SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11939-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RICHARD STEPHEN DAVIES Respondent

Before:

Mr P. Lewis (in the chair)
Mr R. Nicholas
Mr S. Howe

Date of Hearing: 7 August 2019

Appearances

Rory Mulchrone, Counsel, employed by Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR instructed by the Solicitors Regulation Authority for the Applicant

The Respondent did not appear and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent, Richard Stephen Davies, made by the SRA, were that, while in sole practice as a solicitor, under the style of Richard Stephen Davies ("the firm"):

Estate of Client A (deceased)

1.1 From around 3 January 2013 he acted in the Estate of Client A (deceased) and

1.1.1 he undervalued the estate assets by up to £49,196.20 in the estate accounts without any or adequate explanation;

1.1.2 he took costs totalling around £37,020.00 overall, in circumstances where only £16,800.00 appeared in the estate accounts;

1.1.3 in particular, he took costs totalling around £6,540.00, on or about 1 August 2016 (around two years after the final estate accounts were sent to the beneficiaries), without first raising a written bill of costs or explaining why such costs were due and owing, adequately or at all;

1.1.4 he inappropriately paid a co-executor around £5,000.00 out of the estate funds;

1.1.5 he failed thereafter to recover that sum for the estate or account for it to the beneficiaries;

and he therefore:

1.1.6 breached Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the Principles") or any of them;

1.1.7 failed to achieve Outcome 1.2 of the SRA Code of Conduct 2011 ("the 2011 Code");

1.1.8 breached Rule 17.2 of the SRA Accounts Rules 2011 ("the Accounts Rules").

False declaration to insurer

1.2 On or about 1 September 2016 and/or 29 June 2017 he made one or more representations to his insurer, which were false or misleading and he therefore breached Principles 2 and/or 6 of the Principles.

Failure to register title, pay stamp duty, pay land registry fees or inform clients of such failures

1.3 In respect of a number of property conveyances, including Properties A to D (or any of them), he failed:

1.3.1 to register title to such properties in favour of his clients; and/or

1.3.2 to pay stamp duty owed to Her Majesty's Revenue and Customs ("HMRC"); and/or

1.3.3 to pay Land Registry fees owed to Her Majesty's Land Registry ("HMLR"); and/or

1.3.4 to inform his clients of such failures, adequately or at all;

and he therefore:

(insofar as such conduct took place on or before 5 October 2011)

1.3.5 breached Rules 1.02, 1.04, 1.05, 1.06 of the Solicitors Code of Conduct 2007 ("the 2007 Code") or any of them;

(insofar as such conduct took place on or after 6 October 2011)

1.3.6 breached Principles 2, 4, 5, 6, 8 and 10 or any of them;

1.3.7 failed to achieve Outcome 1.2 of the 2011 Code.

Accounting errors

1.4 As at 31 March 2018, there were:

1.4.1 accounting errors in up to 37 matters;

1.4.2 43 matters where money was held in the client account and there had been no activity for a year;

and he therefore breached Principles 6 and/or 8.

Client E

1.5 From around 27 May 2010, he retained around £14,908.27 on account in the matter of Client E (deceased) without any or adequate explanation, in breach of:

1.5.1 Rules 14.3 and/or 14.4 of the Accounts Rules;

1.5.2 Principles 6 and/or 8.

Accounts Rules breaches

1.6 He failed at all material times:

1.6.1 to carry out reconciliations at least once every five weeks, as prescribed by and in breach of Rule 29.12 of the Accounts Rules;

1.6.2 to return client money promptly as prescribed by and in breach of Rule 14.3 of the Accounts Rules;

1.6.3 to inform clients in writing at least once every twelve months of money still held for them and the reason for its retention, in breach of Rule 14.4 of the Accounts Rules;

1.6.4 to provide all relevant client files for review upon request by his accountants and/or the SRA's forensic investigation officer ("FIO"), in breach of Rule 1.2 and/or Rule 6.1 of the Accounts Rules.

2. In addition, allegations 1.1 and/or 1.2 above were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the allegations.

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 22 March 2019 with Appendices 1 and 2 and exhibit RTM1
- Schedule of costs dated 6 August 2019

Respondent

- Letter from the Respondent to the Tribunal dated 20 June 2019

Preliminary and Other Issues

4. Application to proceed in absence

4.1 The Respondent was not present. For the Applicant, Mr Mulchrone submitted that in his Response to the Rule 5 Statement by way of a letter to the Tribunal dated 20 June 2019 the Respondent indicated that he would not attend, giving financial reasons. The Tribunal might think that it was totally clear that he had voluntarily absented himself from the hearing. Mr Mulchrone referred the Tribunal to its Policy/Practice Note on Adjournments and confirmed that he relied on the authorities of R v Hayward, Jones and Purvis [2001] QB 862, CA and General Medical Council v Adeogba; General Medical Council v. Visvardis [2016] EWCA Civ 162. Mr Mulchrone also pointed out that if the Respondent was dissatisfied with a decision to proceed in his absence he could apply under Rule 19 of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") which stated:

> "**19.**—(1) At any time before the filing of the Tribunal's Order with the Law Society under rule 17 or before the expiry of the period of 14 days beginning with the date of the filing of the order, the respondent may apply to the Tribunal for a re-hearing of an application if—
>
> (a) he neither attended in person nor was represented at the hearing of the application in question; and

(b) the Tribunal determined the application in his absence."

4.2 The Tribunal retired to consider its decision. It had regard to its discretion under Rule 16 SDPR which stated:

> "(2) If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

The Tribunal had regard to the care with which it must exercise its discretion as set out in the Hayward case and its policy on adjournments and the submissions for the Applicant. As Mr Mulchrone had pointed out the Respondent had made clear in his Response of 20 June 2019:

> "I wish at this stage to place it on record that I cannot see any likelihood of my being able to attend the Tribunal."

The Respondent went on to give financial reasons for his non-attendance and concluded:

> "In these circumstances I will have to rely upon your good selves to come up with an appropriate judgment in my absence (and I have every confidence in you!)"

The Tribunal's Policy on Adjournments set out amongst reasons not generally to be regarded as providing justification for an adjournment:

> "The inability of the Respondent for financial or other reasons to secure the services of a representative at the hearing or financial reasons for the non attendance of the Respondent."

Furthermore the Standard Directions issued dated 27 March 2019 set out at paragraph 20:

> "If the Respondent fails to attend the substantive hearing and the Tribunal is satisfied that notice of the hearing was served on the Respondent/s in accordance with Rule 10 (1) of the Solicitors (Disciplinary Proceedings) Rules 2007, it will be open to the Tribunal to make such findings, sanctions, costs and orders as it considers appropriate in respect of the application, notwithstanding the absence of the Respondent."

The Respondent had been served with the documents and had engaged with the proceedings. He had made clear his intention to absent himself from the proceedings. He had not applied for an adjournment of the hearing. In the circumstances the Tribunal did not consider that adjourning the matter would improve the chances of the Respondent attending a substantive hearing. The Respondent had submitted a medical report from his GP by way of background but had not sought an adjournment on medical grounds. The Tribunal determined that he had voluntarily absented himself

from the hearing and that it would be appropriate for it to exercise its discretion and proceed in his absence.

5. The scope of allegation 1.5

5.1 The Tribunal queried which Rules the Applicant relied on regarding allegation 1.5. The allegation and Appendix 1 to the Rule 5 Statement which set out "Relevant Rules and Regulations" referred to Rules 14.3 and/14.4 of the Accounts Rules (which were defined in the Rule 5 Statement as being the SRA Accounts Rules 2011) and Principles 6 and 8 of the SRA Principles 2011 but the first date referred to in the allegation was 27 May 2010. Mr Mulchrone accepted that as a pleading point it would have been better to include the Code of Conduct 2007 but it was conduct which dated back even though it continued well into the application of the 2011 Code. The Tribunal sought clarification as to whether Mr Mulchrone was inviting it to look only at conduct which engaged the 2011 Code or asking for permission to amend the pleadings to include the 2007 Code. Mr Mulchrone submitted that in the absence of the Respondent he would be in some difficulty asking the Tribunal to amend the allegation and that it would not be fair to do so. He would therefore treat the allegation evidentially as relating to conduct which occurred from the coming into effect of the 2011 Code.

Factual Background

6. The Respondent was admitted to the Roll on 15 December 1973. The firm was his recognised sole practice and commenced trading on 14 July 1987. The Respondent operated from an office at 62 New Street, Mold, Flintshire, Wales, CH7 1NZ. He mainly undertook probate and conveyancing work.

7. The Respondent was the firm's Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA"). He was also the sole signatory to client account. He employed an unadmitted assistant on a part-time basis.

8. The conduct in this matter initially came to the attention of the Applicant on 31 January 2018, when it received the firm's accountant's report for the period 1 August 2016 to 31 July 2017. This report was qualified and highlighted the following concerns:

- A failure by the firm to provide client files for review. Files requested were either damaged beyond repair or did not contain the information needed.
- The existence of office credit balances.
- A difference in the client account reconciliations.
- Longstanding residual balances.

9. A forensic investigation was commissioned which commenced on 10 April 2018. This investigation included an interview with the Respondent on 26 June 2018. A forensic investigation report ("FIR") was prepared on 21 August 2018. The FIR identified concerns which gave rise to the allegations in this matter.

10. In summary, the FIR identified that:

- The firm's books of accounts were not in compliance with the SRA Accounts Rules 2011 for the following reasons:
  - failure to carry out client account reconciliations as required;
  - failure to maintain up to date and accurate accounting records;
  - failure to inform clients in writing, at least annually, of funds held.
- The Respondent prepared an estate account on the matter of Client A (deceased) which understated the value of the estate assets and the fees taken by the firm.
- 43 client matters were inactive. The ledgers showed credit balances and there had been no financial activity since 1 April 2017 on these matters. The credit balances ranged from £0.20 to £14,908.27 and totalled £66,201.43 with the oldest balance dating from 1 June 2000.
- The firm had failed to undertake post completion work on several conveyancing matters. There were 17 properties in respect of which the change in ownership had not been registered with the Land Registry.
- The Respondent failed to submit stamp duty land tax ("SDLT") returns and pay the tax for several clients.

11. In addition, the Applicant's solicitors had since obtained witness statements from two clients; Client Mrs B and Client C.

SRA Investigation

12. In addition to commissioning the forensic investigation, and instructing its solicitors to take witness statements, the Applicant took the following steps to investigate the allegations which it made against the Respondent. A report recommending intervention into the Respondent's practice was disclosed to him on 21 September 2018. Following identification of some typographical errors, an amended report was disclosed on 26 September 2018. The Respondent was invited to respond to the report by 5 October 2018 and did so. His Response included:

- "I have not acted dishonestly and am concerned that the panel might suspect dishonesty";
- "I hope to organise a quiet and gentle closure of the practice before long as my doctor has advised that I am becoming unwell";
- "I have made the decision to retire shortly and I will ensure that all current matters are completed or transferred to other local solicitors… I have not accepted any new instructions".

13. In relation to the estate of Client A (deceased), the Respondent stated:

> "This Estate Account is admitted to have been inadvertently issued incorrectly. The matter is being considered and any appropriate payments will be made to the beneficiaries of the estate."

14. The Respondent did not consider that it was necessary to make disclosures to the firm's insurer on the basis that "no formal complaints have been received so it would have been inappropriate".

15. In respect of his failure to undertake post-completion work, the Respondent stated:

> "This has been noted. No clients have suffered any financial loss and a new regime is coming into operation to ensure that this does not occur again."

16. On 8 October 2018, the FIO spoke to the Respondent to explore what he meant by the "new regime". The Respondent said that he meant he would "keep a closer eye on things to make sure it does not happen again".

17. The Respondent also reiterated that any costs associated with late payment of fees would be borne by him and not his clients.

18. In relation to the applicable law, rules and definitions annexed to the Intervention Report (including the Principles, Rules 6.1, 14.3 and 14.4 of the Accounts Rules and Outcome 1.2 of the Code), the Respondent stated: "I cannot see that I have flouted any of these provisions".

19. The Respondent provided updates on various matters and said he was registering the properties identified in the FIR.

20. On 12 October 2018 an Adjudication Panel of the Applicant decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

21. No witnesses gave oral evidence before the Tribunal.

Findings of Fact and Law

22. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard 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 rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

23. **Allegation 1.1 - Estate of Client A (deceased)**

From around 3 January 2013 he [the Respondent] acted in the Estate of Client A (deceased) and

1.1.1 he undervalued the estate assets by up to £49,196.20 in the estate accounts without any or adequate explanation;

1.1.2 he took costs totalling around £37,020.00 overall, in circumstances where only £16,800.00 appeared in the estate accounts;

1.1.3 in particular, he took costs totalling around £6,540.00, on or about 1 August 2016 (around two years after the final estate accounts were sent to the beneficiaries), without first raising a written bill of costs or explaining why such costs were due and owing, adequately or at all;

1.1.4 he inappropriately paid a co-executor around £5,000.00 out of the estate funds;

1.1.5 he failed thereafter to recover that sum for the estate or account for it to the beneficiaries;

and he therefore:

1.1.6 breached Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the Principles") or any of them;

1.1.7 failed to achieve Outcome 1.2 of the SRA Code of Conduct 2011 ("the 2011 Code");

1.1.8 breached Rule 17.2 of the SRA Accounts Rules 2011 ("the Accounts Rules").

23.1 For the Applicant, Mr Mulchrone relied on the Rule 5 Statement and the FIR and attachments and referred the Tribunal to Appendix to the Rule 5 Statement setting out the relevant regulatory provisions pleaded in the allegations.

23.2 It was set out in the Rule 5 Statement that in summary, the FIO Ms Joanna Wright identified that the Respondent prepared the final estate account for Client A (deceased), who had died on 3 January 2013. He was a co-executor of the estate. The beneficiaries were told that the assets of Client A's estate totalled £419,797.66. However, according to the client ledger, the firm received some £468,993.86 including from Lloyds Bank, Cheshire Building Society, Aviva and Prudential, each of which was undervalued in the account sent to the beneficiaries. The account undervalued the estate assets by £49,196.20. The Respondent accepted that he must have prepared the account but he was unable to provide a reasonable explanation for the undervaluation. The account sent to the beneficiaries showed that the firm took £16,800.00 in fees for the work undertaken by it. However, the ledger showed that the actual amount taken by the firm was £37,020.00. The Respondent could not explain the reason for this difference. One of the beneficiaries said the last correspondence he received from the firm was on 11 August 2014. However, the client ledger record showed that a further £6,540.00 including VAT was taken in costs on 1 August 2016. The bill for this amount was not produced by the Respondent and no credible explanation was offered as to why this money was taken two years after the final estate accounts were sent to the beneficiaries. The Applicant calculated that four

beneficiaries were owed at least £2,862.80 and possibly more because the Respondent took £37,020.00 in costs instead of the £16,800.00 he told them about.

23.3 On 16 August 2013, a co-executor was paid £5,000 from the estate. In interview the Respondent said this money was for the co-executor to do work on a house before it was sold. He said:

> "I know, I think anyway, it was to do with works that might be needed to be done to the house before it was sold…"

The client ledger described this payment as "On A/c Holiday Mr […]" The Respondent conceded that the payment was in case the co-executor went on holiday. He stated a short time later in the interview:

> "No, I think it was just um in case he wanted in case he went on holiday:"

He said that the co-executor paid the money back but agreed there was no record of this in the client ledger. The payment was not recorded in the final estate accounts sent to the beneficiaries. The Tribunal pointed out that he also said:

> "No… I could be dazed and confused and thinking that somebody else's estate, if you see what I mean. Um, I'm going to have to look into that and see."

Mr Mulchrone submitted that the Respondent also referred to himself as becoming old and tired as an explanation for these matters; it was a matter for the Tribunal to determine whether the facts were proved and if so whether they amounted to the breaches of the Principles alleged.

23.4 It was submitted that by conducting himself as alleged, the Respondent failed to act with integrity, in breach of Principle 2 ("You must act with integrity"). It was well established that the word "integrity" connoted moral soundness, rectitude and steady adherence to an ethical code as set out in Hoodless & Blackwell v FSA [2003] FSMT 007. Lack of integrity was capable of being identified as present or not by an informed tribunal by reference to the facts of a particular case as set out in Newell Austin v SRA [2017] EWHC 411 (Admin) where it was also stated that lack of integrity and dishonesty were not synonymous. A person might lack integrity even though not established as being dishonest. In Wingate & Evans v SRA v Malins, [2018] EWCA Civ 366, the Court of Appeal held that "integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty." A probate solicitor acting with integrity would not undervalue estate assets in the estate accounts by £49,196.20 without explanation. He would not take costs from estate funds substantially in excess of those identified in the estate accounts. He would certainly not take costs two years after the estate accounts were sent to beneficiaries without at least first raising a bill of costs and explaining how such costs had been properly incurred so as to be due and owing. A solicitor-executor acting with integrity would not pay a substantial sum to a co-executor without good reason and then fail to recover those monies for the estate or account for the transaction in its accounts.

23.5 It was submitted that by conducting himself as alleged, the Respondent also failed to act in the best interests of each client, contrary to Principle 4 and/or to provide a proper standard of service, contrary to Principle 5. He failed to behave in a way that maintained the public trust placed in him and the provision of legal services and therefore breached Principle 6. He also failed to protect client money and/or assets, in breach of Principle 10.

23.6 Further or alternatively, it was submitted that the conduct alleged plainly constituted a failure to achieve Outcome 1.2 of the Code ("You provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice").

23.7 Further or in the further alternative, it was submitted that the conduct alleged at allegation 1.1.3 was in breach of Rule 17.2 of the Accounts Rules, ("If you properly require payment of your fees from money held for a client or trust in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party.")

23.8 The Tribunal had regard to the evidence and to the submissions for the Applicant. It also noted that in his Response to the Rule 5 Statement by way of letter dated 20 June 2019, the Respondent stated regarding the estate of Client A by reference to the numbering of the allegations:

> "...
>
> 1.1.1 This was considered unnecessary as the net value of the Estate as shown was all that was available for distribution
>
> 1.1.2 The sum of £16,800.00 was the amount charges in respect of the obtaining of Probate and subsequently dealing with the sale of the Property.
>
> 1.1.3 These costs were incurred prior to the death of [Client A] and she wanted to pay them but I was (perhaps foolishly) slow in providing her with a bill of Costs as she was very distressed owing to her cancer.
>
> 1.1.4 This sum was to reimburse him for the time and effort he devoted to his care and attention to [Client A] and the time spent with [Client A's] work colleagues during her time of illness leading to her death. [Client A] was very devoted to [the co-executor] and they had a very special friendship.
>
> 1.1.5 [The co-executor] asked whether it would be possible to have some money on account of his share in the estate. He requested the sum of £5,000.00 on account so that he could go on holiday so as to relieve himself after having devoted so much time and effort to [Client A]. On reflection it now appears that this sum should perhaps, have been deducted from his share of the inheritance. That being said, I know that [Client A] was very thankful for all his efforts and time and would

have wished him to have received this additional sum rather than have it deducted from his share of the inheritance.

1.1.6, 1.1.7 and 1.1.8 There was no dishonesty involved and the Estate was dealt with in accordance with [Client A's] wishes and neither her sister nor her brother has made any complaint whatsoever."

In respect of the allegations of breach of Principle under allegation 1.1, the Respondent denied acting without integrity. He also stated that the estate was not undervalued; the amount of the estate available to the beneficiaries was the actual available amount. The Tribunal noted that he did not give a proper explanation for the discrepancy in what was distributed and what should have been distributed. He denied having behaved in a way that would have caused the public to displace their trust in him. He said "If you were to come into my office you would see "Thank You" cards amounting to nearly 100." He also said that the majority of his clients had been delighted with the standard of work provided for them.

23.9 The Respondent was an executor of the estate of Client A along with a lay person. He was responsible for the administration of Client A's estate. The Respondent was a sole practitioner and sole signatory to the client account:-

- In respect of allegation 1.1.1, the Tribunal found the facts proved as alleged that the estate accounts sent to the beneficiaries showed that the Respondent had undervalued that estate by up to £49,196.20 as set out in the FIR. The assets in the estate accounts sent to the beneficiaries were stated as £419,797.66 compared to £463,993.86 in the filed estate accounts on the client file, an understatement of £44,196.20, (£49,196.20 when compared to the ledger). Money had not properly been accounted for. The accounts did not reflect the full amount of receipts of money as confirmed by the client ledger of over £80,000 from the Cheshire Building Society received on 1 February 2013, over £36,000 from Aviva on 9 April 2014 and on 15 July of that year over £45,000 from Prudential Assurance Company and nearly £37,000 from Lloyds Bank as set out in the Rule 5 Statement.

- In respect of allegation 1.1.2, the Tribunal found that as a fact the ledger showed that the Respondent had taken cost totalling £37,020 overall by way of costs when the estate accounts recorded only £16,800. The detail of the costs taken was recorded in the FIR.

- In respect of allegation 1.1.3, the Tribunal found as a fact that in particular the Respondent took costs totalling around £6,540 on 1 August 2016, two years after the final estate accounts were sent to the beneficiaries. In his Response the Respondent effectively admitted that he had not raised a bill for this amount as set out above.

- In respect of allegation 1.1.4, the Tribunal found as a fact that on 16 August 2013 an amount of £5,000 was recorded as paid "On A/c holiday Mr …" In interview the Respondent initially attributed this payment to "works that might be needed to be done to the house before it was sold" but later conceded that the payment was in case the co-executor went on holiday.

- Allegation 1.1.5 followed on from 1.1.4, the Tribunal found as a fact that the Respondent failed to recover the £5,000 or account for it to the beneficiaries. Initially in interview the Respondent asserted that the co-executor paid the money back. He was asked to show on the ledger where that was shown as returned and said that he could be "dazed and confused". Shortly after that in the interview the Respondent conceded that there was no evidence to suggest the money was paid back.

23.10 The Tribunal had found all the facts giving rise to allegation 1.1 proved to the required standard on the evidence. It then turned to the Principles alleged to have been breached. Principle 2 related to acting with integrity which as set out in the Wingate case connoted "adherence to the ethical standards of one's own profession. That involves more than mere honesty." Incidentally in respect of allegation 1.1.2, the Tribunal noted that in his Response the Respondent did not address the issue of the discrepancy between the amount the beneficiaries were aware he had taken by way of costs and the amount he had actually taken just over £37,000. The Tribunal determined that undervaluing an estate to the beneficiaries, taking costs in excess of those reported to the beneficiaries, taking unexplained costs two years after the conclusion of the final estate accounts; inappropriately paying money to a co-executor and failing to recover it so that other beneficiaries lost out, all showed a failure to act with integrity in breach of Principle 2. Acting in such a way also constituted a failure to act in the best interests of each client (Principle 4), failure to provide a proper standard of service to his clients (Principle 5), failure to behave in a way that maintained public trust in himself and in the provision of legal services (Principle 6) and failure to protect client money and assets (Principle 10). The Tribunal also found proved that the Respondent had failed to achieve Outcome (1.2) and had breached Rule 17.2 both set out above. The Tribunal therefore found all aspects of allegation 1.1 proved on the evidence to the required standard.

Dishonesty in relation to allegation 1.1 – Estate of Client A (deceased)

23.11 The Applicant relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, which applies to all forms of legal proceedings, namely that the accused has acted dishonestly by the standards of ordinary honest people. The judgment included:

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

Mr Mulchrone relied upon the facts and submissions in the Rule 5 Statement. It was submitted that as the solicitor with conduct of the matters and an experienced solicitor of some 40 years' standing, the Respondent must have known, or at least suspected that:

- he was not entitled to take costs substantially in excess of those identified in the estate accounts;

- he was required to inform the beneficiaries and/or his co-executors before taking any costs exceeding those identified in the estate accounts;

but he nevertheless did take such costs and then failed entirely to inform the beneficiaries and/or co-executors. Despite the Applicant's concerns being put to him in interview, the Respondent's failure to account to the beneficiaries was ongoing at or shortly before the date of the intervention, around three months later. Ordinary, decent people would consider this behaviour dishonest but there was no need to establish that the Respondent himself realised this.

23.12 The Tribunal had regard to the evidence and the submissions for the Applicant. It also noted that the Respondent in his Response to the Rule 5 Statement by way of letter dated 20 June 2019 "strongly" denied dishonesty. He had also denied it in his Response dated 5 October 2018 to the proposal to intervene in the firm. The Tribunal applied the test in the case of Ivey, first determining the state of the Respondent's knowledge and belief as to the facts. He was an executor of Client A's estate. Probate was some of the two main types of work which the Respondent undertook. He was a sole practitioner and the sole signatory to client account and the COLP and COFA for the firm. As a solicitor qualified in 1973, and having run his own practice since 1987 he knew he was taking costs in excess of what the beneficiaries had been advised and he failed to account to them for what he had taken. The Tribunal considered that ordinary, decent people would consider this to be dishonest. The Tribunal found dishonesty proved on the evidence to the required standard in respect of allegation 1.1.

24. **Allegation 1.2 - On or about 1 September 2016 and/or 29 June 2017 he [the Respondent] made one or more representations to his insurer, which were false or misleading and he therefore breached Principles 2 and/or 6 of the Principles.**

24.1 The Applicant relied upon the matters relating to Client A's estate under allegation 1.1 above, and upon the following facts and matters.

24.2 On 1 September 2016, the Respondent declared in his AON policy renewal form that he was not aware of any material information that should be notified to his insurer. The form stated:

> "Duty to disclose material information
>
> 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. Insurers cannot avoid or repudiate claims for the cover required under the minimum terms, but if they later find you have not

> disclosed something material they may charge an additional premium or, in the event of prejudice, seek recovery of the claim from you.
>
> 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…"

Mr Mulchrone pointed out that the Respondent had indicated "No" in respect of the declaration below this section of the form which read:

> "Is any principal, partner, director or member aware, after enquiry, of any loss or claim or circumstances which may give rise to a loss being sustained or claim being made against or involving any person or persons to be included in this insurance, their predecessors in practice or any past partners, directors or members, where such sum has not previously been notified to past or present insurers?"

It was submitted that this was inaccurate and misleading; the Respondent had been subject to a forensic investigation in January 2016. On 29 March 2016, the Respondent had been advised by a supervisor of the Applicant that the investigation had closed. However, he was reminded of the requirement to report any material failures to comply with the rules to the Applicant. The supervisor also noted some issues in relation to the books of account and open matters that should be closed, and any balance dealt with. The letter of 29 March 2016 stated:

> "The FIO also noted some issues in relation to your books of account, in particular a number of old unrepresented items, and a number of open matters which should be closed any balances dealt with. I understand that the FIO raised these issues with you during her visit and you are to resolve them with the assistance of your accountant."

24.3 On 5 October and/or 29 November 2016, the Respondent was reminded by the Applicant of concerns regarding old, inactive client matters and money held by the firm. He was asked to provide information and documents from client files and an update on progress dealing with closed cases and balances on his client account.

24.4 In February and October 2017, the Applicant was notified by the Legal Ombudsman ("LeO") of two client complaints relating to a failure to register ownership of properties for clients. The Applicant raised these matters with the Respondent by emails dated 27 February 2017 and 9 October 2017 respectively. One of the complainants said that he made a complaint to the Respondent on 23 August 2016 in relation to the failure to register a property in 2013, despite the Respondent charging for this. No response was received by the complainant. The LeO said it requested information from the firm, but no response was received. In February 2017, the Applicant's regulatory supervisor and the Respondent agreed that he would act to deal with outstanding matters and related accounting records. However, it was submitted that the Respondent failed to keep to the agreement.

24.5 On 29 June 2017, the Respondent completed a "Statement of Fact" for his insurer. He was asked if there were any circumstances, incidents or claims that had not been reported to the insurer. This included any letters of complaint. He was also asked if there was any other material information that might be relevant to his insurance. The Respondent answered "No" to both questions. It was submitted that this was incorrect and misleading. In his representations, the Respondent stated that no client complaints were received and it was inappropriate to disclose any information to the insurer; however, there clearly was material information that should have been notified to the insurer about the Applicant's investigation and complaints made to the LeO.

24.6 It was submitted that by making representations to his insurer which were false or misleading, the Respondent failed to act with integrity, as defined above, in breach of Principle 2. Mr Mulchrone reminded the Tribunal that contracts of insurance are made in "utmost good faith" and so it was incumbent upon the person making the declaration to do so accurately. It was submitted that a solicitor acting with integrity would scrupulously disclose all known, material risks to his insurer, regardless of whether complaints had been received. He would not sign or submit formal documents incorrectly indicating the contrary. The Respondent's conduct was clearly capable of undermining public trust in the Respondent and the provision of legal services. The Respondent therefore breached Principle 6.

24.7 The Tribunal had regard to the evidence and to the submissions for the Applicant. It also noted that in his Response to the Rule 5 Statement by way of letter dated 20 June 2019, the Respondent stated regarding this allegation:

> "Alleged False Declaration to Insurer
>
> I cannot see that any false or misleading declarations were included in the renewal Application as no complaint had been made and none would have been impossible to deal with, particularly as all clients' money relating to Stamp Duty Land Tax and Land Registry Registration remained in Client Account and I was always able to pay any additional sums (caused by delay) personally."

The Tribunal had queried with Mr Mulchrone during submissions the meaning of Principle 6 on the basis that it could see how, if proved, the declarations would fail to maintain the confidence of the public in the Respondent but queried whether it would undermine trust in the provision of legal services as the completion of the forms did not relate to the latter. Mr Mulchrone submitted that the wording of the Principles should not be read as statutes would be, but rather purposively; if a solicitor was not properly insured and if they were negligent, in common with any professional, it would be much harder for the aggrieved client to obtain redress. He had urged the Tribunal not to adopt a technical or legalistic approach to the Principles. The Tribunal accepted Mr Mulchrone's approach to the interpretation of Principle 6.

24.8 The Respondent was alleged to have made false or misleading representations to his insurers on two separate occasions. The Tribunal examined each in turn. The first occasion concerned an insurance proposal form dated 1 September 2016. The Respondent had not disclosed that he had been subject to a forensic investigation in January 2016. The Tribunal had to determine if this constituted a material fact of

which the insurer should have been made aware so that the declaration which indicated there was nothing to report was false or misleading. The Tribunal noted that on 29 March 2016, the Respondent had been advised by a supervisor of the Applicant that the investigation had been closed. The Tribunal noted that in the same letter some issues were pointed out to the Respondent however the Tribunal could not be satisfied so that it was sure that having been told by the Applicant that the "investigation is now concluded" and "In the circumstances we are not taking any further action…" that the investigation constituted a material fact of which the insurers should be made aware. The Tribunal was not sure that the concluded investigation, as a fact, came within the category "of any loss or claim or circumstances which may give rise to a loss being sustained or claim being made…" which had to be declared. The Tribunal therefore found this aspect of allegation 1.2 not proved to the required standard on the evidence. The allegation of breach of Principles and associated allegation of dishonesty therefore did not fall to be determined in respect of this part of allegation 1.2.

24.9 Having regard to the other aspect of allegation 1.2, that relating to the Statement of Fact completed for his insurer by the Respondent on 29 June 2017, the Tribunal noted that the Respondent was asked:

> "…are you aware of any circumstances, incidents or claims that have not been reported or acknowledged by Aon Claims Solutions (including any letter of complaint about your service or dispute as to outstanding fees)?"

The Respondent indicated "No". He was also asked:

> "Is there any other material information that may be relevant to this form …"

Again the Respondent indicated "No". The Tribunal noted that these questions were very broad. The Tribunal found as a fact that by this time the Respondent was aware, not least because the Applicant had contacted him as the firm's COLP by email dated 27 February 2017 about it, that a client Mr S had complained to the LeO. By email dated 9 October 2017, the Applicant raised with the Respondent the issue of a report from the LeO about failure to register title to a property for a client Mrs W. The email recited that the LeO had been in contact with the Respondent about the complaint. In his Response, the Respondent failed to address this part of the allegation. The Tribunal determined that for the Respondent to fail to declare the complaints and LeO investigation of which he was well aware constituted a failure to act with integrity (Principle 2) the public would expect a solicitor to be completely open with his insurer and the failure also constituted a failure to maintain public confidence in both the Respondent and the provision of legal services (Principle 6).

Dishonesty in relation to allegation 1.2 – false declaration to insurer

24.10 Mr Mulchrone relied upon the facts and submissions in the Rule 5 Statement and submitted in respect of the test in the case of Ivey that as an experienced solicitor of some 40 years' standing, the Respondent must have known, or at least suspected, that he was required to inform his insurer of all known material risks, yet he not only failed to do so but assertively and formally confirmed that there were none. Ordinary,

decent people would consider this behaviour dishonest but there was no need to establish that the Respondent himself realised this.

24.11 In respect of the failure to make a full declaration in the insurance document dated 29 June 2017, the Tribunal determined that the Respondent knew about the two complaints to the LeO about the firm when he omitted to declare them to the insurer and that by the standards of ordinary decent people his omission would be considered dishonest. Dishonesty was therefore found proved to the required standard on the evidence in respect of the Respondent's declaration to his insurer dated 29 June 2017.

25. **Allegation 1.3 In respect of a number of property conveyances, including Properties A to D (or any of them), he [the Respondent] failed:**

1.3.1 to register title to such properties in favour of his clients; and/or
1.3.2 to pay stamp duty owed to HMRC; and/or
1.3.3 to pay Land Registry fees owed to HMLR; and/or
1.3.4 to inform his clients of such failures, adequately or at all;

and he therefore:

(insofar as such conduct took place on or before 5 October 2011)

1.3.5 breached Rules 1.02, 1.04, 1.05, 1.06 of the Solicitors Code of Conduct 2007 ("the 2007 Code") or any of them;

(insofar as such conduct took place on or after 6 October 2011)

1.3.6 breached Principles 2, 4, 5, 6, 8 and 10 or any of them;

1.3.7 failed to achieve Outcome 1.2 of the 2011 Code.

25.1 For the Applicant, Mr Mulchrone upon his submissions in relation to allegations 1.1 and 1.2 and in addition, upon the witness statements of Client Mrs B and Client C and the facts and matters set out below. The FIO identified that the Respondent failed to register title on up to 17 conveyancing matters; the FIR included a table of all 17 properties. The Respondent did not tell his clients about this, or that in respect of some properties, he had not promptly paid SDLT and/or land registry fees following the purchases, despite taking payment for this work. Properties A and B (both for Clients B) and Properties C and D were exemplified in the FIR.

25.2 Properties A and B: it was submitted that in or around September 2011, the firm completed the purchase of Property A for Clients B. SDLT of £21,000.00 was debited from the client ledger on 18 October 2011 but, seven years later, the property was still not registered in the name of the buyers. The Respondent applied to register title in April 2018, after the commencement of the Forensic Investigation. As at 23 July 2018, the property was still registered in the names of the sellers. Property B: on 23 August 2013, the firm completed the purchase of a second property B for Clients B. The completion statement showed a land registry fee of £120.00. However,

as at 11 June 2018, the property remained registered in the names of the sellers. The witness statement of Mrs B included:

- Clients B paid all fees owed to the Respondent. This included an explicitly agreed amount of £550.00 for the title registration of Property A, alongside the stamp duty of £21,000.00. The Clients received no future correspondence or reporting of issues for this matter by the Respondent so assumed the matter to be completed.

- In around January 2018, Clients B received a letter from HMRC, stating that they were yet to pay the stamp duty for Property A. This letter explained that on top of the £21,000.00 owed for stamp duty, an interest cost of £3,871.00 was owed alongside a penalty fee of £200.00. Clients B then received another letter from HMRC, reminding them of these outstanding costs. Mrs B therefore contacted the Respondent who informed her that the matter had been resolved. Clients B requested written confirmation of this matter from the Respondent, but never received such documentation.

- In around August 2013 Clients B purchased Property B. Following the purchase, Clients B received a completion statement for the Respondent's services in relation to the purchase, which included a charge of £120.00 for "Registration fee on transfer". Clients B additionally submitted a completed TR1 form to the Respondent for this matter and assumed the purchase of Property B to be complete.

- In March 2014, Mrs B contacted the Respondent to complain that she was yet to receive the title deed documents to Property B. The Respondent sent her a letter dated 3 March 2014, stating that there had been one or two minor difficulties with the registration of her ownership but that this should be completed soon. Mrs B heard no more from the Respondent so assumed the matter to be resolved but was yet to receive the title deeds for Property B.

25.3 Property C: on 17 November 2016, the firm completed the purchase of a property for Client C. Stamp duty of £1,940.00 was due. As at 31 March 2018, the stamp duty had not been paid and the property was not registered in the name of Client C. The stamp duty was paid (with a penalty and interest) on 11 May 2018. The Respondent could not explain why the purchase price was recorded as £222,000 on the client ledger and the completion statement, but the land registry AP1 form stated the purchase price was £220,000, a difference of £2,000. During his interview on 26 June 2018, the Respondent said that the property had not yet been registered:

> "…because there has been an enormous backlog of other things and, to be perfectly frank, she's a very good client and keeps, doesn't, doesn't harass one. Whereas as many others do."

25.4 The witness statement of Client C included:

- Client C instructed the Respondent to act on her behalf in relation to the purchase of Property C in July 2016. The Property was purchased in November 2016, when Client C was sent a completion statement from the Respondent which included a charge of £270.00 for land registry registration of title.

- On 17 May 2018 and 5 July 2018, Client C received correspondence from HMRC stating she was yet to pay a stamp duty interest fee of £76.78 for the Property. In July 2018, Client C contacted the Respondent regarding this matter, who informed her that he would resolve it. Client C had had no further contact with the Respondent regarding this matter. In October 2018, she was contacted by the Applicant (upon intervention into the Respondent's firm). She subsequently discovered that the registration of title for Property C was yet to be completed.

25.5 Property D: the firm acted for Clients D who bought a property in September 2012. As at 31 March 2018, six years later, neither the stamp duty nor the land registry fee had been paid. The Respondent submitted a stamp duty return on 4 May 2018. As at 11 June 2018, the property was still not registered to Clients D.

25.6 The Respondent said in interview that he did not inform Clients D that he had not paid the stamp duty or that the property was not registered. He agreed he failed to keep them informed. He said regarding the file: "We're desperately looking for that one."

25.7 It was submitted that by conducting himself as alleged, the Respondent failed to act with integrity, as defined above, contrary to Rule 1.02 of the 2007 Code/Principle 2 (as applicable). Acting with integrity would require the Respondent to complete work for which he had been paid and to inform his clients of any failures to do so. He would not prioritise the interests of clients who 'harassed' him over those who did not but would scrupulously attend to the interests of each client in a timely manner. In failing to do so, the Respondent also failed to act in the best interests of clients, contrary to Rule 1.04 of the 2007 Code/Principle 4 (as applicable) and/or to provide a proper standard of service to them, contrary to Rule 1.05 of the 2007 Code/Principle 5 (as applicable). This conduct was likely to undermine public trust and confidence in the Respondent and the provision of legal services and so the Respondent also breached Rule 1.06 of the 2007 Code/Principle 6 (as applicable). It was submitted that insofar as the conduct occurred on or after 6 October 2011, it was also in breach of Principle 8, in that the Respondent failed to run his business effectively and in accordance with proper governance and sound financial and risk management principles. It was also in breach of Principle 10 in that by failing to register title in favour of his clients and/or to pay relevant fees, the Respondent failed to protect his clients' assets or money. Further or alternatively, it was submitted that the conduct alleged plainly constituted a failure to achieve Outcome 1.2 of the Code ("you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice").

25.8 The Tribunal had regard to the evidence and to the submissions for the Applicant. It also noted that in his Response to the Rule 5 Statement by way of letter dated 20 June 2019 the Respondent stated regarding this allegation:

> "As above, where any such failures occurred there was always money available to rectify such problems until of course, Very Sudden Intervention took place and all my business bank Accounts, both Client and Office were closed by the Intervening Solicitors. Then it was too late to do anything to resolve these matters. It is, however, my distinct recollection that the Registration of Title for Mr and Mrs [Clients B] has taken place (albeit

somewhat delayed). As you will see from my doctor's letter appended to my closing paragraph I have to admit that (being of a certain age!) I did not grow up with IT and, from time to time, had difficulty in remembering or finding the passwords needed to access HM Revenue and Customs in order to deal instantly with Stamp Duty Land Tax."

The Respondent also commented in respect of the witness statement of Clients B: "I think these matters are now resolved. If not I assume that [the intervening solicitors] can deal with them." Regarding Client C he said "Noted" and that he "understood that the Registration of [Client C's] property was ongoing but as mentioned previously, owing to the sudden and very swift intervention, I have been unable to catch up on it."

25.9 The Tribunal noted that a significant proportion of the firm's work involved conveyancing matters. The Respondent did not dispute the facts of this allegation and the Tribunal found that there was ample evidence to find the facts proved as alleged. The Respondent had made manifold failures to discharge land registry fees and discharge SDLT in respect of properties for which he had undertaken conveyancing although he had included the necessary amounts in completion statements and clients had paid the money over to the firm. Examples of this were set out in the witness statement of Client C who discovered from correspondence from HMRC in May 2018 that SDLT had not been paid following a completion in November 2016 and was notified by the Applicant following the intervention into the firm that her title to the property which the firm had purchased for her had never been registered. Mrs B set out in her witness statement that there had been similar failings in respect of two property purchases made for her and her husband. Property A was purchased in September 2011 and they found in in January 2018 that SDLT had not been paid. Property B was purchased in August 2013 and at the date of her interview with the Applicant February 2019 they had not received the title deeds for the property. In his letter to the Applicant submitted of 5 October 2018 resisting the intervention the Respondent listed 16 properties and gave updates on the status of the registration process. Regarding Clients B the Respondent stated: "I cannot understand why registrations have not been completed. Should be able to give you more information next week." Regarding Client C the Respondent stated: "both SDLT and Registration Fee paid. Completion of Registration expected shortly". The Respondent had retained clients' money in some cases for years and done nothing with it although it had been collected for the specific purpose of discharging SDLT and land registry fees with which the Respondent told the clients he would deal. This conduct exhibit a serious failure of adherence to the ethical standards of the Respondent's own profession. The Tribunal found that the conduct alleged and found proved constituted a failure to act with integrity as required on or before 5 October 2011 by Rule 1.02 of the Code 2007 and on and after 6 October 2011 by Principle 2 of the 2011 Code. The Tribunal also found proved that the Respondent had breached Rule 1.04 and Principle 4 of the respective Codes by failing to act in clients' best interests, Rule 1.05 and Principle 5 by failing to provide a good/proper standard of service to clients as appropriate, Rule 1.06 and Principle 6, by behaving in a way likely to diminish public trust in himself or the legal profession/not behaving in a way that maintained that trust. On or after 6 October 2011 he also breached Principle 8 by not running his business or carrying out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles regarding the cases the subject of the allegation and Principle 10 by failing to protect client money and assets. The

Respondent had also failed to achieve Outcome (1.2) of the 2011 Code on or after 6 October 2011 by failing to provide services to his clients in manner which protected their interest in their matter, subject to the proper administration of justice. The Tribunal found allegation 1.3 proved on the evidence to the required standard.

26. **Allegation 1.4 - As at 31 March 2018, there were:**

1.4.1 accounting errors in up to 37 matters;

1.4.2 43 matters where money was held in the client account and there had been no activity for a year;

and he [the Respondent] therefore breached Principles 6 and/or 8.

26.1 It was submitted that the FIO further identified that there was difficulty in locating client files and 37 matters were identified with accounting errors. She commented:

> "The Client Matter Listing report as at 31 March 2018 had 37 matters with office credit balances ranging from £5.00 to £1,288.14 and totalling £6,829.04.
>
> The firm provided a schedule which noted the reasons for the majority of the credits (Appendix E3). The majority were due to the firm paying land registry and search fees from office bank account which were posted to a general office nominal ledger instead of posting the costs to the office side of the relevant client ledger. Some of the larger credits were due to the firm's failure to post issued bills. Ms Wright [the FIO] reviewed the office credits and no instances were noted of client monies being incorrectly held in office bank account."

There were 43 matters where money was held in the client account and there had been no activity for a year. The client credits ranged from £0.20 to £14,908.27 totalling £66,201.43 with the oldest balance dating from 1 June 2000.The evidence indicates a loss of effective control of the firm. In interview, the Respondent said that originally the firm was run effectively. He thought that changed because he had become "old and tired" and had some health difficulties.

26.2 It was submitted that by effectively losing control of the firm in this way, the Respondent failed to run his business effectively and in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8. He also failed to uphold the trust the public placed in him and in the provision of legal services, in breach of Principle 6.

26.3 The Tribunal had regard to the evidence and to the submissions for the Applicant. It also noted that in his Response to the Rule 5 Statement by way of letter dated 20 June 2019 the Respondent stated regarding this allegation:

> "I appreciate that there may have been some accounting errors, possibly caused by my growing lack of concentration caused by illness but I do not see that any clients suffered any loss. It was because of my illness that I contacted the SRA to see what I should do with a view to closing the practice in due

> course but very suddenly and completely out of the blue intervention took place."

He also stated regarding the existence of office credit balances:

> "The Office Account was (and still is!) in debit"

Regarding a difference in client account reconciliations he said;

> "This was presumably caused by my failure to pay Stamp Duty or land Registry Fees"

Regarding long standing residual balances he said:

> "These may relate to outstanding payments as above but sometimes relate to beneficiaries delaying to provide information as to their current residence"

The Tribunal found the facts underlying allegation 1.4 proved. It was clear that the Respondent had failed to run his business effectively and in accordance with the principles required by Principle 8 and that state of affairs would undermine the trust of the public in him and in the provision of legal services (Principle 6). The Tribunal therefore found allegation 1.4 proved on the evidence to the required standard.

27. **Allegation 1.5 - From around 27 May 2010, he [the Respondent] retained around £14,908.27 on account in the matter of Client E (deceased) without any or adequate explanation, in breach of:**

1.5.1 Rules 14.3 and/or 14.4 of the Accounts Rules;
1.5.2 Principles 6 and/or 8.

27.1 It was submitted that the FIR referred to the matter of Client E (deceased) in respect of which the firm retained £14,908.27 on account. However, the last transaction recorded on the ledger was 27 May 2010, over eight years prior to the date of the FIR. The file was missing. As the Tribunal would only consider any misconduct from 6 October 2011, Mr Mulchrone pointed out that the FIR was dated 21 August 2018 and if the Respondent had not reimbursed the money from 6 October 2011 and had no adequate explanation for not doing so then he had held the money over a relatively long period of time. It was submitted that this lack of effective management of this client matter was in breach of Principle 8 and/or Principle 6. The Respondent failed to manage his business, failed to properly deal with cases and to account for client money. This represented a shambolic and unsatisfactory state of affairs which diminished the trust the public placed in him and in the provision of legal services. It was further submitted that the conduct alleged was also in breach of Rules 14.3 and/or 14.4 of the Accounts Rules, inasmuch as the Respondent failed promptly to return client money as soon as there was no proper reason to hold those funds. Rules 14.3 and 14.4 stated respectively:

> "Client money must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds. Payments received after you have already accounted to the client, for example by way of a refund, must be paid to the client promptly."
>
> "You must promptly inform a client (or other person on whose behalf the money is held) in writing of the amount of any client money retained at the end of a matter (or the substantial conclusion of a matter), and the reason for that retention. You must inform the client (or other person) in writing at least once every twelve months thereafter of the amount of client money still held and the reason for the retention, for as long as you continue to hold that money."

27.2 The Tribunal had regard to the evidence and to the submissions for the Applicant. It considered the misconduct alleged only with effect from 6 October 2011 when the Code of Conduct 2011 had come into force in accordance with the pleading of the allegation. It also noted that in his Response to the Rule 5 Statement by way of letter dated 20 June 2019, the Respondent stated regarding this allegation:

> "With regard to Client E this money was placed in my Client Account by my former Locum who was in process of closing his practice. He has continued to pressure the beneficiary to accept this inheritance but without luck so far."

The Tribunal found as an undisputed fact that the Respondent retained an amount in excess of £14,000 for over seven years from the estate of Client E without any justification. The Respondent had therefore breached Rule 14.3 of the SRA Accounts Rules 2011 by failing to return money promptly as soon as there was no longer any proper reasons to retain those funds and he had not informed the client in writing that he was retaining the money and why and had not written at least every 12 months as required by Rule 14.4. It was clear that the Respondent had failed to run his business effectively and in accordance with the principles required by Principle 8 in respect of the estate of Client E and that state of affairs would undermine the trust of the public in him and in the provision of legal services constituting a breach of Principle 6. The Tribunal therefore found allegation 1.5 proved on the evidence to the required standard.

28. **Allegation 1.6 – He [the Respondent] failed at all material times:-**

1.6.1 to carry out reconciliations at least once every five weeks, as prescribed by and in breach of Rule 29.12 of the Accounts Rules;

1.6.2 to return client money promptly as prescribed by and in breach of Rule 14.3 of the Accounts Rules;

1.6.3 to inform clients in writing at least once every twelve months of money still held for them and the reason for its retention, in breach of Rule 14.4 of the Accounts Rules;

1.6.4 to provide all relevant client files for review upon request by his accountants and/or the SRA's forensic investigation officer ("FIO"), in breach of Rule 1.2 and/or Rule 6.1 of the Accounts Rules.

28.1 The Applicant relied upon the Rule 5 Statement, and upon the following facts and matters. It was submitted that during interview with the FIO, the Respondent admitted that he did not consistently review the monthly reconciliation statements for the firm and that the Respondent said he only reviewed the reconciliations if prompted by his (unadmitted) assistant or his book-keeping service. It followed that he breached Rule 29.12 of the SRA Accounts Rules 2011:

> "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 the passbooks (after allowing for all unpresented items) if 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 companies"

28.2 It was submitted that further, the FIO identified 43 client matters with credit balances where there had not been any financial activity for 12 months. The Respondent accepted that he had not written to these clients at least annually to tell them he was holding money for them or the reason for holding this money. He also failed to return the money he held promptly to clients. The Respondent had been told around two years previously by the Applicant's letters of 29 March 2016, 5 October 2016 and 5 November 2016 that he needed to deal with inactive files and money held in his client account. Therefore the Respondent breached Rules 14.3 and 14.4 of the Accounts Rules. Further it was submitted that the accountants' report for the firm dated 31 January 2018 detailed material breaches of the Accounts Rules and identified significant weaknesses in the firm's systems and controls for compliance with the rules. The Respondent did not provide all client files for review by the accountants and the FIO. He said that he had not been able to investigate inactive client balances because he could not easily find client files. It followed that the Respondent breached Rules 1.2 and 6.1 of the Accounts Rules.

28.3 The Tribunal noted that in his Response the Respondent stated:

> "On receipt of my monthly Office Office (sic) Account and Client Account Bank Statements they were sent, together with book-keeping vouchers, to … (my accountants). Then the Ledger Sheets would be brought up-to-date and these were, in due course, sent to me together with the Reconciliation Ledgers. Upon receipt I studied all of these print-outs but I was not aware, at the time, that I had to sign them to indicate that I had studied them and approved them."

Mr Mulchrone submitted that the Respondent was not present to be cross-examined and that the Tribunal could draw an adverse inference under its Practice Direction 5; his failure to attend the hearing affected the weight which the Tribunal might attach to his Response. It was submitted that furthermore the Respondent had been reminded of the need to resolve the issues with the books of account.

28.4 The Tribunal had regard to the evidence and to the submissions for the Applicant. It also noted that the Respondent in his Response to the Rule 5 Statement by way of letter dated 20 June 2019 stated regarding this allegation:

> "I thought that all had been done in respect of informing clients that money was still held for them. Where necessary they were informed that not all had been done by way of Stamp Duty or Registration Fees and they all seemed comfortable. No written records of such conversations took place but I can now see that this would have been useful."

He also said in the Response about the firm's books not being in compliance with the Accounts Rules: "Noted, but owing to the sudden and expected Intervention it has been impossible to access any files".

28.5 In respect of allegation 1.6.1, failures were asserted by the Applicant regarding the Respondent's duty to undertake five weekly reconciliations of his client account. The Tribunal paid close attention to pages 3-5 of the transcript of the interview with the Respondent (at pages 29-31 of the attachments to the Rule 5 Statement) as follows. He was referred in interview to the bank reconciliation as at the end of March 2018:

> "FIO: I can see from this report that it hasn't been reviewed or signed by yourself, is that a typical month
>
> R: Yes
>
> FIO: where you wouldn't look at it or sign it?
>
> R: Mmm no, no, I wouldn't
>
> FIO: You wouldn't normally look at this report
>
> JW: You wouldn't normally look at this report?
>
> R: Um I would only look at it if it was brought to my attention if there was anything worrying about it. Do you see what I mean?
>
> FIO: And who would bring that to your attention?
>
> R: Um… [J's] assistant, [CJ], who actually does the works.
>
> FIO Ok
>
> R: Yeah

FIO: So, as part of your responsibility as COFA of the firm, you need to review client account reconciliations, yeah?

R: Mmm

FIO: To ensure that it's a proper 3-way rec, reconciliation.

R: Yeah

FIO: And you should be signing the reconciliation to show that you have reviewed it.

R: I see.

FIO: So, do you accept that that's an omission on your part, not to have reviewed these on a monthly basis?

R: And certainly not to have signed them, yeah.

FIO: Yeah, well the review is the most important bit.

R: Yeah, yeah

FIO: But then the signature obviously

R: Yes, I do…

FIO: provides an audit.

R: I review them frequently, but I didn't appreciate I was supposed to sign them. Um, yeah.

NI: [FIO team leader]
Well it's evidence of your review of those reconciliations. So that's…

R: I see. So that sort of thing I must learn.

…

FIO: So, on here, and this is the client matter listing.

R: Yeah

FIO: Again, this is at the end of March 2018.

R: Mmm

FIO: Ok there's three pages.

R: Mmm

FIO: How often do you review the client matter listing report?

R: Um…each time but largely it's um, if anything is brought to my attention either by [CJ], or by [DE] my assistant, because she's largely in charge of the book works. …

FIO: Ok. Ok so you review it if you're prompted to have a look at a certain

R: Mmm

FIO: client matter on the list?

R: Yeah

FIO: Ok. So, do you accept that within this list of the matters,

R: Mmm

FIO: there are quite a few where there's not been any transactions for a significant period of time?

R: Yeah, yes and the account files been opened for some reason.

…

FIO: Ok so you can see that there are quite a few inactive balances there.

R: Mmm

FIO: Inactive ledgers with balances on them.

R: Yes

FIO: Why, why have they been left for so long?

R: Um basically because I've trying to put one's hand on the file. Because there are so many files ongoing that it can be quite hard to find one. And then something will happen, or the telephone will ring, and we have to abandon it and then start again much later."

The Tribunal noted that the Respondent stated that his accountants provided him with monthly reports. The papers before the Tribunal included a reconciliation summary dated 5 April 2018 and supporting documents. It was unsigned and the Respondent had admitted in interview that he did not sign the reconciliations as he was not aware that he needed to do so. He had not admitted unequivocally that he failed to undertake reconciliations at the intervals required. The Respondent described a process whereby the requisite work was undertaken by his accountants and then provided to the firm. There was an absence of evidence to establish that the reconciliations were not brought to the Respondent's attention every five weeks. Rule 29.12 did not require the Respondent to sign the reconciliations. The burden of proof was on the Applicant

and while the Tribunal noted Mr Mulchrone's submissions regarding the failure of the Respondent to attend and explain himself, the Tribunal could not be satisfied to the required standard that the Respondent had failed to comply with Rule 29.12. The Tribunal therefore found allegation 1.6.1 not proved on the evidence to the required standard.

28.6 In respect of allegation 1.6.2, the Tribunal found that there was ample evidence that the facts giving rise to this part of the allegation were proved; the Respondent held numerous amounts of client money where there had been no activity on the file for 12 months and particularly the amount of over £14,000 in the estate of Client E and he failed to return the money promptly as required by Rule 14.3.

28.7 In respect of allegation 1.6.3, the Tribunal found that the witness statements of Client Mrs B and Client C showed that clients were not being advised at least every 12 months that money was still held for them and why. The Respondent stated in his Response that they had been informed but that he kept no records of having done so; the witness statements showed that was not the case. The Tribunal found the facts giving rise to this part of the allegation proved and that they constituted a breach of Rule 14.4.

28.8 In respect of allegation 1.6.4 regarding non production of files, the Respondent did not appear to dispute the allegation. He said in his Response:

> "Unfortunately a number of files were stored in the attic of the premises and others in the cellar. There was a roof leak which was tended to by the landlord but his workers were not at all careful as to letting files be recognizable and a similar problem arose with a leak causing some flooding in the cellar. Fortunately the files stored in both attic and cellar were of a considerable age."

The Tribunal found that the Respondent did not produce all the files required for review by the Applicant and his accountants and that this amounted to breach of Rule 1.2 (h):

> "You must
> Co-operate with the SRA in checking compliance with the rules;…"

Rule 6.1 stated:

> "All the principles in a firm must ensure compliance with the rules by the principles themselves and by everyone employed in the firm. This duty also extends to the directors of a recognised body or licensed body which is a company, or to the members of a recognised body or licensed body which is an LLP. It also extends to the COFA of a firm (whether to a manager or non-manager)"

The Tribunal also found that the Respondent had breached Rule 6.1 as he had failed to ensure compliance with the Rules as required.

28.10 The Tribunal found allegation 1.6.2-1.6.4 proved on the evidence to the required standard.

Previous Disciplinary Matters

29. The Respondent had appeared before the Tribunal under case number 5374/1988 in 1988. The allegations as amended with the permission of the Tribunal were as follows:

    (i) that the respondent was guilty of unreasonable delay;

    (ii) the respondent failed to deal promptly or at all with correspondence from the National & Provincial Building Society;

    (iii) that the respondent failed to deal promptly with correspondence from the Solicitors Complaints Bureau;

    and that the respondent had been guilty of conduct unbefitting a solicitor.

30. The Tribunal imposed a fine of £350 with costs to be assessed.

Mitigation

31. The Respondent was not present. His Response contained some points of mitigation which are referred to under Sanction below.

Sanction

32. The Tribunal had regard to its Guidance Note on Sanctions (December 2018). There was a range of allegations and the Tribunal determined that one sanction would be imposed covering them all. It looked at the seriousness of the misconduct. As to the Respondent's culpability, the Tribunal determined that the Respondent's motivation for his misconduct was to hold or take money to which he was not entitled. His actions were planned, for example he was in control of the probate process for Client A and decided to understate the value of the estate in the estate accounts which he issued to the beneficiaries. He also decided to make payment of £5,000 to a fellow executor for the purposes of a holiday and did not recoup it before distributing the estate. As sole signatory to client account he decided to take costs without raising bills or giving appropriate notification. He omitted to declare material facts to his insurer in June 2017. There was some planning and deliberate action but there was also chaos and disorganisation in the Respondent's practice. He acted in breach of a position of trust as an executor of Client A's estate. The Respondent had direct control of and responsibility for the circumstances giving rise to his misconduct as sole practitioner and both COLP and COFA of the firm. The Respondent was a very experienced solicitor of 40 years in practice. The Tribunal also looked at the harm which the Respondent's actions had caused. As a result of his actions in the case of Client A there was less money available for beneficiaries. They did not receive their full entitlement. Conveyancing clients suffered the stress of discovering that SDLT and/or land registry fees had not been paid and were exposed to the risk of additional fees and potential exposure because their titles were not registered in a system where correct registration was vital. Client C in her statement described what she had been through. She referred to:

> "a financial impact to me as well as an emotional strain. Within my profession I need to be in a positive frame of mind in order to assist others and perform my job to a professional standard. That has been extremely difficult over the past few years. It has also been very upsetting that all this conflict and grief has all originated from someone who I placed my trust in."

The Respondent had departed to a considerable extent from the "complete integrity, probity and trustworthiness" expected of a solicitor with commensurate and considerable harm to the profession's reputation. The Tribunal considered that the extent of the harm was reasonably foreseeable. There were aggravating factors in that dishonesty was alleged and proved in respect of two different types of misconduct. Elements of the misconduct were deliberate, and calculated and repeated and they continued over a period of time. The misconduct was perpetrated against clients who trusted the Respondent. He should have known that what he did was in material breach of his obligations to protect the public and the reputation of the legal profession. The Respondent had also appeared before the Tribunal previously, albeit many years ago. The Tribunal noted that one aspect of his previous misconduct included serious "delays with registrations of title". There had been a considerable adverse impact on clients. As to mitigation, none of the non-personal mitigating factors applied. The Respondent appeared to have no insight into his misconduct from his Response and responses in interview as well as his letter to the Applicant of 5 October 2018. He did not begin to correct any of the issues relating to post completion work until the Applicant drew them to his attention.

33. The Respondent had been found to have been dishonest in two different matters; dishonesty alone constituted the most serious misconduct and would almost invariably lead to strike off. Lesser sanctions were inappropriate save in exceptional circumstances. In respect of the dishonesty associated with the estate of Client A this had been prolonged over a period of time. No exceptional circumstances had been put forward in respect of either incident of dishonesty and the Tribunal found none. The Tribunal considered the Respondent's references to his age and its impact, as he described it, on his work. The Respondent had provided a letter from his GP confirming a health condition from which he continued to suffer but the medical evidence it constituted gave a picture of the Respondent when he was seen by the GP and at the present time and not at the time of the misconduct. In his Response, the Respondent stated referring to the GP's letter and his mitigation:

> "He confirms that as a result of my illness I can lose concentration from time to time. I wish to make clear that that (sic) this is a result of my condition and is not anything I might personally wish to do.
>
> I become very tired and somewhat confused from time to time but always do my best to rectify any errors I may have made. At the time of my sudden (and unexpected!) intervention this was noted by Mr [J] of [S] Solicitors who was organising the intervention. Although this does not occur constantly it is the reason why I originally applied to the [Applicant] for advice and guidance on closure as my condition continued ad I was conscious of the need to address my condition in case of any serious deterioration (which has not, so far, occurred)."

The Respondent's accountant had expressed some reservations in the interview about the Respondent's physical and mental health but this was not a medical opinion and the Respondent did not rely upon it. In all the circumstances the Tribunal could find no exceptional circumstances relating to the acts of dishonesty and determined that the Respondent should be struck off.

Costs

34. For the Applicant, Mr Mulchrone applied for costs as set out on the updated schedule of costs dated 6 August 2019 with attached documentation relating to the Applicant's investigation, totalling £36,351.28. Mr Mulchrone also drew the Tribunal's attention to the Schedule of Costs at the date of issue of the proceedings (which was reflected in the updated schedule). The investigation element of the updated schedule amounted to £14,152.28. The Tribunal noted that the FIR consisted of only 26 pages but almost 62 hours had been recorded for attendance at the firm in the investigation. It also noted that 41 hours was claimed for "Report Preparation". Mr Mulchrone conceded that the time claimed seemed a little surprising but the FIO was not in attendance to explain. He pointed out that no time had been claimed for supervision by the Applicant in these proceedings as the case had come to the Tribunal following intervention into the firm (where those costs would be reflected). He further submitted that Capsticks acted on a fixed fee basis for the Applicant. There was no separate brief fee as Mr Mulchrone was in-house counsel. The fee was based at the outset on the complexity of the case. At that point the fee had been fixed at £34,500 partly because of the need to take statements from clients who had been affected. The fixed fee could be revised if additional unforeseen matters arose and there was a change in the complexity of the case. He had reviewed the case and realised that the fee of £34,500 would mean a notional hourly rate of over £300 and so he was instructed to claim the lower category of £18,500 which he felt was more reasonable. Mr Mulchrone also pointed out that he had been assisted by Mr Hughes who was present at the hearing and Mr Thomas of counsel had appeared at a Case Management Hearing on 21 June 2019 when Mr Mulchrone had not been available. Mr Mulchrone was a barrister of 10 year's call. He suggested that when one divided the lower fixed fee by the time spent and estimated to conclusion, it came to a notional hourly rate of £161.85. Although strictly speaking a fixed fee should not be attributed to an hourly rate this was a modest rate. The Tribunal considered the time claimed for the preparation of the FIR to be excessive and reduced it from 41 hours to 29 hours. Otherwise it considered the Applicant's costs to be reasonable and proportionate and assessed total costs at £35,200. The Respondent had been advised in Standard Directions that if he wished his circumstances to be taken into account in determining sanction and costs he should submit evidence of his means but he had failed to do so. The Respondent claimed that he had not earned any money at all since October 2018 and was reliant on state pension and had realised investments to discharge most of his business debts. The Tribunal had no other information about his financial position including nothing about capital assets. It would not reduce the costs award on the basis of his financial position. The Tribunal noted that one aspect of allegation 1.2 had been found not proved as had one aspect of allegation 1.6. The Tribunal did not consider that the additional work involved in bringing these allegations was such as to merit a reduction in the costs awarded to the Applicant.

Statement of Full Order

35. The Tribunal Ordered that the Respondent, Richard Stephen Davies, 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 in the sum of £35,200.00.

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

P. Lewis
Chairman

FILED WITH THE LAW SOCIETY
03 SEPTEMBER 2019