SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11911-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

HAROLD ANTHONY NEWELL Respondent

Before:

Mrs C. Evans (in the chair)
Mr J. P. Davies
Mrs L. McMahon-Hathway

Date of Hearing: 2-3 July 2019

Appearances

David Collins, counsel of Capsticks Solicitors LLP, 1 St George`s Road, London, SW19 4DR, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were that, while in practice as a sole practitioner, trading as TS Barkes & Son ("the Firm"):

1.1 On one or more occasions between 1 July 2007 and December 2017, he made transfers from client to office account in respect of his fees, without providing written notification of the costs incurred and in excess of what was agreed and/or was fair and reasonable. He thereby breached all or any of the following:

1.1.1 Insofar as such conduct took place during the period prior to 5 October 2011 acted in breach of Rules 1.02, 1.04, 1.05 1.06, Solicitors Code of Conduct 2007 ("SCC 2007") and Rule 19 SRA Accounts Rules 1998 ("SAR 1998").

1.1.2 Insofar as such conduct took place on or after 6 October 2011 acted in breach of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the Principles") and Rule 17.2, and 20.3 (b) SRA Accounts Rules 2011 ("SAR 2011")

1.2 On one or more occasions between September 2013 and November 2017, he failed to comply with decisions of the Legal Ombudsman, adjudications of the SRA and/or the Court. He thereby breached all or any of 2, 5, 6 and 7 of the Principles.

1.3 Between April 2015 and September 2017, he failed to disclose material information to his professional indemnity insurers. He thereby breached all or any of 2, 6, and 8 of the Principles.

2. By reason of the facts and matters set out at paragraphs 1.1 and/or 1.3 above he acted dishonestly but dishonesty was not a necessary ingredient to prove those allegations.

Documents

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

Applicant

- Rule 5 Statement and Exhibit DCJ1 dated 31 December 2018
- Forensic Investigation Report of Carolann Shimmin dated 29 March 2018 and appendices
- Statements of Costs Lawyer Sue Corbin dated 7 February 2018 and 18 April 2019
- Schedule of Costs dated 25 June 2019

Respondent

- Answer to the Rule 5 Statement dated 14 March 2019
- Respondent's letter dated 2 July 2019

Preliminary Matters

4. Application to Adjourn

4.1 The Respondent had not attended court by the time his case was due to be heard and the Tribunal put the matter back whilst enquiries were made by the Applicant's counsel, Mr Collins. The Respondent spoke to Mr Collins, on the telephone and sent via e-mail a letter for the attention of the Tribunal dated 2 July 2010. In his letter he stated he was unable to attend the hearing due to health problems, both physical and mental, which had worsened in the preceding three weeks due to the strain of the proceedings (including the need to gather in hand his finances to pay the Applicant's costs) and complex on-going probate matters in which he was involved as a lay executor. He made no explicit application for an adjournment but stated "I do not wish to show any disrespect to the members of the Tribunal but in my present state of mind and my heart problems I could not face three days before the Tribunal and run the risk of collapsing in the process. I hope you can understand my position". He then asked the Tribunal to take into account a number of points with respect to the allegations and his personal circumstances.

The Applicant's Position

4.2 Mr Collins opposed any adjournment on the basis that in his telephone conversation with the Respondent the Respondent had indicated he was willing for the hearing to take place as listed. It was clear the Respondent had been aware of the date of the hearing and there was evidence before the Tribunal that the Respondent had been served correctly with the proceedings and notified of the date of the hearing. Mr Collins referred to the Tribunal's Policy/Practice Note on Adjournments (October 2002) which sets out the principles to be applied in consideration of such applications. Mr Collins highlighted that, notwithstanding the Respondent's claimed health problems, he had not submitted any reasoned medical opinion from an appropriate medical adviser in support.

The Tribunal's Decision

4.3 The Tribunal retired to consider the question of adjournment.

4.4 The Tribunal carefully considered the Respondent's letter of 2 July 2019 and Mr Collins' submissions and gave due weight to its statutory duty, under Section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's right 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.

4.5 The Tribunal considered that whilst the Respondent's health issues were not supported by evidence from an appropriate medical advisor it had no reason to doubt them. However, given the comments in his letter the Tribunal was satisfied that an adjournment of any length would not ensure his attendance at a later date. Further, on the face of the Respondent's letter there was in fact no apparent application for an adjournment. The Tribunal decided not to adjourn the hearing

5. Application to proceed in absence

5.1 Mr Collins' next applied for the substantive hearing to proceed in the Respondent's absence and relied upon the decisions in General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 16231 which in turn approved the principles set out in R v Hayward, R v Jones, R v Purvis QB 862 [2001], EWCA Crim 168 [2001] namely that proceeding in the absence of the Respondent was a discretion which a Tribunal should exercise with the upmost care and caution bearing in mind the following factors:

- The nature and circumstances of the Respondent's behaviour in absenting himself from the hearing;
- Whether an adjournment would resolve the Respondent's absence;
- The likely length of any such adjournment;
- Whether the Respondent had voluntarily absented himself from the proceedings and the disadvantage to the Respondent in not being able to present their case.

5.2 It was held in Adeogba that in determining whether to continue with regulatory proceedings in the absence of the accused, the following factors should be borne in mind by a disciplinary tribunal:-

- the Tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;
- the fair, economical, expeditious and efficient disposal of allegations was of very real importance;
- it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and
- there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.

5.3 In Mr Collins' submission the Tribunal had evidence that the Respondent had been correctly served and that he was aware of the hearing date but that he had voluntarily absented himself. With respect to his health problems there was no supporting medical evidence and even if the Tribunal had accepted at face value the evidence of ill health then it was evident from his letter of 2 July 2019 that no adjournment of any length would ensure his attendance. Mr Collins submitted that whilst there was no doubt the Tribunal would have been assisted by the Respondent's presence at the hearing the Respondent had given an account in interview and had served an Answer to the allegations and that any detriment to the Respondent in the Tribunal hearing the matter in his absence was thereby reduced. Applying Adeogba and in fairness to the Regulator

and in the interests of justice it was appropriate for the Tribunal to hear the case in the Respondent's absence and without delay.

The Respondent's Position

5.4 The Respondent had not made any submissions in respect of the Tribunal proceeding in his absence.

The Tribunal's Decision

5.5 With respect to the application to proceed in his absence the Tribunal noted the Respondent had raised no objections in his letter to the Tribunal proceeding in this way and it gave weight to Mr Collins' submission that when he had spoken with the Respondent on the telephone immediately before the hearing the Respondent had indicated that he was content for the substantive hearing to proceed that day without him.

5.6 The Tribunal considered the factors set out in Jones in respect of what should be considered when deciding whether or not to exercise the discretion to proceed in the absence of the Respondent and also Adeogba.

5.7 The Tribunal noted that the Respondent had been served with notice of the hearing and that under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") the Tribunal has the power, if satisfied service had been effected, to hear and determine the application in the Respondent's absence. The Tribunal considered the Respondent had been correctly served and was aware of the date of the proceedings; that he had voluntarily absented himself and that an adjournment would not resolve his absence. Whilst he would have the disadvantage of not being present to represent himself the Tribunal would be assisted by his Answer, the account he gave in interview and the further matters raised in his letter of 2 July 2019. The Tribunal decided that it should exercise its power under Rule 16(2) to hear and determine the application in the Respondent's absence.

Factual Background

6. The Respondent was born in 1938 and was admitted to the Roll of Solicitors in November 1963. His principal area of practice was probate and estate administration. He was a recognised sole practitioner since 1984 and was both Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA"). The Respondent did not hold a current Practising Certificate. The SRA intervened into the Firm on 18 June 2018.

7. The SRA received reports from beneficiaries in respect of two separate probate matters and a report from the Legal Ombudsman ("LeO"). As a result of these reports, an inspection of the Firm was carried out on 25 October 2017 by an SRA Forensic Investigation Officer ("FIO") during which 15 client files were reviewed.

8. With respect to the financial situation of the Firm it had declared net profits/losses of £11,000.00 for the reporting years 2013/14; £15,000.00 for 2014/15; and £100.00 for 2015/16. The Firm's practice accounts for the year ending 30 April 2017 recorded a net

profit of £2,671.00. Trade debtors totalled £86,387.00. Current liabilities totalled £67,088.00. On 30 September 2017, the Firm's office bank account was £32,567.04 in debt and its overdraft limit was £35,000.00.

Witnesses

9. The Applicant's witnesses, Carolann Shimmin (FIO) and Sue Corbin a Costs Lawyer (who considered the costs with respect to clients A and D), both gave oral evidence to the Tribunal. The written evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below as are their responses to the Tribunal's questions asked of them in clarification. The oral and written evidence referred to will be that which was relevant to the findings of the Tribunal, and to the facts in dispute between the Parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the submissions. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

10. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's right 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.

11. **Allegation 1.1 - On one or more occasions between 1 July 2007 and December 2017, he made transfers from client to office account in respect of his fees, without providing written notification of the costs incurred and in excess of what was agreed and/or was fair and reasonable.**

He thereby breached all or any of the following: insofar as such conduct took place during the period prior to 5 October 2011 acted in breach of Rules 1.02, 1.04, 1.05 1.06, SCC 2007 and Rule 19 of the SAR 1998; insofar as such conduct took place on or after 6 October 2011 acted in breach of Principles 2, 4, 5, 6 and 10 of the Principles and Rule 17.2, and 20.3 (b) of the SAR 2011.

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

Agreed Costs

11.1 The FIO's review of the files revealed that the Respondent had not provided written costs information at the outset of the instruction. During an interview on 20 February 2018, the Respondent confirmed to the FIO that on probate matters it was his standard practice to charge the lower of either £150.00 per hour or 1% of the gross estate. The Respondent informed the FIO that this approach to costs would be confirmed with the client, either in person, telephone or correspondence.

11.2 The Respondent confirmed to the FIO that on more complex matters the Firm would charge £175.00 per hour (plus VAT) and that a complex matter would involve cases in which involved either 'technical arguments' with HMRC or those involving significant practical complexities.

Fair and Reasonable

11.3 In non-contentious business, solicitors' remuneration was governed at the relevant time by Solicitors (Non Contentious Business) Remuneration Orders 1994 ("SRO").

11.4 The SRO at paragraph 3 stated that 'solicitor's costs shall be such sum as may be fair and reasonable to both solicitor and entitled person having regard to all the circumstances of the case'. The SRO set out a list of nine circumstances to have particular regard to (referred to as the "Nine Pillars"):

a) the complexity of the matter or the difficulty or novelty of the questions raised;

b) the skill, labour, specialised knowledge and responsibility involved;

c) the time spent on the business;

d) the number and importance of the documents prepared or perused; without regard to length;

e) the place where and the circumstances in which the business or any part thereof is transacted;

f) the amount or value of any money or property involved;

g) whether any land involved is registered land;

h) the importance of the matter to the client; and

i) the approval (express or implied) of the entitled person or the express approval of the testator to:
   - the solicitor undertaking all or any part of the work giving rise to the costs or the amount of the costs.

11.5 The SRO was revoked and replaced on 11 August 2009 by the Solicitors (Non Contentious Business) Remuneration Orders 2009 which provides at paragraph 3 that "a solicitor's costs must be fair and reasonable having regard to all the circumstances of the case and in particular to: the Nine Pillars"

Notification of costs prior to settling fees

11.6 In respect of the files relating to clients A to G (set out below) the FIO was unable to find evidence of either clients/beneficiaries being provided with costs information as the matter progressed, including notification of costs prior to the transfer of funds from the client account to the office account in settlement of fees.

11.7 The Respondent confirmed in interview that he would not discuss the Firm's costs with beneficiaries when he was the sole executor of the estate unless specifically requested to. In these circumstances the Respondent stated that he would only provide a 'rough estimate'.

Settling fees in excess of what was agreed and/or was fair and reasonable

11.8 The FIO's review revealed that the Respondent's fees were in excess of 1% of the gross estate in at least 7 of the client files reviewed as set out below:

Client A

11.9 Client A had died in April 2010 and the Respondent had been co-executor of the estate with VD. The file did not contain any costs information, with the exception of invoices. There was no evidence that the Firm updated the co-executor or the residuary beneficiaries as to the costs, or that invoices were sent to them. The Respondent settled at least ten invoices in respect of the file, with costs charged totalling £30,000.00 (plus VAT). The gross estate was valued at £727,503.00.

11.10 The administration of the estate did not involve technical arguments with HMRC or substantial practical complexities warranting a departure from the standard fee structure. Mrs Corbin, Costs Lawyer, stated in her report that the "estate, whilst unusual in that it involved the distribution of a substantial collection of cycling memorabilia, did not present any challenging legal issues and would have been well within the scope of a grade C fee earner or probate clerk [£146 per hour]."

11.11 In the absence of written costs information, the Tribunal was invited to infer that the maximum agreed charge applicable to the file was the lower of either £150.00 per hour or 1% of the gross estate. The maximum charge in these circumstances, incorporating the value of the gross estate, was £7,275.03 and on this basis, the settled invoices represented an overcharge of 312%.

11.12 Mrs Corbin, additionally considered costs in light of the SRO 2009 and concluded that an application of the Nine Pillars would suggest a fair and reasonable fee, incorporating the 15 or 20 visits to the Client A's bungalow advanced by the Respondent (but not evidenced on the file), would be in the region of £10,425.00 (plus VAT). On this basis, the settled invoices represented an overcharge of 188%.

11.13 Mrs Corbin told the Tribunal that, notwithstanding the volume of cycling memorabilia which was required to be dealt with, she would have expected that this could have been done in no more than 2 or 3 visits to the deceased's bungalow and that if 15 or 20 visits had actually been required (the exact number of visits was not clear from the file) then the Respondent should have prepared detailed notes in the event of any challenge to his costs. However, there were no notes of any sort on the file save for correspondence some of which was sent by A's neighbour and friend informing the Respondent that he had been sorting through the cycling memorabilia and the arrangements he had made for its disposal.

11.14 In her opinion the Respondent had been under a duty to control the costs and it would have been open to him to hire a house clearing company who could have dealt with the house-hold possessions with more efficiency and economy. The 'round sums' in the bills indicated to her that they were not based on an accurate time record and to all intents and purposes were plucked from the air.

Client B

11.15 Client B had died in November 2008. The Respondent had been the sole executor. The Grant of Probate dated 10 July 2009 certified that the gross value of the estate did not exceed £312,000. Notwithstanding the certification, assets totalling £375,524.49 were collected between 16 December 2008 and 23 January 2012. The total invoices settled in favour of the Firm were in the sum of £10,000.

11.16 The FIO's review of the file did not identify that the administration of the estate involved technical arguments with HMRC or substantial practical complexities warranting a departure from the standard fee structure and in the absence of written costs information, the Tribunal was invited to infer that the maximum agreed charge applicable to the file was the lower of either £150.00 per hour or 1% of the gross estate. The maximum charge in these circumstances, incorporating the value of the gross estate was £3,755.25. On this basis, the settled invoices represented an overcharge of 166%.

Client C

11.17 Client C died in June 2003 and the Grant of Probate dated 6 May 2014 certified that the gross value of the estate did not exceed £325,000.00. The FIO identified total estate assets of £152,301.42. The total invoices settled in favour of the Firm were valued at £5,000 (plus VAT).

11.18 The FIO's review of the file did not identify that the administration of the estate involved technical arguments with HMRC or substantial practical complexities warranting a departure from the standard fee structure and in the absence of written costs information, the Tribunal was invited to infer that the maximum agreed charge applicable to the file was the lower of either £150.00 per hour or 1% of the gross estate. The maximum charge in these circumstances, incorporating the value of the gross estate, was £1,523.00 and on this basis, the settled invoices represented an overcharge of 228%.

Client D

11.19 Client D died in May 2016 and the Respondent had been the co-executor with CC, client D's daughter. The Grant of Probate dated 8 November 2016 certified the gross value of Client D's estate as £480,180.00. Notwithstanding the certification, the FIO identified assets received totalling in the region of £530,000.00. The total invoices settled in favour of the Firm was in the sum of £12,665.00 (plus VAT).

11.20 The FIO's review of the file did not identify that the administration of the estate involved technical arguments with HMRC or substantial practical complexities warranting a departure from the standard fee structure.

11.21 In the absence of written costs information, the Tribunal was invited to infer that the maximum agreed charge applicable to the file was the lower of either £150.00 per hour or 1% of the gross estate. The maximum charge in these circumstances, incorporating the value of the gross assets of the estate, was £5,300.00 and on this basis, the settled invoices represented an overcharge of 139%.

11.22 With respect to client D, the Tribunal asked Mrs Corbin her views on the contention that the co-executor, CC, had thought Respondent's costs to have been very reasonable. In response Mrs Corbin stated that she had found no formal retainer on the file between the Respondent and the Firm or between the Respondent and CC and in the absence of a breakdown of the work carried out by the Respondent, the hourly rate being charged, and any costs calculations, CC would not have had enough information to reach an informed assessment as to the reasonableness or otherwise of the Respondent's costs. In her opinion the costs claimed were in excess of the costs which could reasonably have been claimed and whilst the case had its own particular difficulties it was not as complicated as the Respondent had suggested.

Client E

11.23 Client E died in February 2007. The sole executor for this estate had been MCJ. The Grant of Probate dated 18 June 2007 certified the gross value of Client E's estate as £449,449.00. Notwithstanding the certification, the estate's account recorded receipts and assets totalling £471,342.58. The total invoices settled in favour of the Firm were in the sum of £15,000.00 (plus VAT). The FIO's review of the file did not identify that the administration of the estate involved technical arguments with HMRC or substantial practical complexities warranting a departure from the standard fee structure.

11.24 In the absence of written costs information, the Tribunal was invited to infer that the maximum agreed charge applicable to the file was the lower of either £150.00 per hour or 1% of the gross estate. The maximum charge in these circumstances, incorporating the value of the gross estate, was £4,713.00 and on this basis, the settled invoices represented an overcharge of 218%.

Client F

11.25 Client F died in September 2008 and the Respondent had been the sole executor. The Grant of Probate dated 24 July 2009 certified the gross value of Client F's estate as £593,928.00. The total invoices settled in favour of the Firm was £14,250.00 (plus VAT). The Respondent had raised £3,250.00 in fees since 2012 when the last recorded movement occurred on the file.

11.26 The FIO's review of the file did not identify that the administration of the estate involved technical arguments with HMRC or substantial practical complexities warranting a departure from the standard fee structure.

11.27 In the absence of written costs information, the Tribunal was invited to infer that the maximum agreed charge applicable to the file was the lower of either £150.00 per hour or 1% of the gross estate. The maximum charge in these circumstances, incorporating the value of the gross estate, was £5,939.28 and on this basis, the settled invoices represented an overcharge of 140%.

Client G

11.28 G died in October 2002. The executor was JS. The Grant of Probate dated 4 November 2002 certified the gross value of the estate as not exceeding £220,000. The Estate's

accounts identified total assets of £205,357.67. The FIO identified that the Respondent had raised invoices totalling £4,200.00 (plus VAT).

11.29 The FIO's review of the file did not identify that the administration of the estate involved technical arguments with HMRC or substantial practical complexities warranting a departure from the standard fee structure.

11.30 In the absence of written costs information, the Tribunal was invited to infer that the maximum agreed charge applicable to the file was the lower of either £150.00 per hour or 1% of the gross estate. The maximum charge in these circumstances, incorporating the maximum value of the gross estate, was £2,200 (as set out in the Grant of Probate). On this basis, the settled invoices represented an overcharge of 91%.

11.31 Mr Collins submitted that the Respondent's actions amounted to a failure to act with integrity and was a breach of Principle 2 of the Principles and 1.02 SCC 2007. Mr Collins invited the Tribunal to apply the test for integrity as set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … [Professionals] are required to live up to their own professional standards … Integrity connotes adherence to the ethical standards of one's own profession".

11.32 It was submitted that the Respondent had failed to act with integrity in that he had held an important position of responsibility at the Firm as the COLP and COFA and was the sole individual responsible for the files and as such knew both the agreed fees and the values or approximate value of the gross estates. He knew that he had charged in excess of what was agreed and/or was fair and reasonable and his duty to appropriately invoice clients and provide written costs notifications prior to settling costs was higher due to his specific role at the Firm and he had benefited financially from the settled costs. In failing to provide notification of the invoices he was aware or should have been aware of the risk that clients were prevented from effectively challenging the payments. He subordinated the interests of the client to his own financial interests and made improper payments out of the client account. The breaches were not isolated but occurred on multiple occasions spanning a variety of files and years.

11.33 In breach of Principles 4 and 5 of the Principles and 1.04 and 1.05 SCC 2007 his actions had resulted in his clients, paying without prior notification, greater fees than had been agreed and/or were fair and reasonable and by doing so the Respondent failed to act in the best interests of his clients or provide a good standard of service.

11.34 In breach of Principle 6 of the Principles and 1.06 SCC 2007 the Respondent's actions resulted in his clients paying, without prior notification, greater fees than had been agreed and/or were fair and reasonable. The public were entitled to expect a solicitor not to overcharge either above what is agreed or above what is fair and reasonable. By repeatedly overcharging clients on probate files and/or in transferring payment from client to office account without providing prior notification, the Respondent acted in a way that diminished the trust the public places in the legal profession. He had also

breached Principle 10 of the Principles by failing to protect client money and breached Rule 19 SAR 1998 and Rules 17.2 and 20.3 SAR 2011.

11.35 The Applicant's case was that the Respondent had been dishonest and that the test for dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "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."

11.36 Mr Collins submitted that as an experienced solicitor with conduct of the matters the Respondent would have known that withdrawing client funds in excess of what was agreed and/or was fair and reasonable was not permitted and that he was required to send written notification of his costs prior to settling his fees. The overcharging was for considerable amounts and his actions were financially motivated and that ordinary, decent people would consider his behaviour dishonest.

11.37 In response to a question from the Tribunal Mr Collins clarified that the beneficiaries of the various estates could not be accurately considered 'clients' *per se.* The clients would have been the deceased when alive and thereafter the executors of the estates and/or the paying parties. In the instant cases it was to the executors that written costs information should have been supplied and this information would have been mandatory in those cases where he was not the executor or where he was acting as a co-executor. In cases where he was the sole executor it would have been 'best practice' to have had this information on the file.

11.38 The files should have contained client care letters and costs information setting out the fee structure going forward but there was nothing within them which set out the basis of his fees. It was noticed that when he had submitted bills they were for 'round sums' and without any calculation showing how he had arrived at those sums. The FIO noted that the overall pattern was that client care information could not be found on the files and that he had left work to languish: he did not answer questions or queries that came in and the general impression was that he was not on top of the work.

The Respondent's Case

11.39 The Tribunal considered the matters set out in the Respondent's Answer and issues raised in his interview with the FIO.

11.40 Throughout his career until about 2001 or 2002 he was a General Practitioner being involved in company and commercial work; police court advocacy; matrimonial; civil litigation; licencing matters and planning appeals. Over the preceding 16 years however he had restricted his work to conveyancing, wills, tax planning lasting powers of attorney, probate and general advice and conveyancing.

11.41 He had always tried to comply with the spirit of the rules but would often be under too much pressure of work to deal with the formalities. In late January 2008 he suffered three heart attacks in 4 days and his period of ill health and physical ailments continued for the next eight years culminating in having open heart surgery in 2015. He managed to keep matters reasonably up to date during that period but with frequent interruptions from the conveyancing work it was difficult to find time to concentrate on some substantial estates which had reached the stage of being finalised.

11.42 With respect to conveyancing matters there was much competition and he did give an exact figure in order to receive instructions which he confirmed in writing to the client and noted on the file. In his opinion it was a more straightforward task to assess the work involved in a conveyancing matter. With respect to probate matters he always made it his practice to make payments on account to beneficiaries during the administration period. The beneficiaries who had complained would have had as much as 95% of their share and there had been minimal impact on them.

11.43 His usual practice on probate matters was to discuss the question of costs with the executors or beneficiaries at the commencement of the matter when he could make an assessment of the work involved. An understanding would be reached as to the likely figure and he would explain that as the matter progressed he would make an interim charge at significant intervals such as when probate was granted. If requested he would confirm matters in writing but invariably the persons involved were long standing clients and friends who did not require this. He had his costs questioned on rare occasions and he would reach an agreement with the beneficiaries or executors involved. From time to time the comment was made that his charges were very reasonable.

11.44 In general terms the Respondent considered it had been a massive task to answer the points raised by the FIO and he considered the FIO had been biased against him from the commencement of the investigation and frequently questioned him as to why he had not retired or merged with another Firm and this subject was raised on every visit. The FIO appeared uninterested in his comments and appeared to have already made up her mind. In his over 50 years in the profession he had always acted with decency and integrity and often on a pro bono basis in deserving cases.

11.45 With respect to the individual cases identified by the FIO the Respondent set out the following:

11.46 *Client A*

11.46.1 This man had been had a close friend for over 50 years and in life he had been a fanatic cyclist who had been well known in the cycling world. He had amassed 300 boxes of cycling photographs, slides and memorabilia. He asked the Respondent to be his executor as he wished to have a devoted executor to

carry out his wishes and in particular to keep all his records and memorabilia together. He wished his cycles and equipment to be disposed of to serious cyclists who would appreciate the excellent condition in which they had been maintained.

11.46.2 The Respondent suggested to A that his colleague, VD, be appointed as a co-executor. VD agreed to have reserved power so that she would not be part of the application for probate.

11.46.3 Following A's death the Respondent set about carrying out his wishes which included informing people, disposing of his ashes, some of which were scattered on the route of the Tour de France in Dieppe. As executor he next set about dealing with A's effects at the bungalow and this involved at least 15 visits. There was a considerable amount of material and equipment to dispose of and he did this using his own cycling connections and a neighbour whose daughter and granddaughter were the last two residuary beneficiaries named in the will. He was also able to persuade a local museum in Stroud to accept the major part of the records and memorabilia.

11.46.4 The Respondent maintained that a Grade C fee earner who had not known the deceased or his history could not have done justice to A's wishes as the Respondent had done and he thought this should be reflected in his executor's fee. The co-executor did not wish to be involved in the estate unless this became absolutely necessary and the Respondent did not feel it was appropriate to inform the residuary beneficiaries of the projected costs. The costs were difficult to assess in view of the executors' responsibilities in carrying out the non-legal work. The minor beneficiaries received 6.35% of the residue which equated to £62.25 per £1000 of costs. Further, the will had contained a charging clause and the considerable time he spent on executorship duties for the deceased who had had such an exceptional history should not have been overlooked by Mrs Corbin who did not take into account the time and effort it required of him.

11.47 *Client B*

11.47.1 The figure of £312,000 was the nil rate band at the date of death and the certificate read in full "It is hereby certified that it appears from the information supplied on the application for this grant that the gross value of the said estate etc". The application form was completed by the Respondent to the best of his knowledge. His recollection was that the estimated value of the property was lower than the eventual sale price. As an executor it was necessary for him to visit the property on 3 occasions. B was a spinster who lived on her own. He searched for and collected together the business papers that he could find. He visited the property with a local estate agent who provided him with an estimated figure for its value and he visited again with the deceased's distant cousin so that she could remove any items for which she could find a use and which had no resale value. He then arranged for the property to be cleared so that it could be put on the market.

11.47.2 The will gave the residue 'to be used for the purposes of the Penhurst School Chipping Norton'. This was a residential school for disadvantaged and vulnerable children. A payment was duly made to the charity which administered the school however the Respondent later learned from the school's manager/headmaster that the school had not received any benefit from the payment. The Respondent informed the headmaster of the next payment which was to be made to the charity and this was properly applied.

11.47.3 Sometime later the school was closed and sold to a developer of luxury flats and a 5 Star Care Home. This information caused the Respondent concern as the purpose of the gift was being defeated. He researched the legal situation and under the *cy-pres doctrine* he paid the balance in the estate for use in connection with a different school with similar charitable purposes.

11.47.4 The Respondent had requested the return of the file from the SRA and was prepared to review the costs generally in the light of his efforts as executor, the closure of the school and the investigation that that required of him.

11.48 *Client C*

11.48.1 There were considerable practical difficulties with this estate and the Respondent could not understand how the FIO came to her conclusion.

11.48.2 C had wished to make Lasting Power of Attorney in favour of her son. She was housebound and the Respondent visited her bungalow with her son to take instructions. The property was fairly dilapidated and she was in serious arrears with her mortgage and had other pressing debts. C also wished to amend her will and she gave the Respondent a copy. The will had been prepared by a solicitor in the Sutton Coldfield area. A few days after this visit C died.

11.48.3 Immediately there were practical problems. The family could not raise the deposit required by the Funeral Director and the various creditors were beginning to press. He could not trace the solicitor at the address on the back sheet of the copy will and a daughter of the deceased who was estranged from the rest of the family claimed that valuable rings belonging to her mother had disappeared.

11.48.4 C's surviving elder sister was the sole surviving executrix and it proved necessary for her to appoint her daughter as her attorney. They were not local to the Respondent and it was difficult for him to persuade them to proceed in this way but he eventually succeeded.

11.48.5 His most difficult problem was in tracing the solicitor who held the original will. Another solicitor had taken over the practice but it failed and closed down. The Respondent then traced the solicitor but when the Respondent telephoned him he would not assist and became quite abusive. The Respondent applied to the Probate Registry to allow the copy will to be admitted to probate and it took him some time and persuasion to convince the Probate Registry to issue an order. At the same time he was having to keep creditors satisfied that the estate could clear the sums owed to them once

probate was received and the bungalow could be sold. Once probate was issued the bungalow was quickly sold (its state of upkeep was reflected in the price) and the creditors were all paid.

11.48.6 C's family appeared to be dysfunctional. One beneficiary did not want to present her cheque for her share in the estate. Another beneficiary changed her address and he was not able to discover her whereabouts. The Respondent stated that if the file was returned to him he would prepare a detailed bill of costs.

11.49 *Client D*

11.49.1 The Respondent had known D for 25 years and they became good friends having been co-executors of a mutual friend's estate. The Respondent had acted on the estate of D's wife and set up a discretionary trust under the will. The ultimate beneficiary was the couple's only child, a daughter and the asset of the trust was a property in Devon which was purchased by the trustees who were D and the Respondent. D sold investments and the proceeds were applied to the purchase of D's wife's half share of the family residence at probate value and it was these funds which were used to purchase the Devon property which was then used by D and the daughter as a holiday home.

11.49.2 Following the wife's death D developed a close relationship with a younger woman, HC, and in his will D gave her his car and a legacy of £25,000 and he subsequently made a codicil in his will giving her an option to purchase his residence at probate value as agreed with HMRC, such option to be exercised within 6 months from date of probate.

11.49.3 Following D's death the Respondent obtained a valuation figure of £375,000 for D's property and he gave this to HC. The matter was taken up on her behalf by someone acting under a Lasting Power of Attorney. This person suggested that the valuation was inflated so that she could not afford to exercise the option. The Respondent told him to seek his own valuation but this too was not agreeable and the person acting under the Lasting Power of Attorney asked for the terms of the codicil be amended to allow a substantial discount on D's property to reflect the long friendship between D and HC.

11.49.4 D's daughter became distressed at the behaviour of HC and she contacted the Respondent by telephone and e-mail on a near daily basis. The Respondent convinced her that he had matters under control and she was appreciative of his support.

11.49.5 The application for probate was made using the valuation figure as the estimated value of the property. The unpleasant correspondence with the attorney continued at intervals and eventually the period of 6 months expired and as the option was not exercised the property was marketed and sold for over £400,000 and the proceeds paid to the daughter who commented that she thought the costs were very reasonable for his work over a long period.

11.49.6 The Respondent stated that D had asked him to 'look after his daughter' when he died and he considered that in retrospect D was anticipating a clash between HC and his daughter and he felt that he carried out D's wishes. The Respondent informed the FIO of this issue and disagreed with her assessment that this was not a relevant consideration in her investigation. He accepted that he did not make file notes of the issues as they occurred but stated that there was some correspondence on the file indicating the time consuming nature of the work he carried out.

11.50 *Client E*

11.50.1 E was the mother of client F who died 18 months later. E's husband died 16 months after his daughter so the Respondent had three substantial files for the same family. The daughter had little knowledge of her mother's affairs and the husband was elderly, frail and a little confused. The papers were not in an orderly state and the Respondent had to check through many papers to ensure which financial documents were still relevant. It took time for the Respondent to explain to the husband that he should enter into a Deed of Variation in favour of his daughter to save future inheritance tax.

11.50.2 The Respondent noted that the preparation of the final accounts revealed book keeping errors between the three separate ledgers for the family and he had taken steps to correct the errors and had agreed a costs figure with MCJ, the sole executor and a credit note was issued.

11.51. *Client F*

11.51.1 F was the daughter of E and she fell seriously ill with cancer and died intestate. Her father was the only beneficiary under the intestacy. The father was unable cope and he asked the Respondent to act as his attorney to obtain Letters of Administration. The father could no longer drive and the Respondent visited him on three occasions to deal with matters. The father wished to vary the statutory rules of succession by giving legacies to two nieces of his wife and the residue to MCJ who was his godson. When the grant was obtained the Deed of Variation was completed.

11.51.2 MCJ and the Respondent visited F's property on two occasions and discovered that she had also owned a small second property in Cornwall. The Respondent received a considerable volume of her papers and it took many hours to go through them and put them in order. F had run a business and her papers relating to that business were in also in a state of disorder. The Respondent experienced difficulty in settling matters with Companies House and HMRC as her accountants had been taken over and there were problems in locating and contacting the new Firm.

11.51.3 The task therefore of putting E's affairs in order took considerable effort and the Respondent took issue with the FIO's assessment that there were no practical complexities. In December 2012 he made an assessment of costs for his work and concluded that interim payments made did not cover the time and work carried out on the estate and accordingly he issued a further interim bill

which he felt was justified. He had also received a clearance certificate from HMRC which took five months to obtain despite regular reminders. He was working with MCJ to bring the estate to a conclusion and he also unearthed an account with Santander with approximately £22,000 but had had to instruct specialist litigation solicitors to take proceedings to recover the money which appeared to have been paid elsewhere either in error or by way of a scam.

11.52 *Client G*

11.52.1 In this estate there were more investments than the Respondent had anticipated and the executor, JS, was not always prompt in communicating with him. A distribution took place with a memorial to be provided for the grave. The Respondent did not hear further from JS for a year until he was contacted by him stating that he had visited the grave and there was no memorial in place. The executor gave him the address of the monumental mason who had agreed to do the work and the Respondent confirmed that he would settle the account. The Respondent heard nothing more from the executor.

11.52.2 The Respondent considered his costs were fair for dealing with the estate in a prompt manner.

The Tribunal's Findings

11.53 The Tribunal carefully considered the allegations and the submissions made by the Respondent to the FIO and in his Answer.

11.54 With respect to the transfer of money from client account to office account the Tribunal found as a fact that the executors were required to be notified of the basis of the fees in writing before being invoiced and even in cases where he was the sole executor it would have been good practice for the file to contain a client care letter setting out how the costs would be calculated. Other than the Respondent's assertion that he would speak to his clients regarding how the fees would be calculated there was no written evidence on any file by way of a client care letter or attendance note setting out this information. There was no written estimate of the work to be done and the fees potentially payable and then no breakdown of the work actually carried out with calculations setting out how he had arrived at the amount being invoiced. Further, in the cases where he was a co-executor there was no evidence that he had entered into a retainer or sent details of the proposed costs to his co-executor.

11.55 As to charging fees for more than agreed and/or fees which were not fair and reasonable the Tribunal found that there was in fact no evidence of what fees had been agreed and even on his own evidence there was overcharging as set out by the FIO with respect to Clients A-G which was grossly in excess of the Respondent's admitted charging practice i.e. the lower of £150 per hour or 1 % of the gross estate or £175 per hour (plus VAT) for more complex matters. The Tribunal contrasted the Respondent's consistent failure to provide any written costs information in probate matters and his submission that "he always tried to comply with the spirit of the rules but would often be under too much pressure of work to deal with the formalities" with his contention that in conveyancing matters (as to which no complaint was made) he would always provide the client with precise billing information which was evidenced on the file.

11.56 The Tribunal considered the detailed analysis carried out by Mrs Corbin on Client A's file and found her evidence persuasive. Objectively there was no justification for the 15 or 20 visits to the property and the charges he made for his visits were outside his own charging structure and even by applying a generous benefit of the doubt the final figure of £30,000 was not fair and reasonable in accordance with the 'Nine Pillars'. The consistent billing of 'round sum figures' was further indication of inadequate time recording and at best a guessing at the work actually carried out.

11.57 With respect to the contention that the co-executor, CC, in Client D's case had considered Respondent's costs to have been very reasonable the Tribunal was persuaded by Mrs Corbin's evidence, namely, that in the absence of any costs information CC would not have had sufficient information to reach an informed assessment as to the reasonableness of his costs.

11.58 In breach of Principle 2 of the Principles and 1.02 of SCC 2007 the Respondent failed to act with integrity in that he had charged on an arbitrary basis which invariably ended up in him charging more than agreed and/or was fair and reasonable. There were multiple breaches over a significant period of time which indicated a repeated pattern of behaviour. He failed to act with moral soundness, rectitude and steady adherence to the standards of the profession. He had held an important position of responsibility as the COLP and COFA and he knew that he had charged in excess of what was agreed or fair and reasonable and he failed in his duty to appropriately invoice clients and provide written costs notifications prior to settling costs.

11.59 In breach of Principles 4 and 5 of the Principles and 1.05 of SCC 2007 the Respondent had failed to act in the best interests of his clients and provide them with a proper standard of service as his actions had resulted in his clients paying without prior notification greater fees than had been agreed and/or were fair and reasonable. None of the files showed any evidence of the work actually carried out and no attendance notes and his clients, whether they were the executors or his co-executors, would have had any information on the true costs of his work.

11.60 In breach of Principles 6 and 1.06 SCC 2007 he had acted in a way which had diminished the trust the public placed in the legal profession. The public should be able to ensure that a solicitor will keep them fully informed of his work and costs and that he is fulfilling his obligations and duties be that as a solicitor working on behalf of the executor or in his role as the executor. The Tribunal considered that given the Respondent had stated in his Answer that his clients were friends and longstanding clients who trusted him then he was obliged to have exercised caution in how he proceeded. The circumstances which arose in each of the cases identified by the FIO indicated the very reason why the Rules and Principles had been created, so that confusion, disputes and distress would be avoided.

11.61 In breach of Principle 10 of the Principles by settling costs in excess of what had been agreed and/or were fair and reasonable he had failed to protect client money and by failing to provide the requisite written notification of the costs prior to transferring money from the client account the office account the Respondent had breached Rule 19 SAR 1998, and Rules 17.2 and 20.3 of SAR 2011.

11.62 The Tribunal was satisfied that Allegation 1.1 was proved beyond reasonable doubt.

Dishonesty alleged in respect of Allegation 1.1

11.63 Applying the test set out in Ivey the Tribunal was sure that the Respondent was aware that he was not complying with the Rules or Principles. The Respondent had known that he had made transfers without written notification and he knew that withdrawing client funds in fees in excess of what was agreed and/or was fair and reasonable was not permitted. He accepted that he knew the rules when had told the FIO that he had always tried to comply with the spirit of the rules but that he would often be under too much pressure of work to comply with the formalities. This was to be contrasted with his practice in relation to conveyancing clients where he did send out precise billing information. There was a long pattern over a significant period of time of the Respondent's failure to deal properly with his probate clients and there was significant overcharging. The Tribunal was satisfied that his conduct would be regarded as dishonest by the standard of ordinary decent people and that he had dishonestly over-charged his clients, and had done so for a significant period of time.

11.64 The Tribunal found that Dishonesty was proved beyond reasonable doubt in relation to Allegation 1.1.

12. **Allegation 1.2 - On one or more occasions between September 2013 and November 2017, he failed to comply with decisions of the LeO, adjudications of the SRA and/or the Court. He thereby breached all or any of the Principles 2, 5, 6 and 7 of the Principles.**

The Applicant's Case

LeO Decision 9 September 2013

12.1 On 9 September 2013, the LeO provided a final decision in respect of a complaint made on behalf of Individuals Y and Z. The complaint was that the Firm had unreasonably delayed the finalisation of Client A's estate, failed to provide updates on progress, and failed to respond to requests for an update. LeO directed that the Firm pay Individuals Y and Z £100 each as compensation and to provide six weekly updates until the matter was finalised and final payment made.

12.2 The client ledger recorded that £100 each was paid to Individuals Y and Z on 16 August 2013 and the Respondent provided updates to the beneficiaries until February 2014. In June 2014, LeO wrote to the Respondent requesting an explanation for the failure to provide regular updates and subsequently sought an order from the Court for enforcement in light of the Respondent's lack of substantive engagement.

12.3 On 15 April 2015 in the County Court of Gloucester and Cheltenham, the Respondent was ordered to: provide the complainants [Individuals Y and Z] with an update on the progress of the administration of the estate within 21 days and within 42 days to provide a further update to Y and Z and pay costs of £200.

12.4 On 25 October 2017, the Respondent was questioned by the FIO in respect of the Court Order. The administration of the estate had not been concluded by this date. The Respondent acknowledged that he had failed to comply with the Court Order as he had been busy.

12.5 On 24 November 2017, the FIO returned to the Firm and confirmed that the Respondent had still not complied with the Court Order. The administration of the estate had not been concluded by this date. The Respondent informed the FIO that he had not heard from the father of Y and Z for about three years so 'did not consider him.'

12.6 On 29 November 2017, the Respondent wrote to the FIO enclosing a letter to LeO of the same date, a cheque in the sum of £200 and a letter to the father of Individuals Y and Z.

LeO Decision 22 December 2014

12.7 On 22 December 2014 the LeO provided a final decision in respect of a complaint by Individual X. The LeO sought enforcement of the decision from the court.

12.8 On 20 August 2015 in the County Court at Bristol, the Respondent was ordered, *inter alia* to provide X with monthly updates on the case and continue to do so until the conclusion of the case; pay X's new solicitors fees of £798 inclusive of VAT and pay X £200 in recognition of worry caused by poor service and pay costs of £150.

12.9 The order noted that if the Respondent did not comply with the Order he may be 'held to be in contempt of Court and imprisoned or fined, or your assets may be seized'.

12.10 On 16 February 2018, X wrote to the SRA to confirm that the Respondent had not complied with the order in that the Respondent had failed to provide monthly updates on the case. The LeO wrote to the Respondent on 3 November, 19 November 2015, and 22 December 2015 and 12 January 2016 chasing payment.

12.11 The Respondent was questioned by the FIO on his failure to comply with the Court Order. The Respondent, acknowledging his failure to comply, stated that: '[he was] always was on the point of getting something done um to clear it up. But that's going to take a couple of days to do without being interfered with on other matters at all and I don't get that luxury unless I take two days off at home and do it there'. He believed that he had paid £400 to LeO.

LeO Decision 10 October 2016

12.12 On 10 October 2016, the LeO made a decision in respect of the Respondent's failure to exercise a lien over files relating to Individuals Y and Z and was ordered to send the file to Individual W. On 30 November 2016 the Respondent promised by telephone to provide W a full breakdown of the work undertaken for Y and Z, and all files, deeds and other papers held in his possession by 1 December 2016.

12.13 The Respondent acknowledged that the promise would be treated as a solicitor's undertaking. Representations from the Respondent to the SRA dated 19 May 2017 acknowledged that the Respondent had still not provided all the information he had undertaken to provide. On 9 June 2017, an SRA Adjudicator considered allegations relating the Respondent's breach of an undertaking, and failure to substantively respond to the SRA and found that the Respondent had failed to achieve Principle 7 of the Principles, Outcome 10.6 and 11.2 of the Code 2011. The Adjudicator determined that the Respondent pay a fine of £1,000 and costs of £600.

12.14 The Respondent failed to pay the fine or costs to the SRA and the SRA sent two costs notification invoices dated 3 July 2017 and 2 August 2017.

12.15 The Respondent was questioned by the FIO on his failure to comply with the SRA's Adjudication decision and he indicated that he had not had sufficient time. The Respondent had not paid the fine or costs as at 15 March 2018 and the FIO identified that between 26 October 2017 and 25 January 2018, the Respondent had taken on 18 new client matters.

12.16 By failing to comply with decisions of the LeO, the SRA and the Court he had he had failed to act with integrity and had thereby breached Principle 2. As an officer of the court society and the profession had expected him to comply and prioritising alternative commitments he subordinated his obligations to his regulator, ombudsman and the court.

12.17 By failing to provide updates to his clients, having been directed to do so by the LeO, SRA and the Court he failed to provide his clients with a proper standard of care and by repeatedly failing to comply with such decisions he diminished the trust the public places in the legal profession in breach of Principles 5 and 6.

12.18 He breached Principle 7 by failing to comply with his legal and regulatory obligations and deal with his regulator and ombudsman in a co-operative manner.

The Respondent's Case

12.19 In his Answer the Respondent stated that he had not knowingly ignored any decisions or other matters from the LeO. Often matters did not come to his notice. He would use a dedicated room on the ground floor of his office for interviews. If he was not in his room his staff would place papers and e-mails on his desk received in his absence. However they often did not inform him of the very relevant matters which required his attention and due to pressure of work and lack of time he had difficulty in dealing with the build-up of papers on his desk.

The Tribunal's Findings

12.20 The Tribunal noted that there had been some partial compliance with the earlier order but not with the payment of costs. The Respondent had failed to update Y and Z every six weeks as he had been directed to do and disregarded the later court orders.

12.21 The Tribunal found that in breach of Principle 2 of the Principles the Respondent had failed to act with integrity. The account he gave regarding his lack of awareness of the paperwork from the LeO and the County Court was inherently implausible: there had been multiple complaints and written communications from the LeO and the County Court over a significant period of time. A solicitor acting with integrity would have actively managed his workload, engaged effective assistance and prioritised his dealings with the LeO and County Court. On his own account he had let the papers build up on his desk and then sought to shift the responsibility to junior staff for not adequately bringing them to his attention.

12.22 In breach of Principle 5 by failing to provide updates and/or material to clients, having been expressly directed to by the LeO, SRA and the Court, the Respondent failed to provide a proper standard of service to his clients. He had also breached Principle 6 of the Principles as the public were entitled to expect a solicitor to comply with decisions of the LeO, SRA, and the Court and by repeatedly failing to comply with such decisions, the Respondent behaved in a way which diminished the trust the public places in the legal profession.

12.23 The Respondent had breached Principle 7 of the Principles by not complying with the LeO decisions, SRA Adjudication and Court and thereby the Respondent had failed to comply with his legal and regulatory obligations and deal with his regulator and ombudsmen in a co-operative manner.

12.24 The Tribunal was satisfied that Allegation 1.2 was proved beyond reasonable doubt.

13. **Allegation 1.3 - Between April 2015 and September 2017, he failed to disclose material information to his professional indemnity insurers. He thereby breached all or any of the Principles, 2, 6, and 8 of the Principles.**

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

13.1 On 8 March 2018, the LeO confirmed that there were 10 cases relating to the Respondent on file and at least 4 decisions in total had been made against the Firm.

13.2 The Respondent completed the Insurer's professional indemnity insurance proposal forms ("Indemnity Forms") for the years 2015/2016, 2016/2017 and 2017/2018. The Indemnity Form for 2015/2016 stated:

> "[a]ll material information must be disclosed to QBE to enable terms to be negotiated and cover arranged. This is not limited to answering specific questions that may be asked in this Renewal Form. Any changes, which may occur or come to light after a quotation has been given, must also be notified. To ensure that cover is not prejudiced, please refer to [the Insurer] if there is any doubt as to what information needs to be disclosed."

13.3 The Respondent failed to disclose that he had been subject of an investigation by the SRA, LeO or been subject to an enforcement order during the period 2015 – 2016.

13.4 The professional indemnity insurance proposal form for 2016/2017 and 2017/18 stated at section 4:

> "Has the Firm or any prior Practice or any present or former Principals, Partners, Members, Directors, Consultants and employees thereof:
>
> a) Been or is the subject of an investigation that has been upheld, or any investigation or intervention by any regulatory department of the Solicitors Regulation Authority, the Legal Ombudsman Service or any other recognised body."

13.5 The proposal form additionally stated under the header ‘Duty to disclose material information’ that:

> “Material information is information that would influence an insurer in deciding whether a risk is acceptable and if so the premium terms and conditions to be applied.
>
> All material information must be disclosed to insurers to enable terms to be negotiated and cover arranged. This is not limited to answering specific questions that may have been asked in this proposal form. Any changes, which may occur or come to light after a quotation has been given, must also be notified.”

13.6 The proposal form further included an information sheet headed Duty of Disclosure which confirmed that:

> “In order to meet the duty of fair presentation you must:
>
> Disclose every material circumstance that you know or ought to know, or sufficient information to put the insurer on notice that it needs to ask further questions to reveal those material circumstances; and
>
> Mark disclosure in a manner which would be reasonably clear and accessible to a prudent insurer; and
> Make sure that ever material representation as to a matter of fact is substantially correct, and ever material representation as to a matter of expectation or belief is made in good faith.”

13.7 The Respondent failed to disclose that he had been subject to adverse decisions by both the SRA and, LeO or been subject to an enforcement order by the court during the period 2016 to 2018.

13.8 The FIO made enquires with the Insurer, in respect of their position had they known about the complaints made to LeO, the court orders and SRA decision. On 15 March 2018, the Insurer confirmed that failure to disclose the information was a material non-disclosure and it was likely that cover would not have been renewed in September 2017 had these matters been declared.

13.9 It was the Applicant’s case that the Respondent must have known that his declarations were incorrect and that due to the Firm’s poor financial health his failure to disclose was motivated by an intention to obtain a reduced premium and that if he had declared the true facts then either the premium would have been higher or no indemnity insurance would have been offered. In failing to declare material, accurate and complete information to his Insurer he failed to act with integrity and breached Principles 6 and 8 in circumstances where the public were entitled to expect a solicitor to provide accurate and complete information when completing legal declarations. The public’s expectation was heightened for the purposes of professional indemnity insurance which may be made void. He failed to carry out his business with proper governance and sound financial and risk management principles.

13.10 Dishonesty was alleged as an aggravating feature of allegation 1.3. Mr Collins submitted that his material non disclosures were financially motivated. The Firm was small, it was of limited means and struggled to maintain a profitable position. It was submitted that if the Respondent had declared the findings against him then this would have resulted in an increased premium or no indemnity insurance and the Firm not being able to operate financially.

The Respondent's Case

13.11 There had been no deliberate attempt to fail to disclose material information to his indemnity insurers. For many years his insurance was arranged through AON UK and he dealt with Individual GD who had a good relationship with him. To assist the Respondent GD would visit the Respondent's office having completed the standard details in the renewal forms and the Respondent would then answer GD's questions on the remaining sections and go through each paragraph on the form. GD would ask if there had been any claims made against the Respondent and the Respondent would answer in the negative. The Respondent did not realise that the particular section in the renewal form also related to complaints or decisions by the LeO and in answer to a question from the FIO in interview he said that he had not considered that such material non-disclosure would have had an impact on the renewal such that he may have found it difficult to obtain insurance.

The Tribunal's Findings

13.12 It was known both inside the solicitors' profession and in the wider world that a person owes a duty of utmost good faith to their insurer and on the Respondent's own account he accepted that he had failed to disclose material facts to his insurer despite going through the renewal form paragraph by paragraph with GD. His explanation that he thought he was not required to declare complaints or decisions by the LeO was not credible as question 4a in the renewal forms for 2016/2017 and 2017/18 specifically asked:

> "Has the Firm or any prior Practice or any present or former Principals, Partners, Members, Directors, Consultants and employees thereof:
>
> a) Been or is the subject of an investigation that has been upheld, or any investigation or intervention by any regulatory department of the Solicitors Regulation Authority, the Legal Ombudsman Service or any other recognised body"

13.13 In breach of Principle 2 of the Principles the Respondent failed to act with integrity as he must have known that he should have disclosed his SRA Rebuke and fine, and the complaints to the LeO and the County Court orders made against him to the insurer. As the COLP and COFA he held an important and heightened position of responsibility in the Firm and he had been under a duty to provide accurate and complete information to the Insurer. He failed to apply the scrupulous attention to detail that was required of his position and that he knew or knew of the risk that material information had not been disclosed to the Insurer and that by doing so he permitted the Insurer to be materially misled across three declaration periods.

13.14 In breach of Principle 6 of the Principles his failure to declare the LeO investigations and decisions, adverse court orders and SRA adjudication had undermined the public confidence, in solicitors and in the provision of legal services. The public were entitled to expect a solicitor to provide accurate and complete information when completing legal declarations. The public's expectation is heighted for the purposes of professional indemnity insurance, in circumstances when professional indemnity insurance may be made void by material non-disclosure.

13.15 The Respondent's failure to provide accurate and complete information when completing a professional indemnity insurance declaration created a risk that the insurance may be revoked for material non-disclosure. The Respondent had breached Principle 8 of the Principles by creating a risk that the Firm's insurance would be rendered void, the Respondent failed to carry out his business effectively and in accordance with proper governance and sound financial and risk management principles.

13.16 The Tribunal found Allegation 1.3 proved beyond reasonable doubt.

Dishonesty alleged in respect of allegation 1.3

13.17 In applying the test in Ivey the Tribunal found that the Respondent had completed the renewal form in the relevant years in the presence of the broker's representative and had gone through the form paragraph by paragraph with him. Whilst he said that he was not aware he had had to declare the adverse decisions made by the SRA, LeO and in the County Court he had been aware of the paperwork relating to these matters which languished on his desk and which, on his account, remained largely unconsidered.

13.18 There was also evidence to suggest that he was aware of matters which should rightfully have been declared, for example, in the interview with the FIO he accepted that during the relevant period he had received a letter from AH on 28 November 2016 providing him with formal notification that he would be contesting the will drafted by the Respondent for Client D. The Respondent accepted that he had not informed the Insurer of this allegation because it was 'ridiculous'. The following year he confirmed receiving a letter on another probate case in which he was informed that the solicitors acting for their client had advised her to take a professional negligence claim against him: this too he had not declared to his Insurer despite his duty to put the Insurer on notice of any allegations of professional negligence.

13.19 The Respondent was as an experienced solicitor with over 50 years in the profession and he would have been expected to have known that the declarations were incorrect and misleading. By the standards of ordinary decent people he would be considered to be dishonest. By not declaring relevant matters the Respondent stood to gain financially through obtaining a reduced premium. His evidence was neither plausible nor credible on this issue and it was not accepted that he was in some way mis-directed by the representative of the broker. The Tribunal gave particular weight to the confirmation from the Insurer that had it been aware of the matters which he should have declared then it probably would not have offered cover on the renewal in 2017.

13.20 The Tribunal found that Dishonesty was proved beyond reasonable doubt in relation to Allegation 1.3.

Previous Disciplinary Matters

14. There were no previous Tribunal disciplinary findings.

Mitigation

15. In his letter of 2 July 2019 the Respondent asked the Tribunal to take into account the strain he had been placed under by the investigation. He had 54 years' service in the profession and had suffered ill health intermittently for the preceding 8 years. He had always acted with decency and integrity often on a pro bono basis in deserving cases.

16. There had been no money missing from the client account and no dishonesty in that regard was found. His practice was intervened mainly on the suspicion that he had been dishonest and that the public needed to be protected.

17. He was still fulfilling his duties on various estates to save the beneficiaries additional costs despite the limited facilities with which he was left following the intervention and which had condemned him to financial hardship for the rest of his life.

18. He asked the Tribunal to take into consideration the fact that the investigation had followed a complaint made by two solicitors to further a dispute with him over a trust fund of £320,000. The two had joined forces to complain and they had expected him to sign cheques without the formality of a deed of discharge for distributing the trust fund in accordance with a compromise agreement between two competing parties.

19. On the estates still current the beneficiaries had received substantial payments on account pending final settlement.

Sanction

20. The Tribunal had regard to the observation of Sir Thomas Bingham MR (as he then was) in <u>Bolton v Law Society</u> [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

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

21. The Tribunal considered its Guidance Note on Sanctions (6th Edition). The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.

22. In assessing culpability, the Tribunal found that the motivation for the Respondent's conduct was to maintain the continuation of his practice and his standing in the community. His misconduct extended over a significant period of time and was a repeated pattern of behaviour which represented a gross breach of trust: the administration of estates of the deceased with no oversight whilst families and beneficiaries were still grieving placed him in a great position of trust. He sought to blame junior colleagues for putting important correspondence and e-mails on his desk which he then did not read or act upon. There was no evidence that he had mislead the Regulator but with his considerable level of experience he must have been aware that

his conduct was unacceptable. The Tribunal assessed the Respondent's culpability as high.

23. The Tribunal then turned to assess the harm caused by the misconduct. The Tribunal had found that through dishonesty he had overcharged and depleted estates of money which should have gone to the beneficiaries and he had caused them needless stress and delay. He had also let down the testators and their families who had trusted him. The harm to the profession from such conduct was significant and more so on those in the profession who handled probate matters. The harm he had caused was entirely foreseeable and avoidable.

24. The misconduct was aggravated by the fact that the allegations included dishonest conduct which had extended over a considerable period of time and which was calculated and repeated. The seriousness of the conduct was also aggravated by the fact that the Respondent had taken advantage of vulnerable people from whom he concealed his wrong doing by not sending out client care letters or invoices setting out the detail of the work done with reference to the basis of his charging rates. At the point his practice was intervened he had 700 live cases and the actual extent of his misconduct was unquantified.

25. The Tribunal noted that the Respondent had no prior disciplinary findings against him however there was no other mitigation to reduce the level of culpability and harm. The misconduct continued for a long time and there appeared to be no genuine insight into his behaviour and no admissions.

26. The Respondent had been found to have been dishonest. In the Judgment of the Divisional Court in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) it had been held that "save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll….that is the normal and necessary penalty in cases of dishonesty... There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances… In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary… or over a lengthy period of time …whether it was a benefit to the solicitor, and whether it had an adverse effect on others." It was clear to the Tribunal that in this case there were no exceptional circumstances such that the case might be held to fall into the residual category referred to in the judgment in Sharma. His misconduct was to be regarded at the highest level of seriousness as the misconduct had taken place over a long period of time when he was a sole practitioner and trusted to administer estates of the deceased and to carry out their wishes which he had failed to do. Instead, he had depleted the estates of money which should have gone to the beneficiaries. He had also failed to comply with court orders when he was under a legal duty to do so.

27. Having given careful consideration to all the matters raised in the Respondent's case including his age and state of health; his length of service in the profession and that the fact he had no previous disciplinary findings the Tribunal concluded that to make No Order, or to order a Reprimand, a Fine or Suspension (either fixed term or indefinite) would not be sufficient to mark the seriousness of the conduct in this case. The misconduct was of the utmost seriousness and this fact, together with the need to protect

the reputation of the legal profession, required that Strike Off from the Roll was the only appropriate sanction.

Costs

28. On behalf of the Applicant, Mr Collins applied for costs in the sum of £49,172.50 as set out in a Schedule of Costs dated 23 June 2019. The costs were broken down into two parts. The costs of the forensic investigation in the sum of £26,252.50 and the costs of Capsticks Solicitors in the sum of £18,500 plus VAT. This was a fixed fee. In support of the application for costs Mr Collins relied on the fact that all of the allegations made by the Applicant had been found proved and that the Respondent had had the opportunity to produce evidence of means for the Tribunal's consideration and had failed to do so.

29. The Tribunal had heard the case and it was appropriate for it to summarily assess costs. The Tribunal noted that The Respondent had provided neither evidence of his means, as required by the Tribunal's Standard Directions, nor had he had made any submissions about costs in his Answer or in his letter to the Tribunal date 2 July 2019 save to state that he had received invoices from Capsticks and the SRA and that he had had to mortgage his property in France (which he would be selling) in order to avoid bankruptcy.

30. Whilst the Tribunal considered it proper to award costs to the Applicant, the amount of such costs was to be examined carefully. The Tribunal observed that the matter had initially been listed for a three day hearing but it had in fact taken only two days. Also, the Tribunal considered Mr Collins's preparation costs to be high given that much preparatory work had been carried out by the FIO during the investigation and in the report writing stage. Mr Collins's conceded the points and agreed that costs of preparation be reduced from 53.8 hours to 40 hours and attendance upon the Tribunal reduced from 18 hours to 10 hours.

31. In all the circumstances, the Tribunal considered that the reasonable and appropriate level of costs was £44,118.10. This included the sums claimed for the Applicant's investigation costs and those of Mrs Corbin, the Costs Lawyer. The Tribunal noted that in accordance with the Guidance Note on Sanctions and Practice Direction number 6 because the Respondent had not provided evidence of his means no further reduction could be made.

32. The Respondent was ordered to pay the costs of and incidental to this application and enquiry fixed in the sum of £.44,118.10.

Statement of Full Order

33. The Tribunal ORDERED that the Respondent, HAROLD ANTHONY NEWELL, 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 £44,118.10.

Dated this 8th day of August 2019
On behalf of the Tribunal

C. Evans
Chair

JUDGMENT FILED WITH THE LAW SOCIETY

08 AUGUST 2019