The Respondent appealed the Tribunal's decision dated 3 September 2019. The appeal was heard by Lavender J on 26 January 2021 and Judgment handed down on 27 January 2021. The Respondent's appeal was dismissed. The Respondent sought permission to appeal to the Court of Appeal. On 25 June 2021 the Court of Appeal Civil Division refused the application for permission to appeal against the decision of Lavender J.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11931-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

BRIAN MILNER-LUNT Respondent

Before:

Ms A. Kellett (in the chair)
Mr J. P. Davies
Mrs S. Gordon

Date of Hearing: 6 – 8 August 2019

Appearances

Grace Hansen, barrister of Capsticks LLP, 1 St George's Road, Wimbledon, London SW19 for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that while in practice as a Recognised Sole Practitioner at Milner-Lunt & Co ("the Firm") and while his practising certificate as a solicitor was suspended, he:

The W Estate

1.1 Between approximately 12 November 2013 and 1 September 2017 overcharged the W Estate for fees for the administration of the estate and he thereby breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011 ("the Principles").

1.2 Improperly transferred money from the Firm's client account to the Firm's Business Bonus Account on 20 August 2015 and he thereby breached any or all of Principles 2, 6 and 10 of the Principles and any of all of Rules 17.7 and 20.3 of SRA Accounts Rules 2011 (SAR 2011).

1.3 Improperly transferred money from the Firm's Business Bonus Account to the Firm's office account between 20 August 2015 and 15 September 2017 and he thereby breached any or all of Principles 2, 6 and 10 of the Principles and any or all of Rules 17.7 and 20.3 of SAR 2011.

Non-cooperation

1.4 Failed to comply with an Order of the High Court made on 22 June 2017, within the 28 days required, or at all, and he thereby breached any or all of Principles 1, 6 and 7 and Outcome 5.3 of the SRA Code of the Conduct 2011 (the 2011 Code).

1.5 Failed to cooperate adequately or at all with the SRA's investigation into his conduct and he thereby breached any or all of Principles 6 and 7 of the Principles and any or all of Outcomes 10.6, 10.8 and 10.9 of the 2011 Code.

1.6 Failed to cooperate adequately or at all with the Legal Ombudsman in that he did not comply with and/or respond to the Preliminary Decisions issued on 21 June 2017 and/or 22 June 2017 and he thereby breached Principles 6 and 7 of the Principles and Outcome 10.6 of the 2011 Code.

Mismanagement of Client Account

1.7 Failed to reconcile the Firm's client account every 5 weeks, or at all, between September 2015 and September 2017 in breach of any or all of Rules 29.1, 29.2 and 29.12 of the SAR 2011 and all or any of Principles 8 and 10 of the Principles.

2. By reason of the facts and matters set out at paragraphs 1.1, 1.2 and 1.3 above or any of them 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's Rule 5 Statement and Exhibit NXB1 as amended dated 3 June 2019
- Respondent's Answer to the Rule 5 Statement dated 10 June 2019

Factual Background

4. The Respondent was admitted to the Roll in January 1998. He was a Recognised Sole Practitioner; the Firm began trading on 3 November 2005. The Respondent's practice included matrimonial work, conveyancing and probate. The Respondent was the COLP and the COFA of the Firm.

5. The Respondent was adjudged bankrupt on 7 June 2017. As a consequence of the Respondent's bankruptcy, his practising certificate was suspended on 27 June 2017. The SRA intervened into the Firm on 3 October 2017.

6. The Respondent had prepared a deathbed will for Client TW, which was signed on 12 November 2013 (the Will). The Will appointed "the partners" of the Firm and a person who is believed to have been the Respondent's wife as the executors of the estate (the W Estate).

7. Under the Will a friend of Client TW received a monetary bequest and a right to occupy a property belonging to the W Estate. The residue of the W Estate was split equally between Client TW's four half-sisters, Beneficiaries JH, PG, SH and KM (the Residual Beneficiaries).

8. Client TW died on 16 November 2013. Probate was granted on 3 October 2014 and the Respondent appointed as the sole executor of the W Estate. At the time of the intervention, nearly four years after the death of Client TW, no interim payments had been made to the Residual Beneficiaries.

9. The conduct in this matter first came to the attention of the SRA in June 2017. On 26 June 2017 the Respondent notified the SRA that he had been made bankrupt. Around this time the Legal Ombudsman notified the SRA that it was considering two complaints, made by three beneficiaries of the W Estate concerning the Respondent's handling of the W Estate, of which the Respondent was the sole executor. It also came to light that one of the beneficiaries of the W Estate, Beneficiary JH, had obtained a Court Order requiring the Respondent to produce information about his administration of the W Estate.

10. The SRA commenced an investigation. The Forensic Investigation Officer (the FIO) produced a report dated 11 September 2017 (the First FI Report) prior to the intervention and a second report dated 8 May 2018 (the Second FI Report) after the intervention, at which time the FIO had greater access to the Respondent's files for the W Estate and the Firm's financial information.

Witnesses

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

- Oliver Baker – Forensic investigation officer
- Neil Sharman – Intervention Agent from Blake Morgan
- Marc Banyard – Costs Draftsman

12. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. 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

13. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral together with the submissions of both parties.

Dishonesty

14. 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."

15. When considering dishonesty the Tribunal firstly 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. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

16. The test for integrity was that 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".

Oral Evidence

17. On the second day of hearing and at the close of the Applicant's case shortly after lunch, the Respondent requested that matters be adjourned to the following day for him to consider whether he would be giving evidence. His health was such that he was very tired and he had not considered how much presenting his own case would take out of him. He noted that he felt he had said all that he wanted to say. The Applicant did not object. The Tribunal considered that in the circumstances, it was just to finish sitting early that day and to adjourn the matter to the following day to give him time to consider his decision carefully. The Tribunal directed the Respondent to Practice Direction No. 5 which provided:

> "The Tribunal has taken careful note of the dicta of the President of the Queen's Bench Division (Sir John Thomas) at paragraphs 25 and 26 of the Judgment in Muhammed Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin). In the words of the President, "ordinarily the public would expect a professional man to give account of his actions". The Tribunal directs for the avoidance of doubt that, in appropriate cases where a Respondent denies some or all of the allegations against him (regardless of whether it is alleged that he has been dishonest), and/or disputes material facts, and does not give evidence or submit himself to cross-examination, the Tribunal shall be entitled to take into account the position the Respondent has chosen to adopt as regards the giving of evidence when reaching its decision in respect of its findings. This directions applies regardless of the fact that the Respondent may have provided a written signed statement to the Tribunal."

18. On the final day of the hearing, the Respondent informed the Tribunal that he would not be giving evidence. He explained that his health issues were such that he was easily confused. As detailed by him the previous day, he had already said everything that he wished to say on the issues and allegations against him. He confirmed that he fully understood Practice Direction 5 as had been explained to him.

19. The Tribunal noted that the Respondent's Answer, which was signed with a statement of truth, detailed his response to every paragraph of the Rule 5 Statement. The Tribunal noted the reasons that the Respondent chose not to give evidence. It had regard to Practice Direction 5. The Tribunal determined that in the circumstances, whilst it would take account of the Respondent's written evidence, that evidence would be given less weight than would have had afforded to any oral evidence he might have given.

The Incomplete W File

20. The Respondent argued that the W file that had been provided to him was incomplete in that it was missing two categories of documents, namely client account information

and emails. He submitted that those documents were contained on the W file when it was delivered by him to the Applicant's intervention agents, Blake Morgan.

21. Ms Hansen submitted that the hard copy file was delivered to Blake Morgan by the Respondent personally. Mr Sharman from Blake Morgan took a copy of the papers on the file. That copy was sent to Mr Banyard for him to prepare a report. Mr Banyard returned the copy to the SRA, however the SRA had been unable to locate it. Blake Morgan did not keep a copy of the file sent to Mr Banyard, but had sent the original hard-copy file to the current solicitors who had taken over the administration of the W Estate. As to any alleged missing chits in the client file relating to the client account, they did not go to the issue of overcharging in any event. Account movements could also be evidenced from the bank statements contained within the hearing bundle. Some emails were on the file but not many. The Respondent attended the offices of Blake Morgan with his computer. He did not provide any emails.

22. It was accepted that the Respondent had sent emails that were not contained in the file. Some of those emails had been recovered from the beneficiaries. It was also accepted that the file did not contain all of the work undertaken by the Respondent. However, as the sole fee earner and a sole practitioner, it was the Respondent's responsibility to ensure that the file was complete including all of his work and all of the accounts information.

23. A section 44B Notice dated 1 September 2017 was served on the Respondent following previous requests for information. The Section 44B Notice pre-dated the intervention and required him to provide the complete client file. He failed to comply with the Notice.

24. The Respondent submitted that when he delivered the file to Blake Morgan it contained a separate email peg, and one for the chits of payments into and out of the client account. They were both substantial in size. He was very concerned that these documents were missing; both sets of documents were important in the proceedings. There were, however, bank statements which showed the transfers from the client account to the interest-bearing client account on the 20 August 2015 for £99,000.00 and £26,000.00.

25. Despite assurances that the SRA was attempting to locate the copy file, it had made no attempt to do so. The Respondent submitted that he was greatly concerned that two very important aspects of the W file had gone missing, which in turn undermined his ability to defend himself in the face of the serious allegations which had been made against him.

26. Both Mr Sharman and the FI Officer confirmed during cross-examination that they had not removed documents from the file. The FI Officer explained that he was not sure what documents would be on the file. His role was to report on the evidence contained within the file. He had attended the offices of Blake Morgan to review the file. He copied what he considered to be relevant documents; those documents were appended to his report. He instructed that the copy file provided to Mr Banyard should be sent to the SRA. That instruction was likely to have been by email,

however, he was unable to find that email. He had not had possession of the file, and had been unable to locate it. It was not with the investigation file.

27. Mr Sharman stated that the Respondent provided Blake Morgan with the hard-copy file and that when the documents were copied from his computer, the Respondent was present and the documents were copied under his supervision. Whilst he did not recall being instructed by the SRA to check the file, he checked the documents as part of his preparation for writing his witness statement. Mr Sharman stated that a list was made that he had not been asked to provide. The Tribunal adjourned for the list to be produced. The list was in the form of an excel spreadsheet that did not particularise the documents, or class of documents.

28. On the final day of the hearing Ms Hansen informed the Tribunal that the SRA had finally located the copy file returned to the SRA by Mr Banyard. It did not contain the emails or the client account chits referred to by the Respondent.

29. The Respondent was very concerned at the late discovery. He had been trying to obtain the file since April 2019. He had made an application to the Tribunal. The Tribunal accepted that the SRA was not in possession of the file and thus could not order for it to be disclosed. The entire file had been missing until the final day of the hearing. That led to further questions about what else could be missing and what happened to the client account chits and the email peg.

30. The Tribunal found it deeply unsatisfactory that the file that the Respondent had requested was said to be lost, only to be found on the final day of the hearing, particularly as the Respondent had repeatedly asked the SRA to try to locate it.

31. However, the Tribunal had regard to the fact that the file was a copy of the original and was the one seen by Mr Banyard in order to create his report. The documents were not on the copy file that Mr Banyard saw, that much was clear from both his evidence and his report.

32. The Respondent explained that the payments from the client account to the Business Bonus Account were evidenced on the missing client account peg. However, there was evidence of those payments located in the papers. Indeed, the Applicant relied on those payments as part of its evidence as regards allegation 1.2. The Respondent had not explained why those missing chits prejudiced his case. He agreed that the payments had been made into the Business Bonus Account, and also agreed that monies were transferred from the Business Bonus Account to the office account. The transfers were not in dispute. The Tribunal determined that whilst it was unfortunate that those documents were not on the file, the Respondent's defence was not undermined by their absence.

33. The Tribunal considered the position as regards to the missing emails. It was not the Respondent's case that the emails demonstrated that he was entitled to charge the fees that he did; he made no submission to that effect. His case was that he was entitled to charge a flat fee pursuant to the agreement that he had with TW to charge up to 50% of the gross value of the W Estate in fees. The Tribunal had regard to the fact that the Respondent had been required by the SRA to provide a full copy of the file prior to the intervention; he did not do so. He had also been present when the files were

copied from his computer at the offices of Blake Morgan. He did not point to any significant number of emails at that time. The Tribunal also had regard to the fact that the Respondent continued to use the email address he used in practise as recently as 15 October 2018. On that date he emailed Mr Sharman using his practice email address. It was evident that the Respondent had access to his practice emails post the intervention into his Firm.

34. The Tribunal accepted that neither the FI Officer nor Mr Sharman had removed any emails from the file and that it was most likely that some emails had not been printed off and included on the hard copy client file. Given that it was not the Respondent's case that the emails justified his charges or were being relied on by the Respondent as evidence, the Tribunal concluded that the Respondent's defence was not undermined by their absence.

35. **Allegation 1.1 - Between approximately 12 November 2013 and 1 September 2017 overcharged the W Estate for fees for the administration of the estate and he thereby breached any or all of Principles 2, 6 and 10 of the Principles**.

The Applicant's Case

35.1 Under the Firm's Probate Terms and Conditions, which had not been provided to TW, the Firm's fee for the Respondent's work as an Executor was 25% of the gross value of the estate.

35.2 Between 2 January 2014 and 1 September 2017 the Firm raised 45 invoices against the W Estate, totalling £132,666.00 (inclusive of VAT). It is noted that the last seven of these were dated after the Respondent's practising certificate had been suspended.

35.3 The SRA relies upon the report of a Costs Draftsman, Mr Banyard, in support of this allegation, including the following matters:

- Only one of the 45 invoices has a sufficient narrative;
- The invoices were for round figures;
- The "pattern of invoicing defies any readily discernible logic";
- No work was evidenced on the file subsequent to January 2016, yet 36 invoices were raised after this time;
- The fee based on a flat 25% of the gross value of the estate was "egregious";
- Mr Banyard calculated that a reasonable figure for the Respondent's fees was no more than £15,630.44 (inclusive of VAT) and that the Respondent therefore overcharged the W Estate by £117,035.56.

35.4 In his response to the EWW, dated 15 October 2018, the Respondent stated that he believed that a fee based on 25% of the gross value of the estate was reasonable, having been advised by the SRA professional ethics telephone helpline that "the amount charged was my decision". This demonstrated a disregard for the Respondent's statutory obligation under Article 3 of the Solicitors' (Non-Contentious Business) Remuneration Order 2009 to ensure that his costs were "fair and reasonable". The Respondent stated that his narrative was sufficient, but provided no

substantive explanation to the remaining points raised in the Costs Draftsman's Report.

35.5 Ms Hansen submitted that in overcharging the W Estate by a significant sum of money and by seeking to charge the W Estate by reference to a significant flat percentage fee, the Respondent had failed to act with integrity in breach of Principle 2, had failed to maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6, and failed to protect client monies and assets in breach of Principle 10.

35.6 It was further submitted that the Respondent's conduct was dishonest. As a sole practitioner with sole conduct of the W Estate and an experienced solicitor, the Respondent must have known that he was significantly overcharging the W Estate through both the assertion of a flat fee of 25% and through the sums invoiced. Reasonable and honest people would consider such conduct to be dishonest.

The Respondent's Case

35.7 The Respondent denied allegation 1.1. In his Answer the Respondent explained that he genuinely believed the narrative was sufficient given the general nature of the work to the Estate overall and he was operating under a percentage cost regime. He was fairly sure that no issue was raised regarding the invoice narrative during his annual audit. The amounts charged were for specific amounts in each invoice, and were not rounded up amounts. There was never any stipulation that the Respondent should charge in any particular way. As regards any pattern to the invoices, invoices were made as it was deemed appropriate. Given that the Respondent was operating under a percentage cost regime, he considered that there was no need to keep file notes of the work undertaken. However, he was very certain that work was carried out to the W Estate during that period.

35.8 The Respondent submitted that he had been instructed to prepare a Will for TW by her friends. The Tribunal was referred to his handwritten notes from his attendance. The Respondent explained that he attended on two occasions – (1) to take her instructions and (2) for the Will to be signed and witnessed. During his attendance the Respondent discussed the issue of his fees. Ms TW informed him that he could charge up to 50% of the value of the estate for his fees. Ms TW passed away 4 days after signing her Will. The Respondent called the SRA's ethics helpline. He was informed that the amount he charged was a matter for him. The Respondent considered that a fee in the sum of 25% was acceptable in the circumstances. In fact, the amount he charged was 17% + VAT.

35.9 The Respondent referred the Tribunal to a newspaper article published in The Times on 4 November 2017 in which it was reported that Blake Morgan, who were the instructed intervention agents, had charged fees of £138,000 in the administration of an estate valued at £300,000. That fee, it was submitted, equated to 38% of the value of the estate. The article recorded that Blake Morgan, having conducted an internal review considered that the charges, whilst substantial, were reasonable. The Respondent submitted that in the case of the W Estate, whilst the fees charged were substantial, they were fair and reasonable; they were half the amount that had been charged by Blake Morgan.

35.10 The Respondent submitted that given TW's instruction that he could charge up to 50% of the gross value of the Estate, his flat fee of 25% was fair and reasonable. The fees would only have been egregious if he had charged more than 50%. He had, in fact, only charged 17 % of the gross value of the estate, which was less than the 50% he was entitled to charge, and less than the 25% he had decided to charge. In the circumstances, the W Estate had not been overcharged.

35.11 The Respondent denied that his conduct had been dishonest. He could have created attendance notes - he had not done so, as that would have been dishonest. He had acted in accordance with his instructions and had charged less than he was authorised to charge.

The Tribunal's Findings

35.12 The Tribunal found no evidence that TW had informed the Respondent that he was entitled to charge up to 50% of the value of the estate in fees. The contemporaneous handwritten note prepared by the Respondent made no reference to his charges. It detailed TW's instructions as regards her Will, her assets and the beneficiaries under the Will.

35.13 The Will was executed on 12 November 2013. Clause 2(c) stated:

> "Any of my trustees who is engaged in any profession or business may charge fees for professional or other work carried out whether personally or by his or her firm as if he or she were not one of my trustees but were employed to carry out the work on my Trustee's behalf."

35.14 Given that the Respondent drafted the Will, he could have inserted into this Clause his instruction that he was able to charge "up to 50% of the value of the estate" in fees. The Tribunal noted that the "Probate Terms and Conditions" which recorded that "we will charge 25% of the gross value of the estate plus Vat at 20%, plus disbursements", whilst located within the file, was unsigned and undated.

35.15 The Tribunal found that there was no evidence to support the Respondent's contention that he was instructed that he could charge up to 50% of the value of the estate in fees. Further there was no evidence that he had brought this to the attention of the Testatrix. As to his submission that he had spoken to the ethics department who had confirmed that he could determine what to charge, there was no evidence of what he told the ethics department, or that they were aware that he had no confirmation of this in writing from his client.

35.16 The Tribunal found that there was no such agreement between the Respondent and the Testatrix. Having made that determination, the Tribunal then considered whether the Respondent had overcharged the W Estate as alleged.

35.17 The Tribunal considered the evidence of Mr Banyard. He explained in his oral evidence that the Respondent's fixed fee charge was unusual, most solicitors charged on an hourly rate or an hourly rate together with a percentage of the estate. Of those cases that he had seen where there was a flat rate percentage fee, they came nowhere near the 25% charged by the Respondent.

35.18 Mr Banyard explained that the narrative contained within the bills was insufficient. There was a stream of authority stretching back to the 1800's that for a bill of costs to be bona fides it had to be sufficiently detailed for a client to know what work he was being charged for. As the narrative on the bills was insufficient, a Costs Judge was likely to treat them as a request for a payment on account. Mr Banyard stated that he understood the artificiality of the Respondent's situation given that he was both the solicitor and as the executor of the estate, he was also the client. In the circumstances, the likelihood of the Respondent challenging his own bill was zero. However, the bill could be challenged by an interested third party. That third party would find it impossible to tell what work was being charged for due to the insufficiency of the narrative on the invoices.

35.19 As regards the round numbers of the bills, Mr Banyard stated that he could not say, and did not suggest that the bills had either been rounded up or down; he was unable to tell how the figures had been reached.

35.20 In his statement, Mr Banyard had commented on the lack of any express agreement to raise interim bills. The Terms mentioned "the Bill", singular. Whilst it was impossible to gainsay any implicit agreement of the Respondent as the client and the Respondent as the solicitor, had the Respondent not been his own client, it was Mr Banyard's opinion that the terms and conditions would not have allowed for interim bills. Mr Banyard stated that it was ludicrous to imagine that the Respondent could not agree the raising of interim bills with himself, however this was a separate point and did not touch on the adequacy of the narrative contained within the bills.

35.21 Mr Banyard explained that a Costs Judge would consider any express approval of the level of fees from a client. This would weigh as a factor in the Judge's mind in particular if the consent had been given freely and could not be gainsaid. However, this would not necessarily be determinative, but would be one of the factors the Judge would consider. He could not think of any authority where, but for the express agreement, the costs would otherwise have been reduced. That being the case, it was difficult to say with any certainty what a Costs Judge would find. The costs charged by the Respondent were, in Mr Banyard's opinion, wholly excessive. As the express consent of a client was not determinative, it was anticipated that any Judge would be reticent to allow costs on that basis alone when the fees charged were an egregious overcharge taking into account all factors.

35.22 As to evidence of express approval, a Costs Judge would expect to see something in writing or something signed by the Testatrix showing pre-authorisation of costs. A Judge would be slow to give significant weight to an assertion made by a solicitor without any evidence.

35.23 Mr Banyard explained that it was not unusual for time and attendance notes not to be kept when a fixed fee was being charged, however as one of the statutory tests to be considered was the time, if there were no attendance notes, the time taken could not be ascertained.

35.24 The Tribunal accepted the evidence of Mr Banyard who it found to be a credible, measured, knowledgeable and helpful witness.

35.25 The Tribunal considered the Respondent's submission as regards the fees charged by Blake Morgan. The Tribunal noted that the Respondent was not aware of those fees at the time that he was charging the W Estate; he had discovered the article during his preparation of his case. Further, neither he nor the Tribunal were aware of the full facts or the complexity of that matter. In any event, the fact that Blake Morgan had charged a substantial amount on a probate matter did not mean that the Respondent had not overcharged the W Estate.

35.26 Whilst the Tribunal accepted that the file of documents examined by Mr Banyard may not have been complete, it did not accept that the missing documents would justify the fees charged by the Respondent. Indeed, at no point had the Respondent submitted that had those documents been on the file, they would have justified his invoices. In fact, the Respondent had submitted that the invoices raised were not raised in relation to any particular piece of work that he had undertaken.

35.27 The Tribunal found that in charging the W Estate what he did, the Respondent had grossly overcharged for the administration of the Estate. He had provided no cogent or credible evidence to justify the fees charged. The Tribunal accepted Mr Banyard's analysis of this matter, agreeing that costs should not have amounted to more than £15,630.44. The Tribunal found beyond reasonable doubt that in overcharging the W Estate, the Respondent had failed to protect client monies and assets in breach of Principle 10. It was determined beyond reasonable doubt that in overcharging the W Estate, the Respondent had failed to maintain the trust placed in him and in the provision of legal services in breach of Principle 6. No solicitor acting with integrity would overcharge an Estate in the way in which the Respondent did. His conduct in that regards had fallen well below the standards expected of him by members of the public and the profession. Thus, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 2.

35.28 As detailed above, the Tribunal did not accept the Respondent's assertion as regards any agreement with TW allowing him to charge up to 50% of the gross value of the Estate for his fees; the Respondent knew that there was no such agreement. It further found that the Respondent knew that the charges made had not been incurred at all. On his own submission, the invoices raised by the Respondent did not relate to the work he had undertaken. The Respondent had knowingly and deliberately charged excessive amounts for the administration of the W Estate. The Tribunal determined that there could be no doubt that reasonable and honest people would consider that a solicitor who had overcharged as the Respondent had done, had acted dishonestly.

35.29 Accordingly, the Tribunal found allegation 1.1 proved beyond reasonable doubt, including that the Respondent's conduct had been dishonest.

36. **Allegation 1.2 - Improperly transferred money from the Firm's client account to the Firm's Business Bonus Account on 20 August 2015 and he thereby breached any or all of Principles 2, 6 and 10 of the Principles and any of all of Rules 17.7 and 20.3 of the SAR 2011.**

Allegation 1.3 - Improperly transferred money from the Firm's Business Bonus Account to the Firm's office account between 20 August 2015 and 15 September

2017 and he thereby breached any or all of Principles 2, 6 and 10 of the Principles and any or all of Rules 17.7 and 20.3 of SAR 2011.

The Applicant's Case

36.1 The Second FI Report recorded that the Firm had three bank accounts at the time of the intervention:

- A client account, with account number ending 101 ("the Client Account").
- An office account, with account number ending 784 ("the Office Account").
- An account described on the bank statements as "MILNER-LUNT & COMPANY BUSINESS BONUS ACCOUNT", with account number ending 249 ("the Business Bonus Account").

36.2 As the Business Bonus Account did not include the word "client" in the title, it was not a client account, within the meaning of Rule 13.3 of the SAR 2011 and accordingly client money could not be held in it.

36.3 Two payments, one of £26,000 and another of £99,000, were made from the Client Account to the Business Bonus Account on 20 August 2015. This was an improper transfer because those sums were client money, belonging to the W Estate.

36.4 The Respondent stated that the Business Bonus Account was an interest bearing client account and that he believes that he designated the account as such online and does not know why the hard copies of the account statements did not reflect this. The Respondent's reconciliation statement for September 2015 records that there was a "Client Interest Acct" with a balance of £119,006.24. The balance of the Business Bonus Account on 29 October 2015 (the first available statement for the Business Bonus Account) was also £119,006.24. It is therefore inferred that the account described on the reconciliation statement as the "Client Interest Acct" is, in fact, the Business Bonus Account.

36.5 The only sums paid into the Business Bonus Account from 29 October 2015 until the intervention in October 2017 were interest payments.

36.6 All sums withdrawn from the Business Bonus Account were transferred to the Office Account. All of the transfers were for the same sums and made on the same date as the invoices raised by the Firm for the W Estate, save for four exceptions:

- An invoice was raised for £6,600 on 2 February 2016, this sum was transferred from the Business Bonus Account to the Office Account on 22 February 2016.
- An invoice was raised for £6,600 on 4 April 2016, this sum was transferred from the Business Bonus Account to the Office Account on 7 April 2016.
- There was no invoice on file to the W Estate for a transfer of £1,200 on 1 January 2017.

- There was no invoice on file to the W Estate for a transfer of £1,200 on 15 September 2017.

36.7 The Respondent advised the Intervention Agent on 23 October 2017 that the proceeds of the sale of Property A (part of the W Estate) had been transferred into the Business Bonus Account and that sums withdrawn from the Business Bonus Account represented the Respondent's fees for the administration of the W Estate.

36.8 Ms Hansen referred to the Applicant's case as regards overcharging detailed at allegation 1.1. It was submitted that for those reasons, the Respondent was not entitled to charge the W Estate the full amount that was charged. Therefore, for the same reasons, the Respondent was not entitled to transfer sums from the Client Account to the Business Bonus Account or to the Office Account in settlement of invoices he raised to the W Estate.

36.9 It was the opinion of Mr Banyard that the invoices were requests for monies on account and therefore in light of Rules 17.2 and 17.4 of the SAR 2011 sums should not have been transferred to the office account. The transfer of these sums therefore amounted to a breach of Rule 20.3 of the SAR 2011.

36.10 It was also noted that the sums transferred to both the Business Bonus Account and the Office Account were round sums, the withdrawal of which from a client account to settle costs is a breach of Rule 17.7 of the SAR 2011.

36.11 For those reasons, it was improper to make all transfers from the Business Bonus Account to the Office Account, regardless of whether or not the Business Bonus Account was an incorrectly labelled client account (which for the avoidance of doubt, the SRA did not accept).

36.12 Ms Hansen submitted that the Respondent's conduct had been dishonest. Due to his position the Respondent knew how much work was carried out in administering the W Estate and in particular would have known that the invoices raised after January 2016 did not relate to any further work done by him. The Respondent must have known that the invoices were improper invoices which were not a sound basis to justify the transfer of client money to the Respondent. As the sole executor of the W Estate the Respondent was effectively issuing invoices to himself and knew that the invoices would not be independently scrutinised prior to the transfer of funds. He had attempted to conceal his overcharging of the W Estate by transferring significant sums from the Client Account to the Business Bonus Account. As the sole executor of the estate of a childless widow the Respondent held a position of significant trust and responsibility which he abused by inflating his fees and transferring funds belonging to the W Estate to the Office Account in purported settlement of his invoices which bore little to no resemblance the work carried out by him in administering the W Estate, and to which he would have known he was not entitled.

36.13 Ms Hansen submitted that this was a lengthy course of dishonest conduct, from the Respondent's assertion of a flat fee, to raising unjustifiable invoices, improperly transferring sums from the Client Account to the Business Bonus Account, and finally improperly transferring sums from the Business Bonus Account to the Office Account, in purported settlement of those unjustifiable invoices.

The Respondent's Case

36.14 The Respondent submitted that the Business Bonus account was a client interest bearing account and was so designated on the online service provided by the bank. The monies were transferred from the generic client account using the online service, thus the transfer was not in breach of the rules. The Respondent submitted that the online statements included the words "client interest account" and therefore client funds could be held within it. NatWest confirmed to the Respondent that any amendment to the designation status online would not affect the hard copy status, which was why the hard copy statements did not stipulate that the account was a client account. The Respondent believed throughout that the account was properly designated as a client interest account. It was denied that the transfers to that account were improper. The Respondent submitted that the transfers into the account were transparent and not designed so as to conceal the transfer of monies from the W Estate. He denied that his conduct had been dishonest.

36.15 The Respondent did not charge the full amount of 25% to the Estate, but approximately 17% plus Vat. In all the circumstances he was entitled to make the transfers as he did. It was submitted that there was never any request for payments on account and that the invoices were, in reality, requests for payment from funds held on account. It was the Respondent's view that the narrative contained in the bills was sufficient. As the client, it was inconceivable that he would challenge his own bills. The Respondent submitted that when his accounts were audited in August/September 2015, the W file was included in the audit and no issue was taken regarding the bills and the narrative. In the circumstances, Mr Banyard's opinion as to the insufficiency of the narrative rendering the bills as requests for payment on account was incorrect.

36.16 It was also incorrect to say that there should not have been any interim payments as the Terms and Conditions referred to "the bill" in the singular. As the client and the solicitor, it was the Respondent's view that he was able to make interim charges. Mr Banyard accepted during his evidence that it was impossible to gainsay any implicit agreement between the Respondent as the client and the Respondent as the solicitor with conduct of the client matter.

36.17 The Respondent denied that the sums transferred were for round sums; they were for the sums specified on the invoices.

36.18 The Respondent denied that his conduct had been dishonest. It was submitted that given the particular circumstances and the Respondent's belief at the time, all the transfers were properly required and properly made.

The Tribunal's Findings

36.19 Rule 13.3 required that:

> "The client account(s) of:

(a) a sole practitioner must be in the name under which the sole practitioner is recognised by the SRA, whether that is the sole practitioner's own name or the firm name;

and the name of the account must also include the word "client" in full (an abbreviation is not acceptable)."

36.20 Rule 17.7 required that:

> "Costs transferred out of a client account in accordance with rule 17.2 and 17.3 must be specific sums relating to the bill or other written notification of costs, and covered by the amount held for the particular client or trust. Round sum withdrawals on account of costs are a breach of the rules."

36.21 Rule 20.3 required that:

> "Office money may only be withdrawn from a client account when it is:
>
> (a) money properly paid into the account to open or maintain it under rule 14.2(a);
> (b) properly required for payment of your costs under rule 17.2 and 17.3;
> (c) the whole or part of a payment into a client account under rule 17.1(c);
> (d) part of a mixed payment placed in a client account under rule 18.2(b); or
> (e) money which has been paid into a client account in breach of the rules (for example, interest wrongly credited to a general client account) …"

36.22 The name of the Business Bonus Account on the statements produced by the bank had the name of the Firm, but did not state that the account was a client account. The Respondent submitted that online changes were not reflected in the hard-copy statements. The Tribunal inferred that the Respondent had changed the name of the account online. It was clear that when the account was opened, it was not opened as a client account. The Tribunal found that changing the name of the account online so that it included the word client was not sufficient to comply with the SAR 2011. In any event, the online statement did not contain the full name of the Firm as required by Rule 13.3, but only referred to "MILN-LUN". Therefore, as it was not a properly designated client account, monies held in that account would not be afforded the same protection as monies contained in a client account. Thus, the Respondent had failed to protect client monies and assets in breach of Principle 10. Members of the public would expect a solicitor to safeguard client money and afford it maximum protection by placing it in a properly designated client account. Thus the Respondent had failed to maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6. The Tribunal considered that a solicitor acting with integrity would ensure that he had properly protected client monies. By improperly transferring monies to the Business Bonus Account, the Respondent had failed to do so. The Respondent's conduct in that regard had fallen below the standards that the public and the profession expected of him, thus he had breached Principle 2.

36.23 The only payments into the account were the payments from the W Estate and interest payments. There were no payments out (other than for invoices – as to which see allegation 1.3 below). It had not been used in the way that office accounts are

generally used. The Tribunal found that the account was, in fact, used as a client account. The Tribunal accepted that the Respondent genuinely believed that the account was a client account, and that was the way in which he had used it. The Tribunal found that reasonable and honest people would consider that the Respondent was mistaken in his belief that the Business Bonus Account was a client account and that he had used the account as such. In the circumstances, reasonable and honest people would not consider that the Respondent's conduct had been dishonest.

36.24 The Tribunal found beyond reasonable doubt that the Respondent had breached the SAR 2011 and Principles as alleged. It did not find that his conduct had been dishonest. Accordingly the Tribunal found allegation 1.2 proved beyond reasonable doubt save that the Respondent's conduct had not been dishonest. The allegation of dishonesty was dismissed.

36.25 In its consideration of allegation 1.3, the Tribunal referred to its findings as regards overcharging at allegation 1.1 above.

36.26 It was not suggested, and the Tribunal did not find, that the Respondent had rounded figures up or down. To make that assumption, there would need to be a discernible way in which the Respondent charged; there was none. It was evident on the face of all the bills that the amounts charged were in round figures.

36.27 The only narrative contained on the majority of the bills was "To our professional charges for acting as Executors". This gave no indication of what work had been undertaken. The Tribunal accepted the evidence of Mr Banyard as to the likely findings of a Costs Judge given the lack of any meaningful narrative on the bills. The Tribunal found that the bills provided by the Respondent were inadequate due to the insufficiency of the narrative contained therein.

36.28 However, even if as the client, the Respondent considered the narrative to be sufficient, the Tribunal found that the bills bore no relationship to the work he had actually conducted. Indeed, the Respondent had submitted that the invoices were not in relation to any particular set of work he had undertaken. The Tribunal had already rejected the Respondent's explanation that there was a fixed fee payable. The Tribunal found that as the sole Executor of the W Estate, and the sole person responsible for paying the fees, it was incumbent on the Respondent to be able to demonstrate that the fees paid were properly required. As detailed above, whilst the Respondent detailed that the missing documents were prejudicial to his case, he had not sought to suggest that the missing documents would show that the fees he had charged were proportionate to the work he had undertaken in administering the W Estate. In the circumstances, the invoices the Respondent raised were not, and could not be justifiable.

36.29 The Tribunal found that the payments from the Business Bonus Account to the office account were in round figures and were not properly required for the payment of fees. Accordingly, it found beyond reasonable doubt that the Respondent had breached the SAR 2011 as alleged.

36.30 As the sole executor of the W Estate the Respondent was effectively issuing invoices to himself. He knew that there would be no scrutiny of the invoices and that they would not be challenged. Thus, he considered himself free to make transfers in such amounts and with such frequency as he desired. He also knew that he had not conducted the work to justify the quantum charged. The Tribunal found beyond reasonable doubt that in improperly transferring monies from the Bonus Business Account to the office account in purported settlement of fees that he knew were not justified and that he could not properly charge, the Respondent had failed to protect client money in breach of Principle 10 and had failed to maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6. That such conduct fell below the standards expected of him by members of the public and the profession was plain. Thus the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 2.

36.31 The Tribunal found that the Respondent had improperly transferred sums from the Business Bonus Account to the office account in purported payment of fees that he knew had not been incurred. The Tribunal found that there could be no honest explanation for the inexplicable and random nature of the Respondent's bills, particularly when 2 bills were raised and paid on the same day. The Tribunal found that there could be no doubt that reasonable and honest people would consider that a solicitor who had transferred sums that he knew he was not entitled to, in the knowledge that there would be no scrutiny of those charges, had acted dishonestly.

36.32 Accordingly, the Tribunal found allegation 1.3 proved beyond reasonable doubt, including that the Respondent's conduct had been dishonest.

37. **Allegation 1.4 - Failed to comply with an Order of the High Court made on 22 June 2017, within the 28 days required, or at all, and he thereby breached any or all of Principles 1, 6 and 7 and Outcome 5.3 of the 2011 Code.**

The Applicant's Case

37.1 Outcome 5.3 of the 2011 Code required the Respondent to "comply with court orders which place obligations on [him]". Beneficiary JH obtained an Order from the Family Division of the High Court on 22 June 2017 ("the High Court Order") requiring the Respondent to provide an inventory of the W Estate and an account of his administration of the W Estate within 28 days of service of the High Court Order. Beneficiary JH confirmed that as of the date of her witness statement (7 February 2019) the Respondent had not complied with the High Court Order. No evidence had been provided of the Respondent's compliance with the High Court Order. In his EWW response the Respondent cited various personal circumstances to excuse his failure to comply with the High Court Order.

37.2 Ms Hansen submitted that the Respondent's failure to comply with the High Court Order, promptly or at all, amounted to a failure to uphold the proper administration of justice in breach of Principle 1. He also failed to comply with his legal and regulatory obligations in breach of Principle 7. His conduct also amounted to a breach of Principle 6. In failing to cooperate with the Court Order, the Respondent failed to maintain the trust placed by the public in him and in the provision of legal services.

In failing to comply with the Court Order, the Respondent failed to achieve Outcome 5.3 of the 2011 Code.

The Respondent's Case

37.3 The Respondent submitted that he was made bankrupt on 11 June 2017. At that time he was struggling with his health. He was also dealing with the breakdown of his first marriage. That was an extremely harrowing experience, especially in light of his first wife's health. He was endeavouring to keep the family together and to ensure that his children continued with their education. At the time of the High Court Order things were incredibly difficult. This had occurred at a time when he was ill, although his illness had not been diagnosed. He had received only one complaint in 10 years of practise and there had been no claims against his PII policy. At that time he received four or five complaints; this reflected the difficulties he was facing.

37.4 The Respondent submitted that given the combination of circumstances, he did not feel that he was in the position to deal with the Order, and that it was, in fact, impossible for him to do very much. At that time he was not engaging very well with anything.

37.5 The Respondent submitted that any non-compliance was not deliberate but was the result of a coalition of circumstances including his ill health and bankruptcy; there was no deliberate non-compliance.

The Tribunal's Findings

37.6 The Tribunal noted that it was not the Respondent's case that he had complied with the Order. Beneficiary JH had confirmed in her statement that as at 2 February 2019, the Respondent had still not complied with the terms of the Order.

37.7 In addition to detailing his personal circumstances, the Respondent had stated in his Answer that "it also has to be remembered that the Respondent was made bankrupt on the 7 June 2017. When he became aware of the bankruptcy he did not hold himself out as a practising solicitor, nor undertook work by which it would be construed he was acting in a capacity as a practising solicitor, engaging in substantial legal matters". The Tribunal did not accept that as he was made bankrupt, the Respondent was no longer under an obligation to comply with the High Court Order.

37.8 The Order required the Respondent to "within twenty eight days of service hereof exhibit on Oath a true and perfect inventory of the estate of [TW] deceased and render a true and just account of his administration of the estate of the estate of the said deceased". This did not require the Respondent to hold himself out as a practising solicitor, undertake work by which it would be construed he was acting in a capacity as a practising solicitor or engage in substantial legal matters.

37.9 The Tribunal found that the Respondent had failed entirely to comply with the High Court Order and accepted the evidence of Beneficiary JH in that regard. The matters raised by him were mitigation as regards the reason for his failings, but did not amount to a defence to the allegation. It was noted that the Respondent not only

failed to comply, but also failed to contact the Court and either request further time to comply or explain his circumstances.

37.10 The Tribunal found beyond reasonable doubt that in failing to comply with the High Court Order the Respondent had failed to uphold the rule of law and the administration of justice in breach of Principle 1. It was also found beyond reasonable doubt that in failing to comply with the Court Order, the Respondent had failed to comply with his legal and regulatory obligations in breach of Principle 7 and had failed to achieve Outcome 5.3 of the 2011 Code.

37.11 Members of the public would expect the Respondent to have complied with an Order of the High Court. In failing to do so, the Respondent had failed to maintain the trust the public placed in him and in the provision of legal services. Thus the Tribunal found beyond reasonable doubt that the Respondent's conduct was in breach of Principle 6.

37.12 Accordingly, the Tribunal found allegation 1.4 proved beyond reasonable doubt.

38. **Allegation 1.5 - Failed to cooperate adequately or at all with the SRA's investigation into his conduct and he thereby breached any or all of Principles 6 and 7 of the Principles and any or all of Outcomes 10.6, 10.8 and 10.9 of the 2011 Code.**

The Applicant's Case

38.1 The Respondent was required to cooperate fully with the SRA's investigation into his conduct (Outcome 10.6 of the 2011 Code) and to comply promptly with a Production Notice from the SRA (Outcomes 10.8 and 10.9 of the 2011 Code).

38.2 The SRA requested various documents and information from the Respondent by email when its investigation initially commenced on 25 July 2017, however the Respondent did not provide a substantive response. Instead the Respondent provided personal reasons for not being able to assist the Applicant's investigation at various times.

38.3 As a result of this lack of compliance, the Applicant sent a Production Notice, dated 1 September 2017, to the Respondent requiring by 8 September 2017:

- The complete file for the W Estate;
- Information relating to accounts of the W Estate;
- A complete copy of client bank account statements.

38.4 The Respondent did not comply with the Production Notice dated 1 September 2017. Following the SRA's intervention into the Respondent's practice, the SRA has obtained some of the documents required under the Production Notice, but some documents remained outstanding.

38.5 Subsequent to the intervention, the FIO attempted to arrange an interview with the Respondent. The Respondent initially agreed to be interviewed but later declined. As at the time of the Rule 5 Statement, the Respondent had not provided the Applicant

with evidence of the personal circumstances which he cited for his non-compliance with the Applicant's investigation.

38.6 Ms Hansen submitted that in failing to cooperate with the SRA's investigation, the Respondent had breached Principles 6 and 7, and failed to achieve Outcomes 10.6, 10.8 and 10.9.

The Respondent's Case

38.7 The Respondent denied allegation 1.5. In his Answer the Respondent stated that he was finding it impossible at that time to engage with any matters of substance at that time and there were also a number of personal reasons why at various times the Respondent was unable to engage. The FI Officer was made aware of these. The Respondent could not recall receiving or seeing a production notice.

38.8 The SRA was in possession of all client files, including those of the W Estate. The Respondent felt given he had been struggling to engage with matters clearly, he believed it would be more beneficial to the SRA and himself to answer any questions in written form. There was never any attempt to avoid doing so. The FIO declined to engage in that way.

38.9 The Respondent submitted that at the time there were approximately five files in the Firm, including the W Estate matter. He explained that at the time his second wife, whom he had married on 25 July 2017, had health issues. Given what he was dealing with at the time and the fact that he was away on honeymoon, he considered that those matters were his primary concern. Throughout that time, his wife had a number of medical-related appointments. The Respondent provided a number of letters detailing his wife's appointments and medical procedures.

The Tribunal's Findings

38.10 The Tribunal did not accept that the Respondent's wife's medical issues, or his marriage and honeymoon meant that he was unable to cooperate with the Applicant's investigation. Whilst it could amount to mitigation, it did not absolve him of his regulatory obligations. The Tribunal was satisfied beyond reasonable doubt that the Respondent had failed to comply adequately or at all with the informal requests for information or the Production Notice of 1 September 2017. Further, as detailed above, had the Respondent complied with the Production Notice, the Applicant would himself have been in possession of the items that he later stated were missing from the file.

38.11 The Tribunal found beyond reasonable doubt that the Respondent had failed to cooperate fully with the SRA's investigation into his conduct and to comply promptly with a Production Notice from the SRA; he had thus failed to achieve Outcomes 10.6, 10.8 and 10.9. Such conduct was, beyond reasonable doubt, in breach of Principle 7 – the Respondent had failed to comply with his legal and regulatory obligations and had failed to deal with his regulator in a timely, cooperative and open manner. The Tribunal also found beyond reasonable doubt that such conduct was in breach of Principle 6. Members of the public would expect a solicitor to comply with requests

for information, particularly when such a request required the Respondent to provide a formal response.

38.12 Accordingly, the Tribunal found allegation 1.5 proved beyond reasonable doubt.

39. **Allegation 1.6 - Failed to cooperate adequately or at all with the Legal Ombudsman in that he did not comply with and/or respond to the Preliminary Decisions issued on 21 June 2017 and/or 22 June 2017 and he thereby breached Principles 6 and 7 of the Principles and Outcome 10.6 of the 2011 Code.**

The Applicant's Case

39.1 The Respondent was required, pursuant to Outcome 10.6 of the 2011 Code, to cooperate fully with the Legal Ombudsman in relation to complaints about his conduct.

39.2 Two separate complaints were made to the Legal Ombudsman in relation to the Respondent's administration of the W Estate by the residual beneficiaries and half-sisters of the deceased. As regards both complaints the Legal Ombudsman found that the Firm's service was below a reasonable level and issued directions to the Firm in two Preliminary Decisions dated 21 and 22 June 2017 requiring a response by 6 and 7 July respectively.

39.3 Beneficiary JH has confirmed that as of the date of her witness statement (7 February 2019) the Respondent had not complied with directions in the Preliminary Decision dated 21 June 2017 concerning her complaint. In his response to the EWW the Respondent provided no explanation for his failure to engage with the Legal Ombudsman.

39.4 Ms Hansen submitted that in failing to respond adequately to the Legal Ombudsman, the Respondent failed to achieve Outcome 10.6 and breached Principles 6 and 7 of the Principles.

The Respondent's Case

39.5 The Respondent denied allegation 1.6. In his Answer he explained that he considered that he had cooperated as fully as he could. The Respondent reminded that Tribunal that at that time, as a result of his bankruptcy, he was "unable to engage in substantial legal matters as a practising solicitor". The Respondent explained that in a previous complaint made to the Legal Ombudsman, he had been completely exonerated. The complaint that was the subject of this allegation was "more or less similar".

39.6 The Respondent considered that his response to the Legal Ombudsman had been adequate. He referred the Tribunal to an email he sent to the Legal Ombudsman dated 7 July 2017, which stated: "I wish to object to the findings of Mrs Sewell. Could you please put in place the necessary review."

39.7 His response, it was submitted, was adequate in order for the Legal Ombudsman to set in place a review. The response email from the Legal Ombudsman clearly showed this was the action that would be taken. He heard nothing further in this regard.

The Tribunal's Decision

39.8 The Tribunal considered the preliminary decisions notified to the Respondent. In both those decisions it was stated:

> "You can reject my Preliminary Decision and request that an ombudsman makes a final decision about this complaint. If you choose this option, you must let me know by [6 and 7 JULY 2017 respectively] and explain briefly, in writing, why you disagree with my Preliminary Decision. The ombudsman will have access to all the information and comments that you and [the complainant/s] have provided, as well as my Preliminary Decision. They will then make a final decision about the complaint. The ombudsman is not bound in any way to follow my Preliminary Decision. Once an ombudsman has made a final decision, [the complainant/s] can accept or reject it. If the ombudsman's decision is accepted, it will be final and binding on your firm. Please be aware that there will be no further way of challenging it with US".

39.9 The Preliminary Decisions each required the Respondent to undertake certain actions including:

- Paying compensation of £350 to each complainant;
- Writing a letter of apology to the complainant/s regarding the delay;
- Providing copies of their interim Estate Accounts held, and identify the income received from the solar panels;
- Providing reasonable updates by email to the complainant/s until the matter was concluded;
- Providing the complainant/s with a reasonable timescale for the conclusion of the matter.

39.10 The Tribunal did not find the Respondent's response of 7 July 2017 (which was 1 day late as it responded only to the complaint requiring a response by 6 July 2017) to be adequate. He had failed to provide any reasons as to why he disagreed with the decision. As regards the Preliminary Decision of 22 June 2017, the Respondent failed to respond to the Legal Ombudsman at all. As detailed at allegation 1.4 above, the Tribunal did not consider that the Respondent's bankruptcy absolved him from providing the Legal Ombudsman with a substantive response to the matters raised, or complying with the directions contained in the Preliminary Decisions.

39.11 The Tribunal found beyond reasonable doubt that in failing adequately (as regards the 21 June 2017 Preliminary Decision) or at all (as regards the 22 June 2017 Preliminary Decision), the Respondent had failed to comply with his legal and regulatory obligations and to deal with the Ombudsman in an open, timely and co-operative manner in breach of Principle 7. Such conduct failed, beyond reasonable doubt, to achieve Outcome 10.6, which required the Respondent to co-operate fully with the Legal Ombudsman at all times including in relation to any investigation about a claim for redress against him. The Tribunal found beyond reasonable doubt that the

Respondent's conduct failed to maintain the trust placed in him and in the provision of legal services contrary to Principle 6. Members of the public would expect the Respondent to respond fully to the Legal Ombudsman and to comply with any directions made.

39.12 Accordingly, the Tribunal found allegation 1.6 proved beyond reasonable doubt.

40. **Allegation 1.7 - Failed to reconcile the Firm's client accounts every 5 weeks, or at all, between September 2015 and September 2017 in breach of any or all of Rules 29.1, 29.2 and 29.12 of the SAR 2011 and all or any of Principles 8 and 10 of the Principles.**

The Applicant's Case

40.1 It was a mandatory requirement under Rule 29.12 of the SAR 2011 that client accounts were reconciled at least once every five weeks.

40.2 The FIO noted in the Second FI Report that at the time of the intervention on 3 October 2017, the last completed reconciliation of the client account(s) was dated September 2015, some two years prior to the intervention. Accordingly, Ms Hansen submitted that there had been repeated breaches of Rule 29.12 of the SAR 2011. For the same reasons, it was submitted that there had also been breaches of Rules 29.1 and 29.2 of the SAR 2011, which required proper accounting records be kept.

40.3 As a result of this failure, neither the Intervention Agent nor the FIO were able to fully reconcile the client account.

The Respondent's Case

40.4 The Respondent denied allegation 1.7 in his Answer. During his submissions, the Respondent accepted that technically he had not kept the Firm's accounts "up to scratch". On that basis he accepted a technical breach of the SAR 2011. He explained that he was keeping a running total, so he was quite sure that there were no breaches of the client bank account. Any reconciliations he had carried out would were done "by hand" and were "probably not in the SRA required format" but had been conducted in an attempt to ensure there were no client account breaches".

The Tribunal's Findings

40.5 The Tribunal found that no client account reconciliations had been undertaken in accordance with the Rules post September 2015. During his cross-examination of the FI Officer, the Respondent asked whether the FI Officer considered that it was the SRA's responsibility to bring the accounts up-to-date, given that it had the baseline of the 2015 information. Mr Baker stated that it was not for the SRA to reconstitute two years of accounting records, and it was not ordinary for the SRA to bring a Firm's books of account up-to-date. The Tribunal accepted this evidence. It was not for the Applicant to remedy the Respondent's failings. Given those failings, Mr Baker had been unable to express an opinion as to the Firm's ability to meet its liabilities to clients. This was a justified and appropriate position for Mr Baker to adopt.

40.6 Rule 29.12 required:

> "You must, at least once every five weeks:
>
> (a) compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all unpresented items) of all general client accounts and separate designated client accounts, and of any account which is not a client account but in which you hold client money under rule 15.1(a) or rule 16.1(d), and any client money held by you in cash; and
>
> (b) as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients (and other persons, and trusts) and compare the total of those balances with the balance on the client cash account; and also
>
> (c) prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons."

40.7 Rule 29.1 required:

> "You must at all times keep accounting records properly written up to show your dealings with:
>
> (a) client money received, held or paid by you; including client money held outside a client account under rule 15.1(a) or rule 16.1(d); and
>
> (b) any office money relating to any client or trust matter"

40.8 Rule 29.2 required:

> "All dealings with client money must be appropriately recorded:
>
> (a) in a client cash account or in a record of sums transferred from one client ledger account to another; and
>
> (b) on the client side of a separate client ledger account for each client (or other person, or trust).
>
> No other entries may be made in these records"

40.9 In failing to undertake reconciliations as required, the Respondent had, beyond reasonable doubt, failed to comply with Rules 29.12, 29.1 and 29.2 of the SAR 2011. He had also failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles. Further, he had failed to protect client monies and assets in breach of Principle 10. The FI Officer was unable to ascertain whether the client account held sufficient funds to meet client liabilities. Further, there was a minimum shortage on the client account.

40.10 Accordingly, the Tribunal found allegation 1.7 proved beyond reasonable doubt.

Previous Disciplinary Matters

41. None.

Mitigation

42. The Respondent referred the Tribunal to the documents contained within the hearing bundle that related to the health of him and his wife. He explained the stress that he was under at the time of his conduct due to his personal circumstances. His health had been improving, however he had found the proceedings to be an exhausting process. He had engaged throughout the Tribunal proceedings. He had been trying to close the Firm for some time. Whilst he did not agree with the reasons for the intervention, it had come as a relief to him.

43. He did not believe that he would ever be in a position where he could again practise, however he did not want to be struck off the Roll.

Sanction

44. The Tribunal had regard to the Guidance Note on Sanctions (December 2018). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

45. The Tribunal found that the Respondent was motivated by personal financial gain. His actions were planned. He had created a number of invoices which he had, in the main, paid on the same date as the invoice was raised. His conduct was in breach of his position of trust as the sole Executor of the W Estate. He had breached the trust placed in him by TW, who had instructed him to take care of her affairs and had executed the Will 4 days before her death. The Respondent had overcharged the Estate and raised improper invoices in the knowledge that his conduct was unlikely to be discovered or challenged given that he was the sole Executor and the solicitor with conduct. He had used a substantial amount of the Estates assets for his own purposes, but had made no interim payment to the beneficiaries who were entitled to the proceeds of the Estate. The Respondent was an experienced solicitor who had direct control and was solely responsible for the circumstances giving rise to the misconduct. The Tribunal found him to be highly and solely culpable for his misconduct.

46. He had caused significant harm to the beneficiaries. Complaints had been made to the Legal Ombudsman regarding his conduct, and High Court proceedings were taken by one beneficiary resulting in a High Court Order requiring the Respondent to provide an inventory of the Estate and an account of his administration of the Estate. The Respondent failed to comply with that Order. The Legal Ombudsman found that the Respondent's conduct had caused the family frustration, division and upset. The Respondent had also caused great harm to the reputation of the profession as per the findings of Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

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

47. The Respondent's conduct was aggravated by his proven dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession. His conduct had been deliberate, calculated, repeated and had continued for over 3 years. He had taken advantage of his position as the sole Executor of the W Estate and had abused the trust placed in him by his elderly client who he knew was dying at the time he attended her to take instructions for the preparation of her Will. The impact of the Respondent's misconduct on the beneficiaries was evidenced by their complaints to the Legal Ombudsman and the High Court action. The Tribunal found that the Respondent demonstrated very little insight into his conduct.

48. In mitigation, the Respondent had a previously unblemished record, and he had cooperated with the Applicant following his referral to the Tribunal.

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

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

50. The Tribunal did not find any circumstances that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

51. Ms Hansen applied for costs in the sum of £30,950.50. This comprised of the SRA's investigation costs, disbursements for witness attendances and the Capsticks fixed fee of £18,500 (which was subject to VAT).

52. The Respondent did not make any submissions as regards the quantum claimed. He explained that his bankruptcy had been discharged in June 2018. The proceeds of the sale of his former matrimonial home had been distributed to his ex-wife and to his Trustee in Bankruptcy. He was in receipt of a small pension. He lived in a rented property and was supported financially by his wife who was in full time employment.

53. The Tribunal considered that the quantum claimed was reasonable and proportionate. The Tribunal noted that the Respondent was of limited means, however it determined that it was appropriate for the Applicant to be awarded its costs in full. The Tribunal

was aware that the Applicant took a realistic and pragmatic view to costs recovery, and expected that it would come to a reasonable arrangement with the Respondent as regards recovery of the costs.

Statement of Full Order

54. The Tribunal Ordered that the Respondent, BRIAN MILNER-LUNT, 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 £30,950.50.

DATED this 3rd day of September 2019
On behalf of the Tribunal

A. Kellett
Chair