity or dishonesty when he had genuinely thought that the rule as he understood it, permitted him to ensure that the advice was given. If there had been a breach it was a technical one. The correct advice had been given, by a properly qualified person who was independent and the only potential issue was that it was not given before.

18.20 Mr Parker made a general submission about the point that the Respondent had arranged for clients to see the providers of independent advice. Mr Parker submitted that there was nothing that suggested that arranging an appointment was wrong, indeed plainly it was the most practical and sensible way to go about things. There was no connection between the Respondent and IM, GW or NE or JB, whose advice had not been criticised. The only person with whom he had a connection was SC. Mr Parker submitted that it was wrong to say that a solicitor could not arrange the independent advice as that would ignore the practical realties of will-making for elderly clients.

18.21 In respect of CF the advice was given by SC the same day and so it was timely. Mr Parker reiterated his submissions about SC being the person giving the advice. She had made a detailed attendance note and no undue influence was implied in that note.

18.22 Mrs Cole had seen CF two and a half months before CF died. Mr Parker submitted that this was an example of Mrs Cole effectively setting out to get clients to change their minds by telling them that what had happened in the past was wrong. There was no basis on which Mrs Cole should properly have gone back to CF.

18.23 In relation to JLRC Mr Parker accepted that no independent advice was given. This was an oversight. However it was significant to bear in mind that when independent advice was finally given in relation to the next will, the legacy was confirmed. Mr Parker submitted that the Tribunal could therefore be satisfied that the client had

done what she intended to do regarding the legacy. This was not a case of undue influence or other pressure. By the legacy being confirmed, the purpose of the Code had, in the fullness of time, been satisfied.

18.24 In relation to SS, the point was the significance or otherwise of the £5,000 gift. The Respondent had carefully considered if it was significant in the circumstances and had concluded that it was not. Client SS himself had also not considered it unduly significant. Mr Parker submitted that it "beggars belief" that the Respondent had acted dishonestly in the circumstances.

18.25 In relation to FT, the client received independent advice in between the execution of two wills. Mr Parker reminded the Tribunal of his submissions on the question of retrospective advice. He directed the Tribunal's attention to another decision of the Tribunal, SRA v Beach Case No: 11761-2017, which he submitted supported the point. Mr Parker submitted that it was important to note that the advice given retrospectively appeared to have had the effect of confirming the very same legacy. Mr Parker invited the Tribunal to keep the circumstances of the revocation of the will in mind. There had been a complaint about Mrs Cole's service and her interaction with him because FT had felt coerced by JC.

18.26 In respect of Client JDC, Mr Parker reiterated his submissions about retrospective advice. GW, like NE, had not communicated to the Respondent to the effect that there was no point in providing advice in respect of will that was already made. Mr Parker submitted that there was therefore some support for the proposition that it was not necessarily the case that for regulatory and compliance purposes the advice had to be given in advance of the will being executed. Mr Parker submitted that JDC had not been unduly influenced. There had been no breaches of the Code and no lack of integrity or dishonesty on the part of the Respondent.

18.27 In respect of Client MA, Mr Parker reminded the Tribunal that it was alleged that her capacity was in doubt but it was not alleged that she did, in fact, lack capacity.

18.28 The undated attendance note was handwritten as the Respondent had not expected to take instructions about a will. However detailed instructions had been taken. The Respondent had no doubt that MA gave those instructions and had done so willingly. There was a significant gift and therefore independent advice had necessary. GW was asked to give that advice. This was after the instructions had been taken but before execution of will.

18.29 GW had found that MA was confused and not in a position to satisfy him regarding the will. GW had not, however, been briefed as to contents of that will. Mr Parker submitted that it was not surprising that MA suffered memory deficiencies as to names of beneficiaries. Mr Parker reminded the Tribunal that the advice was not a test of memory and reminded the Tribunal of the tests set out in Walker.

18.30 Mr Parker submitted that when GW had seen MA he did not find that she had a lack of testamentary capacity for all purposes and for all time. MA had been ill and confused but she had subsequently recovered. Mr Parker submitted that the Respondent had been under pressure to get the will signed and sealed in order to give effect to MA's wishes. This was why GW was asked to see her at the time he was.

18.31 The Respondent had been forced out of the firm on 15 February 2017 and so had not had the opportunity to respond to the points in GW's letter of 13 February 2017. The Respondent had, however, recorded his own recollection of events in the attendance note of 14 February 2017. This contained the Respondent's explanation about his suggesting the name of SC's daughter to MA. Mr Parker submitted that in these circumstances, it was impossible to conclude any lack of integrity or dishonesty on the part of the Respondent. The reality was that he was consistently trying to give effect to MA's intentions.

18.32 As regarded the question of capacity, Mr Parker submitted that the Respondent had been quite clear as to the MA's capacity and her ability to cope with the detail concerned. The medical evidence did not go as far as had been suggested by the Applicant. The one thing that could not be said was that MA lacked capacity, especially testamentary capacity which had a lower threshold than overall mental capacity. Mr Parker submitted that the best available contemporaneous evidence was from the Respondent's visit to her in November 2016. As far as he had been concerned, based on his notes at the time and the fact that in February he had been able to go through these matters of considerable detail with MA, he did not have an inkling that she could not deal with these matters. MA's capacity may have fluctuated but the Respondent was in a position to exercise an independent judgement on his own and to that extent he had felt able to proceed in the way that he did, making sure he had sought to arrange an appointment after instructions were given and before the will had been executed. Mr Parker submitted that the Respondent had plainly been trying to do his best for the client.

18.33 Mr Parker submitted that this was supported by Mrs Cole's attendance note of 7 March 2017 and by the telephone calls, which had been played to the Tribunal. The reality was that MA knew what she was doing, wanted to do that and was capable. In the circumstances the allegation that the Respondent lacked integrity and was dishonest or was not acting in her best interests, did not stand up.

18.34 Mr Parker submitted that the Respondent had been an honest solicitor, at all times seeking to assist his clients by carrying out their wishes.

19. The Tribunal's Findings

General Approach

In respect of each Allegation and, in relation to Allegation 1.1, each client, the Tribunal considered the factual basis of the Allegation, before then considering if any Rules, Principles or Outcomes had been breached.

(a) Integrity

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

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor

> conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".

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

(b) Dishonesty

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

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

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

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

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

19.1 Allegation 1.1

19.1.1 The Tribunal considered the Rules and associated guidance that were relevant to the Allegations.

19.1.2 Rule 3.01 of the 2007 Code was set out under the section relating to Mr Parker's submissions and is not repeated here.

19.1.3 Rule 3.04 stated as follows:

> "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."

19.1.4 The Guidance to Rule 3.04 stated:

> "55. Rule 3.04 does not prevent you accepting a client's gift but does require the client to take independent advice where the gift is significant, or significant as compared with the client's likely estate and the reasonable expectations of prospective beneficiaries."

19.1.5 The Guidance to Rule 3.04 dealt with the question of significance as follows:

> "58. A "significant amount" for the purposes of 3.04 cannot be quantified because the particular circumstances of the proposed gift must be taken into account. In general, however, anything more than a token gift will be considered significant. If, therefore, anything more than a token amount is accepted without the client having separate advice (other than where you are acting for a family member as permitted by 3.04) you may be exposed to allegations of misconduct.
>
> 59. When considering whether a gift is of a "significant amount" the date of preparation of the document is relevant when determining the size of the estate."

19.1.6 The Law Society practice note entitled 'Preparing a will when your client is leaving a gift for you, your family or colleagues' was dated 10 October 2014. The relevant sections included the following:

> "It may be appropriate to accept instructions from a client who is related to an employee or partner and who proposes a proportionate gift to that employee or partner or a member of their family. However, you should take into account the reasonable expectations of others who would be reasonably expected to benefit because of their relationship to the deceased. You should make detailed file notes, recording the full circumstances of the client's family and explain why the gifts are proportionate given the circumstances. You should warn your client that the gift might be questioned later by people who suspect that you took advantage of your or your staff member's close relationship with the client, to influence the gifts made by the client. Even if you consider the instructions to be appropriate, the person preparing the will should consult your firm's Compliance Officer for Legal Practice (COLP), or the Senior Responsible Officer (SRO) if your firm is a member of the Wills and Inheritance Quality Scheme (WIQS), or a senior experienced practice member who has considered potential conflicts of interest and the best interests of the

client. You should place a detailed note of this consideration with the will or relevant file.

If the client proposes to make a gift which is of a significant amount, whether by will or lifetime gift, then you should not act, unless the client:

- obtains independent legal advice from someone completely unconnected with your firm; and

- provides written confirmation that they have obtained such advice."

In relation to the definition of a 'significant amount' the practice note continued:

"An amount may be significant in itself, or as a proportion of the client's net estate. The SRA Guidance on the Drafting and Preparation of Wills does not provide any indication of a monetary amount which would be considered significant. You should carefully consider any gift worth more than £500 to determine whether it may be considered significant in the particular circumstances. You can assume that the following gifts would be considered significant:

- anything worth more than one per cent of the client's current estimated net estate; and

- anything that might become more valuable at some point, especially after the death of the client, and anything that provides a benefit to an individual which is more valuable than their relationship to the deceased reasonably justifies."

19.1.7 The Tribunal considered as a preliminary point whether the provision of advice after the execution of the will, putting to one side the question of independence, would be satisfactory if in all other respects it had been in compliance with the code of conduct. The Respondent's case had been that in the instances of advice being given after the execution of the will the spirit of the code of conduct had been achieved. It had also been submitted on his behalf that the requirement for the advice to be given before the execution of the will was not spelt out in explicit terms.

19.1.8 The Tribunal was clear that the effect of the Code and associated guidance was such that if there was a conflict of interest the solicitor should cease acting or should remove himself from the legacy. The Tribunal accepted the submission of Ms Hansen that the appropriate way to have addressed this situation, if the Respondent wished to continue acting, would have been for him to prepare the will without inclusion of the legacies to himself or his family. If the client then wished to make such a legacy it would be open to that client to seek independent advice on that point. Thereafter the will could have been prepared leaving legacies to the Respondent if the client so chose. This would avoid any delay to the will being executed and would avoid any negative impact of delay that may be caused to other beneficiaries. The Respondent had accepted in his evidence that this would be best practice. The Tribunal found beyond reasonable doubt that it went further than best practice and that it was essential that independent advice was provided before the execution of the will in circumstances where a legacy was being left to the solicitor who was acting for the

client in the preparation of that will. The Tribunal therefore rejected the Respondent's case that retrospective advice was satisfactory.

19.1.9 The Tribunal then considered the question as to whether SC was capable of providing independent advice. There were three wills in which she had provided advice and a key point of difference between the parties in this case was whether she was independent for the purposes of providing that advice to those clients. The Tribunal noted that she had been trained by the Respondent and had worked with him for many years. She had been a paralegal and was therefore not on an equal footing to him and she had previously worked as his secretary. The Tribunal noted that while they were not working at the same firm when the advice was given, SC had ultimately followed him to Sussex law, which was an indication of an ongoing close working relationship. SC had trained under the Respondent's guidance and therefore worked to his standards. The Respondent had told the Tribunal that he had provided her with all the training that she needed.

19.1.10 The Respondent was dealing with potentially vulnerable clients and he was under a duty to exercise considerable caution when dealing with their matters. Part of that duty required him to ensure that when independent advice was provided, the person providing it was truly independent. The Respondent had not given a list of names of solicitors to clients. Instead he has made contact with SC and had instructed her to provide the advice. The Tribunal found beyond reasonable doubt that the cumulative factors led to the conclusion that SC was not capable of providing independent advice in relation to these matters.

19.1.11 The Tribunal then considered Allegation 1.1 in relation to each of the relevant wills.

19.1.12 *EK – 9 March 2012*

19.1.12.a In the matter of EK the legacy to the Respondent was £10,000 and it had not been disputed that it therefore qualified as a significant gift.

19.1.12.b The Respondent had added his legacy in to the will having advised EK to get independent legal advice. He had not, however, waited for it to be delivered as SC provided advice the following day. The Respondent had accepted in cross-examination that the advice was delayed. However even if the advice of been timely, the Tribunal, for the reasons set out above, found that the advice provided by SC did not amount to independent advice. The Tribunal was satisfied beyond reasonable doubt that when preparing the will of EK under which a significant gift on death was to be made to him he had failed to advise or cause EK to obtain independent advice. The Tribunal therefore found the factual basis of Allegation 1.1 in respect of EK proved beyond reasonable doubt.

19.1.12.c *Outcome 3.4* - It followed from the Tribunal's factual findings that the Respondent had failed to achieve Outcome 3.4 of the Tribunal found this proved beyond reasonable doubt.

19.1.12.d *Outcome 1.2 and Principle 4* - It was clearly inconsistent with protecting a client's best interests to fail to advise or cause a client to obtain independent advice in circumstances where such advice was necessary. The Tribunal found the breach of Outcome 1.2 and Principle 4 for proved beyond reasonable doubt.

19.1.12.e *Principle 2* - The Tribunal considered the question of integrity. Client EK had been an elderly lady living on her own, who was widowed and had no children. As soon as the possibility of a legacy came up it was incumbent on the Respondent to act with caution. Instead he had not arranged any advice before the execution of the will and when he had arranged advice it was not independent. The Tribunal considered this to be a complete failure of the Respondent's moral compass. The legacy had come up at short notice and had not previously been part of her instructions to him, as evidenced by the fact that it had been written in by him in manuscript. All of this taken place at the client's home address. The Tribunal was satisfied beyond reasonable doubt that in proceeding as he had done, the Respondent had lacked integrity and the Tribunal found that the breach of Principle 2 proved beyond reasonable doubt.

19.1.12.f *Principle 6* - The Tribunal considered that the trust the public placed in the profession would be demolished in such circumstances. The public would be appalled by the set of circumstances set out above and the failure to arrange for the client to receive timely or independent legal advice. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

19.1.13 JDC – 27 May 2016 and 16 August 2016

19.1.13.a The legacies in both wills were, again, clearly significant and this was not disputed by the Respondent. JDC was not advised to obtain independent legal advice until he wrote to the client 12 July 2016, more than a month after the 27 May 2016 will. The letter stated:

> "I am obliged to advise you to take independent advice on the legacy of £10,000 to myself. This is a requirement of the Law Society, as I am receiving a legacy in a Will that I have prepared."

19.1.13.b The Respondent's evidence that he had orally advised the client prior to that was not supported by the evidence, indeed the evidence of the letter pointed in the opposite direction as it was prospective and did not refer to any earlier conversation.

19.1.13.c The Respondent's suggestion that he would have disavowed the legacy if the client had passed away before receiving the independent advice was noted but it was not a relevant factor in the Allegation. The will and the legacies would still have been valid and the Respondent had agreed with that analysis. The requirement was for the client to have the advice at the time and this had not happened, as was confirmed by the statement of JDC.

19.1.13.d The Tribunal also noted the Respondent's argument that GW had not pointed out that it was too late to be giving such advice after the event. However GW's reaction, or lack thereof, was not relevant to the question of whether the Respondent had acted properly. The Tribunal had not heard from GW and could not speculate on how he might have responded to the point. It was the Tribunal's role to assess the Respondent's conduct and consider whether the Applicant had proved a breach that amounted to professional misconduct. In the case of JDC's wills the Tribunal was satisfied beyond reasonable doubt that the Respondent had not caused the client to receive independent legal advice and the factual basis of Allegation 1.1 in relation to JDC was proved beyond reasonable doubt.

19.1.13.e *Outcome 3.4* - It followed from the Tribunal's factual findings that the Respondent had failed to achieve Outcome 3.4 of the Tribunal found this proved beyond reasonable doubt.

19.1.13.f *Outcome 1.2 and Principle 4* - It was clearly inconsistent with protecting a client's best interests to fail to advise or cause a client to obtain independent advice in circumstances where such advice was necessary. The Tribunal found the breach of Outcome 1.2 and Principle 4 proved beyond reasonable doubt.

19.1.13.g *Principle 2* - Client JDC had no immediate family. The Respondent was on notice about the client's intention to leave him a legacy but he had still continued to act, not once but twice. In respect of the final will there was no advice at all and the legacy doubled. The Respondent was under a duty to be scrupulous in ensuring that he did not act until independent advice had been given. He had not done so and the Tribunal found beyond reasonable doubt that the Respondent had therefore lacked integrity and found the breach of Principle 2 proved beyond reasonable doubt.

19.1.13.h *Principle 6* - The Tribunal found this proved beyond reasonable doubt for the same reasons as set out in relation to EK and in light of the Tribunal's finding in relation to lack of integrity.

19.1.14 Client FF – 15 January 2011

19.1.14.a The Respondent had accepted that the gift was significant, the entire estate being left to him, or to his children in the event of his death. The case clearly called out for independent advice to be given. The Tribunal had already found that advice given by SC was not independent for the reasons set out above.

19.1.14.b The Tribunal found the factual basis of Allegation 1.1 and the breaches of Rules 3.01 and 3.04 of the 2007 Code in relation to FF proved beyond reasonable doubt.

19.1.14.c The breaches of Rules 1.02, 1.04 and 1.6 were proved beyond reasonable doubt for the same reasons as Principles 2, 4 and 6 respectively in relation to EK and JDC.

19.1.15 CF – 12 June 2013

19.1.15.a This was a case in which it was not disputed that the legacy was significant and the Respondent had arranged for SC to provide advice. The Tribunal had already found that advice from SC did not amount to independent advice for the reasons set out above. The Tribunal referred to the Respondent's handwritten note dated 3 April 2012 A184. The Tribunal noted that in respect of the previous will the client had proposed to leave the Respondent approximately £39,000 which has subsequently been reduced to £2,000 following the receipt of independent advice from JB.

19.1.15.b The Respondent had stated that CF did not wish to see JB again on the basis that he had made her feel as though she was going to go to prison. The Tribunal saw no evidence of CF instructing the Respondent not to send JB and no evidence of any concerns that he had made her feel like a criminal. There was nothing contained in either the Respondent's handwritten note or in SC's typed attendance note that made any reference to this. In any event it was been open to the Respondent to send someone else who was genuinely independent if indeed it was the case that CF had not got on with JB, but instead he had sent SC.

19.1.15.c The Tribunal found the factual basis of Allegation 1.1 proved beyond reasonable doubt in respect of CF together with the breaches of Principles 2, 4 and 6 as well as Outcomes 1.2 and 3.4 for the same reasons as EK and JDC.

19.1.16 Client DP – 26 February 2011

19.1.16.a The Respondent had admitted that DP did not receive advice. The issue in this case was whether the advice was required. The Respondent's case was that he had not believed the gift to be significant. If that was correct that there was no need for independent advice and on that basis Mr Parker had submitted that the allegation could not succeed.

19.1.16.b The Tribunal noted that the gift was in the sum of £2,000 and represented just over 1% of the estate. The key factors in the guidance note to Rule 3.04 in relation to the question of significance was the size of the overall estate and the expectations of other beneficiaries.

19.1.16.c The Respondent was receiving the same legacy as the client's grandchildren despite not being a family member. The Respondent had told the Tribunal that he had also not considered the total estate value when carrying out his analysis as to whether or not the gift of significant. In cross-examination the Respondent accepted that the estate value was a relevant consideration and that he should have considered circumstances in which the legacy was being made to him. The Tribunal was satisfied that the gift was significant and that in the circumstances independent advice should have been given before the Respondent continued to act in the preparation of this will. That advice had not been given the Tribunal found the factual basis of Allegation 1.1 in respect of Client DP proved beyond reasonable doubt. The Tribunal

also found the breaches of Rules 1.02, 1.04, 1.06, 3.01 and 3.04 proved beyond reasonable doubt for the same reasons as applied in respect of FF.

19.1.17. Client JRLC - 16 September 2014

19.1.17.a The Respondent accepted that there was an own interest conflict in this matter and he had further accepted that no independent advice had been provided. The Tribunal found this element of Allegation 1.1 proved beyond reasonable doubt including the breaches of Principles 2, 4 and 6 and Outcomes 1.2 and 3.4.

19.1.18 Client SS – 23 July 2015

19.1.18.a The Tribunal reviewed the record of the Respondent's own recollection of what had occurred, contained in the undated letter to the SRA sent by the Respondent's former solicitors. The Tribunal noted that there were no contemporaneous attendance notes in respect of this matter. The Respondent had accepted that no independent advice was given and the question was again whether or not this gift was significant. The Tribunal referred to the Law Society practice note, which was in in existence at the material time and which the Respondent had confirmed he had read.

19.1.18.b The Tribunal considered that a legacy of £5,000 was significant. The Respondent had argued that it was in fact two legacies of £2,500. The Tribunal rejected that interpretation but even if the legacy was for £2,500 the Tribunal also found that it was significant such that required independent advice to be provided to the client. The Respondent had not checked with the COLP or a senior practice member as required by the guidance note and in any event the gift was for more than £500 and represented more than 1% of the estate. The Tribunal had regard to the witness statement of Client SS but this did not change the position in relation to the will itself. The Tribunal found the factual basis of Allegation 1.1 in relation to SS proved beyond reasonable doubt together with the breaches of Principles 2, 4 and 6 as well as Outcomes 1.2 and 3.4 for the same reasons as EK, JDC, and JRLC.

19.1.19 Client FT - 12 May 2016

19.1.19.a The Respondent had accepted that the gift in the will to his two children was significant. The advice provided to FT was retrospective however and the Tribunal had already made findings that retrospective advice was not adequate. The Tribunal found the factual basis of Allegation 1.1 proved beyond reasonable doubt in respective FT together with the breaches of Principles 4 and 6 as well as Outcomes 1.2 and 3.4 for the same reasons as EK, JDC, and JRLC and SS.

19.1.19.b *Principle 2* - The Tribunal noted the difference in circumstances between advice being provided by SC which was not independent and advice which was independent being provided after the event. However both circumstances represented a fundamental breach of the Respondent's

obligations in circumstances where he or a member of his family was receiving a substantial legacy from a client. The Tribunal was satisfied beyond reasonable doubt that in allowing retrospective advice to be provided to the Respondent had lacked integrity and the Tribunal found the breach of Principal 2 proved beyond reasonable doubt.

19.1.20 Client MA – 21 November 2016

19.1.20.a As a preliminary point the Tribunal noted that the Rule 5 statement made reference to a legacy of £10,000 to the Respondent. The will stated that the legacy was £100,000 and the Tribunal noted that this had been corrected by Ms Hansen in her opening. The basis of the cross-examination, in which the Allegation was put to the Respondent was in terms of £100,000 and the schedule attached to the Rule 5 statement had also contained the correct figure. The Respondent's witness statement also dealt with the Allegation in terms of £100,000. The Tribunal was therefore satisfied that the case against the Respondent had been correctly put notwithstanding the typographical error in the Rule 5 statement.

19.1.20.b This was a case in which GW had attended retrospectively but was unable to advise for the reasons set out in his letter of 13th February 2017 in which he stated:-

"I confirm that during my meeting with [MA] I became concerned that, firstly, she was not able to identify the extent of her Estate and also that there were several beneficiaries under the terms of her Will that she was entirely unable to identify.

She also appeared to be under the impression that your children are disabled and that the legacy to them was in some way to assist with extra equipment or schooling that they would need. It is my understanding that your children are not disabled but please do correct me if I am wrong. In the circumstances, and as a result of my discussion with [MA], I did not feel able to act as a witness to the Will on the 1st December 2016, for the reasons set out above."

19.1.20.c This followed his telephone call to the Respondent on 1 December 2016. This was therefore a case in which no advice had been provided in respect of will in which a significant legacy had been left to the Respondent as well as to his two children and to the daughter of SC. The Tribunal noted that by the time of this will SC was now working with the Respondent again. The Tribunal therefore found the factual basis of Allegation 1.1 proved in respect of MA beyond reasonable doubt. The Tribunal also found the breaches of Principles 2, 4 and 6 and outcomes 1.2 and 3.4 proved beyond reasonable doubt.

19.2 Allegation 1.2 (MA)

19.2.1 The Tribunal had a ready noted in its consideration of Allegation 1.1 in respect of MA, that GW had told the Respondent that he was unable to advise and a in respect of will because of his concerns about her capacity. MA had been diagnosed with dementia in 2014.

19.2.2 On 27 January 2016 the Respondent had written to MA's financial advisers in his capacity as her attorney and stated the following:

> "We also confirm that the client is now not of sound mind and we agree for you to place a block on the account to prevent [MA] from further action regarding her account".

19.2.3 This related to the withdrawal of monies by MA from her ISA. On 14 June 2016 the financial advisers had written to the Respondent and referred to MA having "lost mental capacity" based on what the Respondent had written six months earlier. The Respondent had not corrected or qualified this assessment at the time.

19.2.4 In the report to the Office of the Public Guardian dated 28 January 2018, the psychiatrist had written the following:

> "In my opinion; [MA] did not have the capacity to make her Lasting Powers of Attorney for health and welfare and property and financial affairs, on 14 June 2017. Her cognitive decline by reason of dementia in Alzheimer's disease is an enduring and progressive disease. [MA] has suffered from cognitive and memory decline for the last number of years, particularly during the last two years since being known to her carer [NS], who was in attendance during this assessment. This is also to note that since the death of her sister [AC] in October 2016, [MA] has shown rapid and significant deterioration in her cognitive functioning and memory. In my view, it is not clinically even speculative that [MA] had the capacity to make her Lasting Power of Attorney in June 2017".

19.2.5 That assessment was based in part on an email from a nurse who cared for MA. The psychiatrist paraphrased the email as follows;

> "In accordance to the email by [EG], Nurse Practitioner at Worthing Medical Group, [EG] confirmed carrying out an assessment of capacity in July 2016 and 'it was deemed that [MA] did not have capacity to make complex decisions surrounding her health '. The email also confirmed that following the death of her sister [AC], 'there has been a marked decline in her cognitive function and following the most recent capacity assessment in June 2017 [MA] was unable to evidence that she was able to retain or weigh up information regarding her financial affairs and Will".

19.2.6 The Respondent had stated in his evidence that there had been no decline at all following the death of MA's sister. The Tribunal rejected this on the basis that it was contradicted by the contemporaneous medical evidence. The Tribunal had seen no

evidence which counted the conclusion of the material provided to the Court of Protection.

19.2.7 The Tribunal was satisfied beyond reasonable doubt that at the time that the Respondent prepared MA's will there was doubt about her mental capacity.

19.2.8 The Tribunal found the factual basis of Allegation 1.2 proved beyond reasonable doubt.

19.2.9 *Principle 2* - The Tribunal had concluded that the client's capacity was clearly in doubt at the time the will was prepared. The Respondent had been on notice of the concerns about MA's capacity for some considerable time, not least of all because she had a diagnosis of dementia. The Tribunal considered that to continue to prepare a will in those circumstances clearly lacked integrity the Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

19.2.10 *Principle 4 and Outcome 1.12* - The Tribunal found the breach of Principle 4 proved beyond reasonable doubt on the basis that it was clearly not in a client's best interests to have will prepared when her mental capacity was in doubt. The Tribunal found the breach of Outcome 1.12 proved beyond reasonable doubt for the same reasons.

19.2.11 *Principle 6* - The Tribunal found that the public would be deeply concerned by the circumstances in which this will was prepared given the obvious concerns about the client's mental capacity. The Tribunal found beyond reasonable doubt that by proceeding in this way the Respondent had not acted in a manner which maintained the trust the public placed in him and in the profession. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

19.3 Allegation 2 (FF)

19.3.1 The Tribunal reviewed the contemporaneous evidence in this matter.

19.3.2 On 5 November 2010 the Respondent had written to FF's GP to express concern that her health had "deteriorated rapidly".

19.3.3 On the same day IM had written to the Respondent, following their visit to FF the previous day. In that letter IM had stated:

> "I agree with you that whilst [FF] seemed familiar with the arrangement to sign the annual pension authority, she was not in a fit state to provide instructions to alter her Will and make the proposed gift to you."

19.3.4 The Tribunal found that FF's mental and testamentary capacity was certainly in doubt when IM had seen her. The Respondent had also been told by IM that two to three visits would be required to deal with the matter.

19.3.5 Client FF had subsequently been admitted to hospital. The Respondent had written to SC on 13 January 2011 in which he stated:

"[FF]'s health and ability to understand does tend to fluctuate, but at the moment she is in a good state and seems to be able to understand things very clearly. I would be grateful if you would see her as soon as possible in case her condition and health does deteriorate.

19.3.6 There was no evidence of the Respondent having tried to contact IM at all, let alone any evidence of those attempts being unsuccessful. The Tribunal also found it significant that the Respondent had not referred to IM's earlier visit in his briefing to SC. The letter to SC was therefore selective.

19.3.7 It was clear that the Respondent had asked SC to assess FF's capacity to amend her will when IM had previously advised that FF lacked capacity to amend her will. The Tribunal found the factual basis of Allegation 1.2 proved beyond reasonable doubt.

19.3.8 *Rule 1.02* - The Tribunal considered the question of integrity and found that a solicitor of integrity would have made efforts to ensure that IM, or another independent solicitor, went to see the client again, the concerns about her capacity having been clearly set out by IM. A solicitor of integrity would not send SC instead in circumstances where SC was not able to provide independent advice, where there was a very significant legacy being left to the Respondent and where SC was not told about IM's earlier visit or of his concerns. The Tribunal was satisfied beyond reasonable doubt that the Respondent had lacked integrity in respect of this matter and found the breach of Rule 1.02 proved beyond reasonable doubt.

19.3.9 The Tribunal also found the breach of Rules 1.04 and 1.06 as well as 3.01 and 3.04 beyond reasonable doubt for the reasons set out in relation to Allegation 1.1.

19.3.10 Allegation 2 was proved in full beyond reasonable doubt.

19.4 Allegation 3 (Dishonesty)

19.4.1 *EK*

19.4.1.a The Tribunal considered the Respondent's state of knowledge in respect of EK at the time when he was assisting with the preparation of the will. The Respondent knew that EK was a widow with no children. He also knew that he was the beneficiary of a significant legacy under the will and he knew that this created the potential for an own client conflict, which was why he arranged for SC to advise the client. The Tribunal considered whether the Respondent believed SC to be capable of providing independent advice of the nature that was required in this case. The Respondent knew SC from his previous firm and they clearly had a working relationship from the past. The Tribunal was satisfied beyond reasonable doubt that the Respondent was aware that SC was not someone who could provide independent advice.

19.4.1.b The Tribunal considered that given the Respondent's state of knowledge, his actions would be considered dishonest by the standards of ordinary decent people. The public would expect an honest solicitor receiving a gift

in a will that he was preparing to take active steps to ensure that the advice received was unquestionably independent.

19.4.1.c The Tribunal found the allegation of dishonesty proved beyond reasonable doubt in respect of Client EK.

19.4.2 *Client FF (Allegation 1.1)*

19.4.2.a The Tribunal considered the Respondent's state of knowledge in respect of FF. The Respondent knew that he was being left a significant legacy, in this case the client's entire estate. The Respondent therefore knew that independent advice was absolutely essential. The Respondent was also aware that FF lived in a care home and had no living children. The Respondent had knowledge of FF's lack of capacity following the visit of IM. The Tribunal had found when dealing with EK that the Respondent did not believe that SC was capable of providing independent advice. In the circumstances of IM having previously visited FF the Tribunal was again satisfied that the Respondent was aware that SC was still not independent. The Tribunal had rejected the Respondent's evidence concerning his attempts to contact IM to visit the client again.

19.4.2.b The Tribunal was satisfied beyond reasonable doubt that the Respondent's conduct would be regarded as dishonest by the standards of ordinary decent people. It therefore found the allegation of dishonesty proved in respect of FF (Allegation 1.1).

19.4.3 *FF (Allegation 2)*

19.4.3.a The Respondent knew that FF had, in the view of IM, lacked capacity. He also knew that he had decided not to send IM to visit the client again but has instead chosen to send SC who was not independent. The Tribunal was satisfied beyond reasonable doubt that it would be considered dishonest by the standards of ordinary decent people to ask SC to assess FS capacity particularly in circumstances where the Respondent had failed to refer to IM's visit in his note to SC.

19.4.3.b The Tribunal was satisfied beyond reasonable doubt that the Respondent's conduct would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty in respect of FF proved beyond reasonable doubt in respect of FF (Allegation 2).

19.4.4 *Client CF*

19.4.4.a The Respondent's state of knowledge in respect of FF and UK was similar to his knowledge in respect of CF. He was again aware of CF's personal circumstances and he was also aware of JB's previous role in advising in respect of an earlier will. The Tribunal was satisfied beyond reasonable doubt that the Respondent's conduct in proceeding without CF having had independent advice would be considered dishonest by the standards of

ordinary decent people. The allegation of dishonesty in respect of CF was proved beyond reasonable doubt.

19.4.5 *Client SS*

19.4.5.a In assessing the Respondent's state of knowledge in respect of SS, one of the important questions for the Tribunal was whether the Respondent knew that the legacies were significant. The Tribunal had already found that the legacy of £5,000 was significant as it had also made a similar finding in the event that the legacy was considered to sums of £2,500. The Tribunal was satisfied beyond reasonable doubt that the Respondent, as an experienced practitioner, knew that these legacies were significant.

19.4.5.b The Tribunal was satisfied beyond reasonable doubt that in proceeding in the manner in which he had the Respondent had acted in a way which would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved in respect of Client SS.

19.4.6 *MA (Allegations 1.1 and 1.2)*

19.4.6.a In respect of MA, the Respondent knew that the legacies being left to him, his children and the daughter of SC were significant. He had accepted that he was aware that there was the potential for an own client conflict and he knew of the personal circumstances relating to MA, not least due to his role as her attorney. In particular this included the diagnosis of dementia and the concerns about her capacity. He was also aware of her recent bereavement. The Respondent himself had raised issues and concerns about his client's capacity in the letter to MA's financial advisers. He was also aware of the other medical evidence situation at the time, as subsequently recounted by EG, and he had referred to much of it in his witness statement. The Respondent was therefore aware not only that the client required independent advice but that there was significant doubt as to her capacity to make a new will. The Tribunal noted the Respondent's evidence that he did not believe that MA had deteriorated following the death of her sister on the basis that she had been controlling. The Tribunal found no evidence whatsoever to support such a conclusion and indeed the evidence pointed the other way. The Tribunal saw no basis at all for the Respondent to have substituted the view of the medical experts with his own. The Tribunal was satisfied beyond reasonable doubt that the Respondent was aware of the doubt concerning MA's capacity. The telephone calls that had been played to the Tribunal during the course of the hearing did not alter that finding and they did not assist the Respondent as they did not displace the strength of the medical evidence placed before the Tribunal.

19.4.6.b The Tribunal was satisfied beyond reasonable doubt that the Respondent's conduct in light of his knowledge of the situation would be considered thoroughly dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved in respect of Client MA.

Previous Disciplinary Matters

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

Mitigation

21. Mr Parker told the Tribunal that in light of the nature of the Tribunal's findings there was little that could be said in the way of mitigation given the almost inevitable sanction that the Respondent would face. Mr Parker did remind the Tribunal that the Respondent had cooperated with the investigation, had accepted restrictions on is practising certificate and had a previously unblemished record. Mr Parker submitted that the Respondent had shown considerable insight into his conduct as a solicitor. However the reality of the situation was that he had been found to have been dishonest and Mr Parker told the Tribunal that there were no exceptional circumstances to advance.

Sanction

22. The Tribunal had regard to the Guidance Note on Sanctions (December 2018). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

23. In assessing culpability the Tribunal found that the motivation for the Respondent's misconduct was financial personal gain. He had planned his misconduct. The Respondent had been in a very significant position of trust which he had seriously breached. He had complete control over the circumstances giving rise to the misconduct and at the material time the Respondent had been between 10 and 11 years qualified. On his own evidence he had acted in the preparation of between 3,500 and 4,000 wills.

24. In assessing the harm caused, the Tribunal found that the Respondent had massively damaged the reputation of the profession by preying on vulnerable clients and abusing his position. Many of these clients were elderly, widowed, childless and in at least two instances were of doubtful capacity. In the case of MA there was a diagnosis of dementia. There was harm caused to the families and other potential beneficiaries of these wills. While that harm could not necessarily be quantified, the damage to the profession was obvious and significant.

25. Matters were aggravated by the Respondent's dishonesty and the fact that his conduct was deliberate calculated and repeated in this case occurring on nine occasions over a period of five years.

26. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

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

27. The Respondent had taken advantage of clients who were vulnerable and he knew or ought reasonably to have known that his conduct was a fundamental breach of his obligations.

28. The Tribunal identified very few mitigating factors but it did recognise that there had been a degree of cooperation with the SRA, the Respondent had no previous findings before the Tribunal and he had made some very limited admissions.

29. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a strike-off. The protection of the public and of the reputation of the profession demanded nothing less. The misconduct here was significant, prolonged and reprehensible. Many of the persons had sadly subsequently died. Over a period of four years, the individuals bequeathed him in total £404,000.

30. The Tribunal found that a worrying pattern of behaviour had emerged in evidence. Each individual was vulnerable. They had few or no surviving relatives. The Respondent had befriended them often paying visits out of office hours for no apparent or ostensible professional reason. There were no independent witnesses or extraneous evidence as to their prior testamentary wishes. Each of the clients had left legacies to the Respondent, ostensibly of their own volition. Some received limited legal advice post execution of their wills while others had received no advice at all. When in some cases advice was given, it was done on several occasions by a former close colleague of the Respondent who was not independent for the reasons set out above. Their careers had been inextricably linked and progressed on a very close footing.

31. The Respondent's lack of insight as demonstrated in his evidence was astonishing and disturbing in equal measure.

32. The clients had clearly not been afforded the considerable and understandable protection given to members of the public by the professional conduct rules applicable at the material time.

33. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. There had been none advanced by Mr Parker and the Tribunal identified none from the facts of this case. The Tribunal considered that the reputation of the profession would be seriously undermined by anything other than a strike-off.

Costs

Applicant's Submissions

34. Ms Hansen applied for the Applicant's costs in the sum of £56,381.90, based on the cost schedule provided to the Tribunal and to the Respondent. She submitted that the costs incurred were reasonable. This had been a complicated case in which it had been necessary for the FI Officer to review a lot of material during the investigation. The allegations had been very serious.

35. Ms Hansen told the Tribunal that the Applicant was a reasonable regulator. While the Respondent's personal assets exceeded his liabilities, she recognised that the business assets were different as the Respondent was still growing his business as an electrician.

Respondent's Submissions

36. Mr Parker told the Tribunal that he did not object to the principle of costs or to the overall figure claimed. He submitted that the Respondent did not, however, have the ability to pay.

37. He referred the Tribunal to the Respondent's statement of means. Although there was some equity in the matrimonial home, to require the Respondent to sell would be to impose a sanction on his family. In relation to his second property, the equity was around £13,000 less the costs of sale and any Capital Gains Tax that would fall due.

38. The Respondent had debts of £144,500, including £128,000 in debts to his family. The reality was that the Respondent's net assets were less than nil.

39. The Respondent's total outgoings exceeded his income. He was dependent on his family for support and this was unlikely to change. The Respondent was impoverished and faced ruin.

The Tribunal's Decision

40. The Tribunal considered carefully the submissions of the parties and the statement of means served by the Respondent as well as the Applicant's cost schedule.

41. The Allegations against the Respondent had been proved in full and the principle was that he should pay the Applicant's costs. The Tribunal considered that the costs claimed were reasonable and proportionate. This had been a complex case in which a number of wills, and the circumstances in which they had been made, over several years had been examined.

42. The Tribunal considered whether any reduction or deferment should be made in light of the Respondent's means. The Tribunal noted that the SRA took a proportionate and reasonable approach to enforcement. The prospect of the Respondent being forced to sell the family home, as opposed having a charging order placed on the property for example, was therefore remote. Respondents often made repayments by way of instalments agreed with the SRA. The Respondent did have assets and was in employment, albeit the business was currently in its early stages. The Tribunal did not wish to prevent the Applicant from attempting to recover its costs and it was satisfied that the Respondent had the ability to pay by a variety of methods. Similarly there was no basis to defer the costs. This would in fact increase the costs as the Applicant would be required to make a further application to the Tribunal for leave to enforce.

43. The Tribunal therefore ordered that the Respondent pay the costs in full on the usual terms.

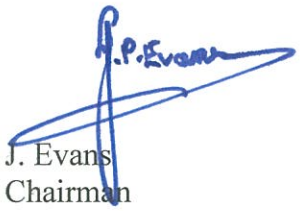
Statement of Full Order

44. The Tribunal Ordered that the Respondent, JONATHAN LESLIE HORNER, 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 £56,381.90.

Dated this 20th day of August 2019
On behalf of the Tribunal

FILED WITH THE LAW SOCIETY

21 AUGUST 2019



J. Evans
Chairman