SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11993-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

IEUAN MICHAEL JONES First Respondent
[NAME REDACTED] Second Respondent

Before:

Mr P. Booth (in the chair)
Mr R. Nicholas
Mr S. Hill

Date of Hearing: 7-8 January 2020

Appearances

Rory Mulchrone, barrister of Capsticks LLP, 1 St George`s Road, London, SW19 4DR, for the Applicant.

The First Respondent did not appear and was not represented.

The Second Respondent appeared and represented himself.

JUDGMENT

Allegations

1. The allegations against the First Respondent were that, while acting as partner at Jestyn Jeffreys ("the Firm") he:

1.1 made transfers from the Firm's client to office account of sums which were in excess of those which might properly be charged for the work undertaken and/or which did not reflect the work actually undertaken and thereby breached all or any of Principles 2, 4 and 6 of the SRA Principles ("the Principles");

1.2 knowingly provided misleading information to the SRA about bills sent by the Firm and thereby breached any or both of 2 and 6 of the Principles.

1.3 knowingly provided misleading information to the SRA about client communications concerning bills and thereby breached any or both of 2 and 6 of the Principles;

2. The allegations made against both the First Respondent and the Second Respondent, a partner and Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA") at the Firm, were that they:

2.1. withdrew money from the Firm's client account to office account on behalf of costs where bills had not been sent out to clients and/or relevant persons and when they did not have authority to do so in breach of any or all of 2, 4, 6, 8 and 10 of the Principles and any or all of Rules 17.2, 20.1 (a) or 20.1 (f) of the SRA Accounts Rules 2011 (SARs 2011).

2.2. failed to remedy breaches of the SARs 2011 and/or failed to keep accurate records of money held for clients and/or failed to carry out reconciliations in breach of any or all of Rules 1.2 (f), 7.1 and/or 29.12 (c) of the SARs 2011 and a breach of one or both of Principle 8 and Principle 10 of the Principles.

3. Each allegation at 1.1 - 1.3 above was advanced on the basis that the First Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the misconduct but was not an essential ingredient in proving the allegations.

This case proceeded under the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR 2007").

Preliminary Matters

4. <u>Application to proceed in the absence of the First Respondent</u>

4.1 The First Respondent did not attend and was not represented. Mr Mulchrone applied to proceed in his absence.

<u>Applicant's Submissions</u>

4.2 Mr Mulchrone submitted that it was clear that the First Respondent had been properly served, as evidenced by his participation in the Case Management Hearing on

16 October 2019 and by his correspondence in the proceedings. In that correspondence had stated he would not be attending due to medical reasons.

4.3 Mr Mulchrone reminded the Tribunal that at the CMH the First Respondent had been directed that if he wished to serve medical evidence then he do so by 15 November 2019. He had not served any medical evidence and was not applying for an adjournment.

4.4 The First Respondent had received the evidence on which the Applicant relied including Civil Evidence Act notices. Mr Mulchrone submitted that his absence was voluntary and that it was in the public interest to proceed without an adjournment, which would serve no useful purpose.

Second Respondent's Submissions

4.5 The Second Respondent supported the application. He had exchanged text messages with the First Respondent the previous week in order to ascertain if he would be attending. The Second Respondent told the Tribunal that the First Respondent had indicated that he wished the Tribunal to proceed to deal with matters in his absence. The Second Respondent did not wish the matter to be adjourned.

The Tribunal's Decision

4.6 The Tribunal considered the representations made by the Applicant and the Second Respondent. The First Respondent was aware of the date of the hearing and SDPR 2007 Rule 16(2) was therefore engaged. The Tribunal had regard to the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:-

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
>
> (ii) …;
>
> (iii) the likely length of such an adjournment;
>
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
>
> (v) …;

(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;

(vii) …;

(viii) …;

(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

(x) the effect of delay on the memories of witnesses;

(xi) …;"

4.7 In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

> "…It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".

4.8 Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account".

4.9 On 18 August 2019 the First Respondent had emailed the Tribunal to inform it that he would not be attending the substantive hearing due to ill-health.

4.10 On 16 October 2019 the First Respondent had participated in the CMH when the issue of his health had been addressed by the Tribunal. The Memorandum of that CMH stated as follows at paragraph 6:

> "The Chairman enquired as to whether the First Respondent intended to rely on medical evidence and if so, whether it went to fitness to participate in proceedings and/or to the Allegations themselves. The First Respondent told the Tribunal that he was not seeking an adjournment and he was not able to deal with the proceedings due to his health issues. The Chairman confirmed that the First Respondent could not be compelled to attend but if he chose not to there could be consequences of not participating or giving evidence. The Tribunal would always take a fair approach but it was preferable for respondents to appear. The Chairman also confirmed that reasonable adjustments could be

> made if the First Respondent did attend. The First Respondent confirmed that he had considered those points."

4.11 The Tribunal had then gone on to direct that if either Respondent wish to rely on medical evidence in these proceedings, they must make an application for leave to rely on such evidence by 4.00pm on 13 November 2019. That application should be accompanied by the medical evidence on which it was proposed to rely.

4.12 The First Respondent had not served any such medical evidence. He had not applied for an adjournment and it was clear from the above that he would not attend any adjourned hearing. The Tribunal was satisfied that he had voluntarily absented himself.

4.13 The Allegations faced by both Respondents were serious and the public interest lay in proceeding with the matter. The Applicant was ready to proceed as was the Second Respondent. The interests of justice required that the matter proceed in the absence of the First Respondent. The Tribunal granted Mr Mulchrone's application.

5. First Respondent's Application for non-publication of decision

5.1 In an email to the Tribunal dated 18 August 2019, the First Respondent had written the following:-

> "I would ask that any decision not be published as the publicity surrounding the intervention was extreme and has made it extremely difficult for me to find new employment thereby leading myself and my family in to financial difficulty. Any need for the public to see that action has been taken has been met by the intervention publicity."

5.2 The Tribunal noted the starting point was the requirement for open justice as affirmed in SRA v Spector [2016] EWHC 37 (Admin). The Tribunal had power to direct that part or all of a hearing take place in private under SDPR Rule 12(4). This stated:-

> "Any party to an application and any person who claims to be affected by it may seek an order from the Tribunal that the hearing or part of it be conducted in private on the grounds of a) exceptional hardship b) exceptional prejudice to a party, a witness or any person affected by the application".

5.3 Although this Rule referred to a hearing in private, which was not the First Respondent's application, the Tribunal considered that the criteria for non-publication was the same. It therefore considered whether the First Respondent had demonstrated that he or anyone else would suffer exceptional hardship or exceptional prejudice if the decision was published.

5.4 The Tribunal found that there was nothing before it that came close to the threshold of exceptional hardship or exceptional prejudice. The First Respondent had made reference to medical matters in his correspondence. Although he had not provided any medical evidence, the Tribunal did not intend to refer to the details of those matters in its Judgment. Beyond that there was no basis for the Tribunal's decision not to be published. It was in the interests of open and transparent justice that it be published in the usual way. The First Respondent's application was refused.

Factual Background

6. The First Respondent was admitted to the Roll on 15 February 1999 and trained with the Firm. The partnership between both Respondents commenced in November 2004. The Second Respondent was admitted on 15 January 1980 and became a partner with the Firm in 1988. At the material time the Second Respondent was the Firm's appointed COLP and COFA.

7. On 31 July 2018 the SRA had been sent a qualified accountant's report for the year ending 31 January 2018. The accountant had appended a schedule to the report identifying numerous breaches of the SARs 2011. He identified:-

- overdrawn office ledgers: at the reporting date there were 123 office ledger accounts with credit balances totalling £13,682;

- overdrawn client ledgers: at the reporting date there were 58 client ledger accounts with credit balances totalling £36,954;

- failure to prepare client bank reconciliations.

8. The accountant explained that when the bank reconciliation was run from the accounts system at the year end the bank balance appeared to exceed the cash book balance by £150,138.34. The accountant noted that there were many "unmatched items from April 2017 onwards." In relation to specific designated client accounts, when a year-end bank reconciliation was prepared for the designated client account, there was a difference of £5,233.80 which had not been identified.

9. The accountant noted that in October 2017 the firm suffered a system failure which resulted in the Firm having to repost all of the accounting transactions from that date. This exercise which was unable to be completed by the reporting date of 31 January 2018.

10. On 1 November 2018 the accountant wrote to the FI Officer to explain that upon attending the offices that day the accounts were still not up to date. The accountant stated:

> "we find that whilst much time has been spent in identifying and rectifying errors such corrections have not yet been reflected in the ledger accounts and accordingly we are unable to confirm that the ledger balances accurately reflect the client monies held. We have spoken at length with Mr Iuean Jones, one of the partners, who confirms that the ledger balances have not yet been corrected."

11. In light of this information the SRA commenced a forensic investigation into the Firm conducted by Mr Esney ("the FI Officer").

12. On 5 November 2018 the First Respondent told the FI Officer that client ledgers were inaccurate and that this originated from the software failure during October/November 2017 in which the Firm had lost a large amount of data. As at that date the First Respondent explained that the most recent postings undertaken by the firm were mid-April 2018 and therefore the client ledgers would not be able to identify

any transactions undertaken after April 2018 and that the firm had not undertaken a client account reconciliation since March 2018. In light of the position in terms of the reconciliation and lack of postings, the FI Officer was unable to calculate whether the Firm held sufficient funds in the client bank account to match its liabilities to clients as at 30 September 2018.

13. On 21 November 2018 there was a recorded interview with the First Respondent. On 11 December 2018 he discussed matters with the Respondents and separately with the Second Respondent alone. These discussions were not digitally recorded. In the interview on 21 November 2018 the First Respondent stated he felt he would realistically be able to complete the postings by the February/March of 2019.

14. Whilst reviewing a sample of client files, the FI Officer determined that on four of the client files that he looked into, the First Respondent, who had conduct of all four matters, had not sent a bill of costs to the client in advance of the transfer of costs from client to office bank account. This resulted in a minimum cash shortage of £102,400.

15. The FI Officer was able to calculate a total minimum cash shortage of £106,527.48 on the client bank account as at an extraction date of 30 September 2018. This comprised the shortage of £102,400, due to the failure to send bills referred to above, and £4,127.48 in respect of debit balances. This cash shortage was partially replaced on 25 October 2018 following the transfer of £794.34 from office to client bank account by the First Respondent.

Client A (deceased)

16. The Firm acted for Client A in two matters, identified as "Will/Trust Fund" and "Estate"

17. The client ledgers showed thirteen bills totalling £44,100. The FI Officer reviewed the Firm's bills book and identified twelve bills relating to Client A. The bills ranged between £1,200-£12,000 and the narrative contained on each of the bills stated "to costs" or "interim costs" or "professional charges in dealing with the estate" and did not include any narrative of the work undertaken for the period to which the bills related.

18. On 22 November 2017 a transfer of £12,000 was made from client account to office account in respect of costs on the will/trust fund ledger and this resulted in the client ledger becoming overdrawn in the sum of £2,762.24. On 8 January 2018 there was a payment made from this client ledger of £3,711 to reference "FFYNONE HOUSE", meaning the overdraft increased to £6,473.24.

19. The FI Officer's attendance note of his discussion with the First Respondent recorded:-

> "I then asked for the clients contact details so that I could verify the bills had been sent. IJ then said "she may not have received them". I asked why IJ was saying that now. He said "I don't know" and "I can't remember". He said he "couldn't be sure" the bills had been sent. He said "I'm being honest.
>
> I asked for the clients contact details so I could verify. He said he thought they were away in Singapore. I asked for the details all the same.

> IJ agreed the bills were large but said "there was a lot of money.". I said the ledger didn't reflect that. He said there was other money that wasn't on the bill. He became vague and said he was "advising on other money". He referred to "several hundred thousand pounds."

20. On 21 November 2018 the FI Officer contacted Client A's wife ("Client A's Wife") to determine whether any bills had been sent to her. The note of this telephone call recorded:-

> "RE introduced himself and told [Client A's Wife] that Mr Jones of the firm was aware of the phonecall. [Client A's Wife] confirmed that Mr Jones was dealing with the matter.
> RE asked [Client A's Wife] if she had received any bills from the Mr Jones. She said "no, not yet". RE asked [Client A's Wife] if she had paid any money to the firm. She gave the same reply "no, not yet". RE clarified this with her. She repeated that she had not paid any money or received any bills from the firm."

21. In the meeting on 21 November 2018 the FI Officer asked the First Respondent how a total of £44,100 worth of work had been carried out on the file. The transcribed meeting notes recorded:-

> "RE [FI Officer]: Combined I think it's £44,100 worth of bills.
>
> IJ: Right
>
> RE: Sounds an awful lot.
>
> IJ: Yes, yeah.
>
> RE: What's the story with that?
>
> IJ: It's to deal, it's to deal with everything. The whole dispute that came around with it, with the family.
>
> RE: Right
>
> IJ: The estate, the transfers of property, wills and everything, and advice that had been given previously then as well. So, it covers not just the estate, it covers everything that was done prior, while [Client A] was alive.
>
> RE: How many files are there? I've got two ledgers but…
>
> I think there are only two, I think there's only two ledgers. And everything sort of combined in between the two of them.
>
> RE: How substantial a file are we talking about? Obviously, there are files in this room, it is you know, more than one lever arch or…?

IJ: It, it would be, yes. So I'd expect, expect it to be.

RE: So I mean are the costs justified? Is the obvious –

IJ: Yes, I, I believe so. Yes.

RE: You're comfortable with £44,000?

IJ: I, I'm, I'm comfortable yes.

RE: Fine

IJ: Yeah

RE: Ok, returning to the bills. Obviously, something we discussed this morning. And again, same issues with [Client B executor] and others.

IJ: Yes

RE: Were the bills sent out or not? Your first answer was yes. This morning –

IJ: I can't, I can't be 100% certain –

RE: Right

IJ: That they were

RE: Okie doke

IJ: So I would have to err on the side of caution there.

RE: Right

IJ: And say maybe the bills haven't been sent out. Because I don't want to say, yeah, definitely they will have been.

RE: I've gone through the bills book, and the vast majority, I think all except one. Let's say there's 20 bills and I found 19 of them.

IJ: Right

RE: Does that mean that they were sent out, or are we saying that just because they're in that bills book doesn't mean they were definitely sent?

IJ: Just because they're in the bills book doesn't mean they were definitely sent out. The bills book goes into it when it's put in the Accounts Department.

RE: Right fine. So, a bill might have been created, but not…

IJ: Bill might have been created and then not sent out. Now what usually happens is the bill is created, sent out at the same time. But I can't say –

RE: Right

IJ: Yes, they definitely are but.

RE: Okay, it seems to me just from my experience of dealing with these, it's probably unlikely the bills have been sent.

IJ: Yeah, I'd have to accept that. Yeah, yeah.

RE: I spoke to [Client A's wife] this morning, she's not had any bills and –

IJ: Right

RE: And as far as she's aware, she hasn't paid anything so…

IJ: No, because it would have been any bills would, would come from the monies that were held –

RE: Yeah, yeah

IJ: Rather than…because that was an agreement –

RE: Yeah

IJ: With [Client A] before he passed away. That he wanted to put the money there –

RE: Yeah

IJ: Um and deal with that and pay things out from that then.

RE: Yeah, I mean that's how estates work. Obviously –

IJ: Yes, yeah

RE: The money is there, you don't, she doesn't necessarily write you a cheque.

IJ: Yes, yeah

RE: I think she's under the impression that, that no money has been taken from her account shall we say.

IJ: Ah right, right

RE: But she certainly hasn't received bills, and the Rules dictate that without a bill you're not entitled to the money.

IJ: I'd have to accept. If she says it, that she hasn't received them. [Client's wife] is probably spot on in fairness to her. So, if she says she hasn't received them, I'd have to accept that they haven't been –

RE: Right

IJ: Sent out. For whatever reason.

RE: Ok. What do you think that reason might be, why wouldn't bills be sent out?

IJ: Purely, utterly error."

22. At the conclusion of the meeting the First Respondent explained that he would try and find the file on the matter of Client A and then if it couldn't be found he would "go back through everything, sit down with [Client A's wife] and go back through everything."

23. On 11 December 2018 the First Respondent told the FI Officer that he had met with Client A's wife the previous week. He stated he had gone through everything with her and she was content with the costs the firm have taken.

24. On 2 January 2019 the FI Officer emailed Mr Jones and stated:

> "In order to ensure my report is fully up to date, since we met on 11 December 2018, have bills been sent to any of the following clients? You will recall we discussed the fact that the firm would not have been an entitlement to the costs if bills (or other written notification of costs) was not provided to the client.
>
> 6. [Client A's Wife] – costs totalling £44,100.00
> 7. [Client B Executor] – costs totalling £12,000.00
> 8. [Client C Executor] – costs totalling £23,500.00
> 9. [Client D] – costs totalling £22,800.00."

25. Mr Jones responded the same day, stating:

> "Bills have been sent out on [Client A's wife], [Client B executor] and [Client D]."

26. On 3 January 2019 Mr Jones emailed the FI Officer attaching copy letters and bills for various files which he stated he had "just sent", including Client A's Wife. He provided "when I calculated these I clearly made errors as rushed this before Christmas and didn't check back far enough."

27. On 3 December the FI Officer queried when the bills had been sent to the clients, noting that they were dated 17 December 2018 but that Mr Jones had provided above that they had just been sent. The FI Officer stated:

> "Thanks. They are dated 17 December, when were they sent? (you say "I have just sent…")." Mr Jones responded; "Sent out on the 17th. I meant that's what I sent not time wise."

28. Following this email exchange, the FI Officer contacted Client A's Wife on 7 January 2019, some 21 days after the bill was allegedly sent to her. The note of that telephone call recorded the following:

> "She said the following:
>
> 1. She has "no idea" what costs the firm have taken.
>
> 2. She has not received any bills and has not received anything from the firm about costs recently (I asked specifically about the letter of 17 December but the response was "no").
>
> 3. She said she spoke to Mr Jones before Christmas. During this meeting [Client A's wife] told Mr Jones about the conversation she had with me. Mr Jones' response to that was "if he calls again, tell him everything is fine."
>
> 4. I asked specifically whether the issue of costs/fees was discussed during this meeting. [Client A's Wife] said "no" and suggested I speak with Mr Jones.
>
> 5. I asked whether she was aware the firm had taken £44,000 of costs, she said "I have no idea". I asked if she knew what the firm's costs were – she said "I have no idea yet" and suggested I speak with Mr Jones. I explained that I was speaking with Mr Jones and wanted to check what he was telling me was correct, i.e. that he had explained the costs to Mrs Beynon. She said he didn't know what the costs were.
>
> It seemed to me that [Client A's Wife] was becoming upset and as such I thanked her and ended the conversation. She was clear, she did not know what the costs were; she has not received any bills and Mr Jones has not explained the costs to her as he told me he had. My reference to costs of £44,000 was complete alien to her. If Mr Jones had explained (and sent bills on 17 December) I would have expected her to recognise this level of costs. She did not."

<u>Client B (deceased)</u>

29. The First Respondent had acted in relation to the estate of Client B, with the executor being "Client B Executor". The client ledger identified two transfers of costs both in the sum of £3,600, the first on 20 March 2018 and the second on 29 March 2018. As a

result of the transfers the client ledger became overdrawn in the sum of £7,200. The client file did not include any bills or other written notifications of costs.

30. In the discussion before the recorded meeting on 21 November 2018 the file note taken by the FI Officer recorded:

> "The bills totalling £7,200.00 have not been sent on [Client B Executor]. He said the matter was substantially complete bar the sale of the estate house. Once the sale is complete he will be sending the estate accounts/bills to [Client B Executor]. He said he was aware of the rule regarding sending bills prior to taking the client money. He also said he felt the bills were entirely justified."

> "I asked IJ about the lack on [sic] bills on [Client B Executor]. He accepted they had not been sent and said it wasn't common practice to take costs in advance of bills, but "it does happen." He confirmed the costs would have been taken if they appeared on the ledgers. He does the transfers (since [M] left)."

31. The FI Officer noted that the balance of the Firm's office account was £225.82 as at 20 March 2018. Following receipt of the £3,600 from Client B's matter the following payments were made:

a) £105 – "DWP /CAPITAL ONE
b) £405 – "IMJ /LLOYDS"
c) £2,500 – "DAC BEACHCROFT LLP, [H] CLAIM."

32. The initials DWP referred to the Second Respondent and the initials IMJ referred to the First Respondent.

33. Prior to the receipt of £3,600 on 29 March 2018 the balance in office bank account was £10.25. Following receipt for the £3,600 from the Client B ledger the following payments were made:

a) £2,057.44 – "NEW LOAN ACCOUNT"
b) £838.71 – "012589 541019"

34. On 21 November 2018 the First Respondent explained that the £838.71 was in respect of staff wages.

35. The FI Officer also found client to office bank account transfers of £1,800 on 29 August 2018 (referenced as "INTERIM [Client B]") and £3,000 on 14 September 2018 (referenced as "[CLIENT B] DECEASED"). The FI Officer calculated that the firm had taken costs totalling £12,000 in the matter although the First Respondent recalculated the costs as £8,250 plus VAT.

36. On 2 January 2019 the FI Officer emailed the First Respondent to set out the fact that there had been £12,000 taken in respect of costs. In the email he asked him whether he felt costs of £12,000 were justified and how he had calculated £8,250. He responded the same day, stating:

> "In relation to [Client B], I believe that the £8,250 is justified and this matter is ongoing but the £12,000 is not justified at this stage.
> Bills have been sent out on [Client A], [Client B] and [Client C]."

37. As in the case of Client A, the First Respondent stated that these had been sent on 17 December 2018. On 3 January 2019 the FI Officer spoke with Client B Executor. The telephone attendance note recorded:

> "1. She has not received any bills from the firm.
>
> 2. She is not aware of any costs having been taken by the firm.
>
> 3. The estate is still in its relatively early stages as the house has not been sold and that is the main element to the estate.
>
> 4. There have been some distributions to beneficiaries.
>
> 5. In terms of expected costs she referred to 2% of the estate and 1% of the value of the house [this sounded identical to the charging method on another matter I have looked at.]
>
> I told her that it appeared that the firm had taken costs of around £12,000 from the estate. She said she had given Mr Jones some bills to pay (utility bills etc) but nothing approaching £12,000. I explained that the ledger indicated that the costs alone were £12,000, not including any utility bills etc.
>
> I explained that Mr Jones had indicated that he had/was sending bills to her. I asked her to let me know if the [sic] she received bills and we agreed to touch base next week. I will call her on Tuesday next week as that would be sufficient time for any bills to arrive. She will call me if she does receive bills before then."

38. On 10 January 2019 the FI Officer spoke again with Client B Executor. The telephone attendance note recorded:

> "1. She has spoken with IMJ who said that he had sent her a bill on 71/12/18 [sic].
>
> 2. She did not receive that bill so she insisted IMJ emailed it to her, which he did.
>
> 3. She is concerned that the firm have taken costs of over £10,000 and has asked for a breakdown of how those costs are arrived at. The bill did not contain a meaningful narrative.
>
> 4. IMJ said that he was very busy so there may be a delay in giving her a breakdown. She is very concerned and says she can't understand how the costs are so high.

5. IMJ told her that he had "overestimated" the costs in this matter. He referred to issues with the Firm's accounts system.

6. She is going to ask IMJ for copies of all letters he has sent as she is doesn't know what he has done apart from getting probate and he "paid some utility bills."

I asked her to keep me posted about what further information she receives in terms of a breakdown of the costs."

Client C (deceased)

39. The First Respondent acted in relation to the estate of Client C with the executor being "Client C Executor". A client care letter was to Client C Executor on 17 July 2017. In relation to the Firm's fees, the letter stated that taking instructions and obtaining the Grant of Probate/Letters of Administration would be calculated as follows:

> "Value of main residence – 1%
> For example, if the deceased owned a residence/property in his/her own name and it was valued at £200,000 then our fees would be £200,000 x 1% = £2,000.
> Plus:
> Value of Gross Estate less residence – 2%
> For example, if the deceased's gross estate (excluding the residence/property) was £25,000 then our fees would be £25,000 x 2% = £500.
> Our total bill would be £2,500 plus VAT and disbursements."

40. The letter set out likely disbursements and stated "obviously if the matter becomes more complex than initially instructed then we reserve the right to charge an additional fee for time spent. Our charge rate is £180 per hour. In addition to the above, if the property is to be transferred, say into the name of the Executor...then our fees will be £250 plus VAT and disbursements."

41. The client ledger identified costs being taken of £6,700 by the Firm. When the FI Officer reviewed the firm's "bills rendered book" he noted there was a £3,000 bill dated 15 June 2018 and a bill for £1,200 on 29 June 2018. Neither bill was included in the client ledger but the Firm's office bank account confirmed receipt of the amounts. The FI Officer identified the transfers totalling £12,600 which were not included on the client ledger. The FI Officer determined that a total of £23,500 had been transferred in respect of this matter. On the basis of the value of the estate and the charging mechanism that was set out in the client care letter, the total costs should have been £980.00.

42. The First Respondent told the FI Officer that the matter had been complicated by issues relating to the property and that he had to obtain a statutory declaration in order to confirm ownership as the property had been unregistered. There was nothing on file which demonstrated that that work had been carried out on this issue.

43. On 13 December the FI Officer wrote to the First Respondent asking him to:

- Confirm the total amount of costs taken by the firm in relation to the matter;

- copies of all bills or other written notifications of costs provided to the client;
- Provide details of the charging mechanisms applied to the matter;
- Confirm the property sale price or advertised price;
- Confirm whether the total costs taken by the firm were justified.

44. The First Respondent responded on 17 December 2018 and said that the total costs were £9,000 plus VAT. By email dated 2 January 2019, the FI Officer asked him to explain why the file contained no evidence of work reconstructing the deeds or of obtaining the statutory declaration, how he had arrived at £9,000 plus VAT and how costs of £23,500 could be justified. The First Respondent replied on 2 January 2019 and explained that the costs would not have been correct and that he had arrived at the figure from the bills delivered book. He also stated that "the matter is ongoing and has a long way left to go but not costs of that level."

45. The FI Officer telephoned Client C Executor on 14 December 2018 she stated that she had not received any bills.

Client D

46. The Firm acted for Client D in relation to four conveyancing transactions and matters arising from the administration of an estate. The FI Officer identified bills totalling £11,000. During the meeting with the FI Officer on 21 November 2018 the First Respondent stated that it was probably the case that the bills had not been sent out.

47. Upon a review of the files there was no evidence of the bills and a review of the Firm's office bank account statements identified 12 occasions where costs had been taken on Client D's matters amounting to £22,800. These were either referenced as "COSTS, COSTS [Client D], [Client D] or INTERIM [Client D]."

48. On 13 December 2018 the FI Officer wrote to the First Respondent seeking confirmation of the costs taken and requested copies of all bills or written notifications of costs sent to the client. He also requested evidence of any funding arrangement with the client. On 17 December 2018 the First Respondent responded and stated that the total costs taken by the Firm were £12,250. He explained:

> "This matter was not just the sale of the property. It included another purchase, wills, potential LPA's and a number of abortive purchases. All these included numerous home and nursing home visits. The money was also to be held and issued to client as and when necessary. This is now an estate matter."

49. The First Respondent did not provide evidence of bills or written notifications of costs.

50. The FI Officer sent a further email on 3 January 2019 asking why there was such a disparity between the costs identified by him and the £12,500 that Mr Jones had stated. He also explained that having reviewed the client files pertaining to the matters, he did not consider that there was sufficient work on file to justify costs of £22,800. The First Respondent replied the same day stating:

> "I need to review [Client D] as may well not be justified." Attached to this email were bills provided in the sum of £14,700 which had been dated 17 December 2019.

Client E

51. The Second Respondent had acted in relation to Client E's matrimonial dispute. The client ledger identified a debit balance in the sum of £1,799.60 as at 2 February 2018. The balance arose as a result of a payment made to Client E in the sum of £2,000 on that date. On 8 November 2018 the FI Officer wrote to the First Respondent seeking details of any client money received in relation to this matter which would rectify the debit balances. On 13 November 2018 the First Respondent replied and explained that it appeared to be an error and needed to be corrected.

Client F

52. The First Respondent acted in relation to Client F's sale of a property. As at 25 August and upon a payment out of £1,500 to an estate agent in the sum of £1,500 the matter became overdrawn and stood at £1,074 debit. The First Respondent told the FI Officer that this was the result of an error.

Client G (deceased)

53. The Second Respondent acted in relation to the administration of the estate of Client G. As at 10 January 2018 the client ledger showed a debit balance in the sum of £1,253.88 which arose following a transfer of costs in the sum of £6,000 though the client file did not contain a bill in relation to the firm's costs. The FI Officer sought comments on the debit balance on 8 November 2018. The First Respondent responded on 13 November 2018, stating:

> "Ongoing. Money sent by bank directly to clients. See letter attached showing £64,000 [sic] to be refunded and this will correct balance." When asked in the interview with the FI Officer whether it could be assumed that bills were not sent out in relation to this matter, he stated:
>
> "Yes, we could well do. We could well..I don't, I'm not sure on um [Client G] because that's one of [Second Respondent's] matters."

54. When asked by the FI Officer about the debits on the various client accounts during the transcribed meeting he described taking costs when insufficient money was held as an error.

55. He clarified it was human error which led to client matters becoming overdrawn.

Client Account Reconciliations

56. During the meeting on 5 November 2018 the First Respondent had told the FI Officer that the Firm had not undertaken a client account reconciliation since 31 March 2018 and that due to the software failure he was reposting lost information by reference to the bank statements. On 21 November 2018 he informed the FI Officer that he needed

to go back to a point where the reconciliations balanced and he was unable to say when this would have been and that it could have been over a year ago. He explained he intended to use that as a starting point and with accountant's help hoped to be able to check all transactions undertaken by then and determine whether the position shown by the books was correct or whether there was an error.

57. On 25 February 2019 the Adjudication Panel of the SRA resolved to intervene into the practices of the Respondents and the Firm.

Findings of Fact and Law

58. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' 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.

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

60. **Allegation 1.1 -**

Applicant's Submissions

60.1 Mr Mulchrone submitted that the First Respondent had made improper transfers from the client account by failing to send and/or prepare bills in many instances had admitted charging in excess of what had either been estimated or the work on the file failed to reflect the work carried out.

60.2 Mr Mulchrone submitted that the First Respondent had taken advantage of the fact he was dealing with probate matters and that often there were funds held in the account. He had often been dealing with vulnerable people, such as Client B's wife and Client C Executor, who were completely unaware that any costs had been charged for he failed to send them any bills. In acting as he did the First Respondent had failed to behave in the way that maintained the trust the public places in him in breach of Principle 6. He had also failed to act in the best interests of his clients in breach of Principle 4.

60.3 Mr Mulchrone further submitted that the First Respondent's actions amounted to a failure to act with integrity as solicitor acting with integrity would not have overcharged at all. The First Respondent had done so by grossly inflating the costs. He also did without the clients' knowledge.

Dishonesty

60.4 Mr Mulchrone submitted that the First Respondent had acted dishonestly. He was an experienced solicitor of some 20 year's standing and must have known that overcharging clients was dishonest. This would be considered dishonest by the standards of ordinary decent people on any objective basis.

First Respondent's Submissions

60.5 On 18 August 2019 the First Respondent had responded to the Rule 5 Statement by email.

60.6 The email began with references to his health. These are not repeated in this Judgment but were noted by the Tribunal when considering the case against the First Respondent. In relation to the Allegations he faced, he stated the following:-

> "I accept that there have been numerous errors made due to the problems we faced with our accounting software and the continuous crashes this suffered. This led to transfers being taken that should not have been taken and bills being submitted that were incorrect.
>
> At no time was this done with dishonesty or lack of integrity and we were working diligently to correct the errors when the intervention occurred.
>
> I accept there has been mismanagement and failure to maintain up to date accounts due to the situation.
>
> I again strenuously deny any dishonesty in this matter."

60.7 The First Respondent had not provided any further account or statement addressing the Allegations.

The Tribunal's Findings

60.8 In his email of 18 August 2019 and in his explanations to the FI Officer, the First Respondent had placed the blame for these matters on the failure of the accountancy software and the departure of an employee. The First Respondent had not challenged the factual basis of the Allegation, nor had he challenged any of the evidence in the case including that of the FI Officer or Client B's executor.

60.9 It was clear that the First Respondent had made the transfers from client to office account as this was evidenced by the ledgers as examined by the FI Officer.

60.10 The sums were clearly in excess of those which might properly be charged in that they were not justified by a bill and there was no evidence of work undertaken that would justify such a sum being transferred. In the example of Client C there had been a formula set out in the client care letter. There was no documentation to support a basis for the fees to go beyond that formula and certainly not by £23,500 when the formula would have generated a fee of less than £1,000. In that example the First Respondent had 'reduced' the amount to £9,000, which the Tribunal took to be an admission that the £23,500 was not justified. For the avoidance of doubt, the Tribunal also found the figure of £9,000 to be unjustified.

60.11 As was clear from the unchallenged evidence presented by the Applicant, the First Respondent had provided no narratives on the bills that had been produced which would justify the sums involved. The First Respondent had been unable to properly explain the reason for the sums claimed when he was asked about it by the FI Officer and he

had not adequately explained it in these proceedings. There was no evidence as to the failure of the software and how that caused a failure to provide justification for transfers from client to office account or how it caused significant overcharging to repeatedly take place. There were no file notes and no other documentation that explained this.

60.12 The clients, or where applicable their beneficiaries or executors, were unaware of the extent of the charges, as evidenced by their conversations with the FI Officer. In the case of Client B's executor, she had provided a witness statement in which she had stated:-

> "I confirm that on 3 January 2019 I called Richard Esney, a Forensic Investigation Officer, at the Solicitors Regulation Authority following receipt of an email he had sent me on 11 December 2018. He had asked me in the email whether I had received any bills from the Firm in relation to Client B's matter. I had not received any bills at all from Mr Jones or his Firm and informed Mr Esney of this. I explained on that call that I was not aware of any costs being taken as the estate was in relatively early stages with no sale of Client B's house at that time.
>
> Mr Esney went on to tell me that costs of £12,000 had been transferred to the office account in respect of Client B's matter. I was confused and shocked as not only had I not received any letter or bill or update about any costs, we had merely agreed the percentage figures as per the above which would have, at the very most, have been significantly under the £12,000. Notwithstanding this, I understood that so little work had been done on the matter it could not possibly have amounted to £12,000".

60.13 The First Respondent had not attended the Tribunal and had therefore not given evidence. The Tribunal had regard to Practice Direction 5 dated 4 February 2013 which stated:

> "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 had 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 that the Respondent has chosen to adopt as regards the giving of evidence when reaching its decision in respect of its findings".

60.14 The Frist Respondent had given no good reason for his non-attendance and the Tribunal was entitled to draw an adverse inference from his failure to give evidence and from his limited engagement.

60.15 The Tribunal found the factual basis of Allegation 1.1 proved beyond reasonable doubt.

Principle 2

60.16 In considering whether the First Respondent had lacked integrity it applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:-

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".

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

60.18 The Tribunal found that the First Respondent's conduct fell squarely into the examples given in Wingate. The making of improper transfers from client account and the gross overcharging represented a clear failure to adhere to an ethical code. This was not an isolated incident but had happened repeatedly and involved very large sums of client money that had been misappropriated. The Tribunal found beyond reasonable doubt that the First Respondent had lacked integrity and had breached Principle 2.

Principle 4

60.19 It followed as a matter of logic from the Tribunal's factual findings that it was not in the best interests of clients to overcharge them and make transfers in excess of what might properly be charged. The Tribunal found the breach of Principle 4 proved beyond reasonable doubt.

Principle 6

60.20 The Tribunal found that the trust the public placed in the First Respondent and in the provision of legal services was inevitably diminished when that solicitor moved client money out of the client account for improper purposes.

60.21 The Tribunal noted the following section of Client B's executor's statement:-

> "I have been left extremely disappointed by the conduct of Mr Jones and the Firm and it is clear Client B has had money taken which not in respect of work carried out. In addition to the overcharging, bills were not sent to me prior to the monies being removed from Client B's account. Had a bill been sent prior to the monies being charged I would have flagged that the costs were grossly over-inflated."

60.22 The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

Dishonesty

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

> "the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ….. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the

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

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

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

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

60.25 The Tribunal considered the First Respondent's state of knowledge at the time of the transfers. The Tribunal found that the First Respondent knew that he was overcharging the clients. It was inconceivable that he could not know. In at least one case there was a formula for setting the fee and calculating costs. Although there was an hourly rate for exceptional cases, the starting point was the formula. In most of the cases the First Respondent was the fee earner.

60.26 He would therefore know the appropriate charging levels. He was an experienced solicitor and the principal fee earner on the exemplified cases.

60.27 He had admitted when speaking to the FI Officer that some of the bills were wrong and too high.

60.28 The First Respondent knew that he had not been engaging with the clients or executors and had therefore not agreed the transfers or the fees with them. There was nobody overseeing the First Respondent's work, which was a probate matter, and he would have been aware of that lack of oversight at the time he was making the transfers.

60.29 The First Respondent knew that the money was being transferred to the office account as he had been responsible for the transfers and would therefore have specified where the funds were to go.

60.30 The First Respondent also demonstrated his knowledge of the failure to send out bills to justify the transfers by his agreement to do it when challenged by the FI Officer. He therefore knew that a bill had not been issued and that he had no authority to make the transfers. The Tribunal noted that when the bills were drawn up there was no credit applied for monies already paid into the Firm. The Tribunal found this to be indicative of his approach to these matters.

60.31 The Tribunal concluded that the First Respondent knew that the transfers should not be made and that he went ahead and made them regardless. The Tribunal found that this would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt in relation to Allegation 1.1.

60.32 Allegation 1.1 was therefore proved in full including the allegation of dishonesty.

61. **Allegation 1.2**

Applicant's Submissions

61.1 Mr Mulchrone submitted that the First Respondent had expressly provided to the FI Officer that he had sent bills out on Client A and Client B's matter on 17 December 2018.

61.2 He had clearly told the FI Officer something that was not true as the bills had not been sent out as had been verified by the telephone conversations with Client A's Wife and Client B Executor. Mr Mulchrone submitted that the First Respondent had sought to mislead the FI Officer. The public would expect solicitors to deal truthfully and candidly with their regulator, and the First Respondent had therefore breached Principle 6. He had also acted with a lack of integrity by knowingly making false statements about bills in the course of an investigation into the firm's billing practices.

61.3 Mr Mulchrone further submitted that the First Respondent had acted dishonestly. He was aware of the true position at the time of providing incorrect information to the SRA. Ordinary decent people would consider lying to the FI Officer and telling him something had happened when it had not, to be dishonest.

First Respondent's Submissions

61.4 The First Respondent's submissions on all the Allegations are set out under Allegation 1.1. The Tribunal noted that the First Respondent denied this Allegation.

The Tribunal's Findings

61.5 The Tribunal noted that the evidence of Mr Esney and Client B's executor was not challenged.

61.6 Mr Esney stated in his witness statement:

> "4. On 3 January 2019 I received an email from Mr Jones attaching copy letters and bills for various files which he stated he had "just sent" including to Client A's Wife and to Client B Executor. I queried by email when they had been sent to the relevant people (for they were dated 17 December 2018) and Mr Jones confirmed by email that they had been sent on 17th December (see page 117 of the exhibit to the Rule 5 Statement).
>
> 5. On 3 January 2019 | contacted Client B's Executor who stated she had not received any bills from the firm and was not aware of any costs having been

> taken by the firm. I immediately drafted a file note following my conversation with Client B Executor.
>
> 6. I contacted Client A's Wife on 7 January 2019 and she stated she had also not received any bills and had no idea what costs the firm had taken and that she had spoken to Mr Jones before Christmas but Mr Jones had said that if I called again to say everything was fine."

61.7 Client B's executor had stated:

> "4. I confirm that on 3 January 2019 I called Richard Esney, a Forensic Investigation Officer, at the Solicitors Regulation Authority following receipt of an email he had sent me on 11 December 2018. He had asked me in the email whether I had received any bills from the Firm in relation to Client B's matter. I had not received any bills at all from Mr Jones or his Firm and informed Mr Esney of this."

61.8 This remained the position until 10 January 2019, when the First Respondent had emailed her a bill with no narrative.

61.9 The Tribunal was satisfied beyond reasonable doubt that the information given to the FI Officer by the First Respondent was misleading as the bills had not been sent out on 17 December 2018. The First Respondent would have known that he had not sent them out and the Tribunal found the factual basis of Allegation 1.2 proved beyond reasonable doubt.

Principles 2 and 6

61.10 The Tribunal found that knowingly providing misleading information to the regulator was a clear example of a lack of integrity and acting in a way which diminished the trust the public placed in him and in the provision of legal services. The Tribunal found the breaches of Principles 2 and 6 proved beyond reasonable doubt.

Dishonesty

61.11 The Tribunal had been required to assess the First Respondent's state of knowledge when considering the factual basis of Allegation 1.2 as the word "knowingly" was in the body of the Allegation itself. As explained above, the Tribunal found that the First Respondent knew that he was providing misleading information to the SRA. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people.

61.12 The Tribunal found Allegation 1.2 proved in full including the allegation of dishonesty.

62. **Allegation 1.3**

Applicant's Submissions

62.1 Mr Mulchrone told the Tribunal that the First Respondent had asserted to the FI Officer on 11 December 2018 that he had paid a visit to Client A's Wife and explained that he

had gone through matters with her and she was content with the costs. The contemporaneous file note produced by the FI Officer recorded:

> "In terms of the [Client A] matter IMJ said that he met with [Client A] last week. He met her at an Age Concern clinic in Port Talbot. He "went through everything with her" and she is content with the costs the firm have taken. IMJ said that none of the bills were withdrawn and the costs were accepted in full. She has not been given bills – IMJ said he has not finalised the bill and as such has not remedied the shortage (by sending bills). He wanted to speak with RE today first. He will resolve this by sending bills once the matter is completed. RE referred to the ongoing shortage until the bills are provided to [Client A's Wife]. IMJ understood this. He repeated that he would send bills at the conclusion of the matter."

62.2 The FI Officer had contacted Client A's Wife and she was clear that she did not know what the costs were; she had not received any bills and the First Respondent had not explained the costs to her. Mr Mulchrone submitted that it was clear that Client A's Wife had not been informed about the costs and that these certainly were not accepted in full. Mr Mulchrone referred to the First Respondent having visited Client A's wife at Age Concern and submitted that it could be inferred that she was a vulnerable elderly lady. The First Respondent had sought to mislead the FI Officer by asserting Client A's Wife was aware of the position in relation to costs when it is clear she was not. Mr Mulchrone submitted that this was a clear breach of Principle 6 and demonstrated a lack of integrity.

62.3 Mr Mulchrone further submitted that the First Respondent's conduct had been dishonest. He submitted that ordinary decent people would consider lying to the FI Officer and telling him something had happened when it had not, to be dishonest.

First Respondent's Submissions

62.4 The First Respondent's submissions on all the Allegations are set out under Allegation 1.1. The Tribunal noted that the First Respondent denied this Allegation.

The Tribunal's Findings

62.5 The Tribunal found that the First Respondent's account of events was completely contradicted by the evidence of the telephone conversation between Client A's wife and the FI Officer, as quoted above, which took place not long after the conversation she had had with the First Respondent. This was also unchallenged evidence. Further, the First Respondent's account was not supported by any written document. There were no corroborating notes on the file and no letters to or from the client that would lend credibility to the First Respondent's version of events. The Tribunal was satisfied beyond reasonable doubt that the account the First Respondent had given to the FI Officer was misleading.

62.6 The conversations that the First Respondent had with Client A's wife were close in time to the conversation he had with the FI Officer. This was evidence in support of the Applicant's case that the First Respondent had knowingly given that misleading information to the FI Officer. The Tribunal also noted that the First Respondent had

said to Client A's wife "if he calls again, tell him everything is fine" – referring to the FI Officer. This was clear evidence that the First Respondent was well aware of his actions at the material time. This was all evidence that what the First Respondent had told the FI Officer was not a mistake or a genuinely incorrect recollection. The Tribunal was satisfied beyond reasonable doubt that the First Respondent had knowingly provided that misleading information. The Tribunal found the factual basis of Allegation 1.3 proved beyond reasonable doubt.

Principles 2 and 6

62.7 The Tribunal found the breaches of these Principles proved beyond reasonable doubt on the same basis as it had made such findings in relation to Allegation 1.2.

Dishonesty

62.8 The Tribunal had again been required to assess the First Respondent's state of knowledge when considering the factual basis of Allegation 1.3 as it was explicit in the wording of the Allegation itself. As explained above, the Tribunal found that the First Respondent knew that he was providing misleading information to the SRA. The Tribunal was again satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people.

62.9 The Tribunal found Allegation 1.3 proved in full including the allegation of dishonesty.

63. **Allegation 2.1**

Applicant's Submissions

63.1 Mr Mulchrone submitted that in Client A, B, C and D's case, costs were transferred prior to bills having been sent to the Clients in breach of Rule 17.2 of the SARs 2011. There were no instructions from clients to state that the costs could be withdrawn. It appeared from the recorded meeting notes with the First Respondent to be standard practice and it was clear that the transfers of costs were sometimes made so as to keep the office account from going overdrawn and/or in order that there could be office account payments made.

63.2 Mr Mulchrone referred to an attendance note from the FI Officer dated 21 November 2018 which stated:

> "IJ came to see me (looking for the bills book which he found and passed to me...) I said I would look through the book to see if the bills were there. He said in relation to [Client G] and [Client D] that it was "probably the case that the bills hadn't been sent." And that "its like you said, I've looked at office account and thought I know there are costs there and taken them. He said "I know it's a breach" and said "it's bad management on our part."

63.3 The Second Respondent also carried out transfers, as was evident in the case of Client G where £6,000 was transferred prior to a formal bill being sent out. The Second Respondent had told the FI Officer that he thought that making transfers from client to

office account without issuing bills "may have been a historic issue but not an issue now". He therefore knew that improper transfers of client money had been taking place.

63.4 In relation to Client B's matter there was a transfer of funds to the office account followed by a transfer to pay a credit card referenced with the Second Respondent's initials and so the Firm would not have been able to make the payments without this money.

63.5 The Second Respondent was an experienced solicitor who had been in practice for almost 40 years. If he had looked in any detail at the Firm's bank statements he should have noted the large sums of money which were being taken and queried the level of costs. In view of the fact both Respondents had daily partners meetings the accounts should have been reviewed.

63.6 Mr Mulchrone submitted that transferring monies prior to bills being raised and/or sent meant not only a failure to keep client monies safe in breach of Principle 10 but also a clear failure to act in the best interests of the clients in breach of Principle 4. It was also a breach of Principle 6 in that both Respondents had failed to behave in a way which maintained the trust placed in the public profession.

63.7 Mr Mulchrone further submitted that the Respondents' actions amounted to a failure to act with integrity as a solicitor acting with integrity would not have transferred costs other than in accordance with the terms already notified to clients and without first sending bills to clients. It was clearly not "bad management" but a distinct lack of integrity. In making these transfers both Respondents had demonstrated a clear breach of Principle 2.

63.8 The Respondents had also breached Principle 8.

First Respondent's Submissions

63.9 The First Respondent's submissions on all the Allegations are set out under Allegation 1.1. The Tribunal noted that the First Respondent denied any lack of integrity in particular.

Second Respondent's Submissions

63.10 The Second Respondent admitted the breaches of the SAR and the breaches of Principles 8 and 10. He denied breaching Principles 2, 4 and 6.

63.11 The Second Respondent told the Tribunal that he was very saddened to be before it after a career of over 40 years. He explained that there had been a "downward trend" that occurred when the accounts clerk retired. The First Respondent had been adamant that he would deal with the accounts on his own. The Second Respondent told the Tribunal that he had offered assistance and regretted that he was not more forceful in being involved.

63.12 The Second Respondent said that he accepted the breaches of the SAR as he had been a partner and should have checked the bank statements regularly. He told the Tribunal that the first time he knew there was something untoward was when the FI Officer had

a joint meeting with him and the First Respondent. After the intervention he saw the overcharging allegations. The most the Second Respondent had ever charged was £10,000 for anything. In most cases probably undercharged and he had never overcharged.

63.13 The Second Respondent told the Tribunal that most of his bills were submitted but accepted that not all of them had been, due to a lack of time, and that this was a personal breach.

63.14 The Second Respondent was at pains to emphasise that he had never been dishonest and indeed this had never been alleged. He asked the Tribunal to make this clear in its findings. He had been open and co-operative with the FI Officer.

63.15 The Second Respondent maintained that he had always acted with integrity and had always acted in the best interest of his clients. He therefore could not accept that he had breached Principles 2, 4 or 6.

The Tribunal's Findings

63.16 First Respondent

63.16.1 It followed as a matter of logic from the Tribunal's findings in relation to Allegation 1.1 that the First Respondent had withdrawn money from client account when bills had not been issued to justify the transfer. This was a clear breach of the SAR and demonstrated a lack of integrity for the same reasons as set out in relation to Allegation 1.1. It was also a breach of Principles 4 and 6, again for the same reasons.

63.16.2 There followed an inevitable breach of Principles 8 and 10. The First Respondent's role in the business was that of a partner and principal fee earner. It was self-evident that withdrawing monies from the client account in breach of the SAR was inconsistent with protecting client money and assets.

63.16.3 The Tribunal found Allegation 2.1 proved beyond reasonable doubt in respect of the First Respondent.

63.17 Second Respondent

63.17.1 The Second Respondent had admitted breaches of the SAR and Principles 8 and 10. The Tribunal was satisfied that these admissions were properly made.

Principle 2

63.17.2 The Tribunal again adopted the test for lack of integrity as set out in Wingate. The Second Respondent had, on his own admission, failed to step in as required by his roles as partner, COLP and COFA. He admitted that he should have done more to involve himself in the accounts and he had also admitted that he made some transfers himself without bills to justify them.

63.17.3 The factors that had been discussed in relation to Allegation 1.1 were also applicable here to a large extent. The Tribunal found that withdrawing money from client account was a very serious matter, particularly when it involved the individual with the specific responsibility for compliance.

63.17.4 The Tribunal was satisfied beyond reasonable doubt that the Second Respondent's own failings as well as his failure to ensure that the First Respondent was complying with his obligations amounted to a lack of integrity and the Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principles 4 and 6

63.17.5 The Tribunal found that the breaches of these Principles followed from the factual findings and the Tribunal found them proved beyond reasonable doubt.

63.18 The Tribunal found Allegation 2.1 proved beyond reasonable doubt in respect of the Second Respondent.

64. **Allegation 2.2**

Applicant's Submissions

64.1 Mr Mulchrone told the Tribunal that the FI Officer had been unable to determine whether the Firm's assets met its liabilities as the accounting records were not properly drawn up. There had been reference to a system failure within the firm taking place in October 2017. However a year later the accounts were still not up to date and had not been reconciled since March 2018 and many of the breaches remained un-remedied.

64.2 He submitted that both Respondents had therefore failed to carry out their respective roles in the business in accordance with sound financial management principles and so had breached Principle 8.

First Respondent's Submissions

64.3 The First Respondent's submissions on all the Allegations are set out under Allegation 1.1.

Second Respondent's Submissions

64.4 The Second Respondent had admitted this Allegation in full.

The Tribunal's Findings

64.5 First Respondent

64.5.1 The Tribunal again referred to the unchallenged evidence of the FI Officer. The dates spoke for themselves in terms of breaches and failures to carry out reconciliations. This in turn led to failures to remedy said breaches. The Tribunal also noted the admissions made by the First Respondent in his

conversations with the FI Officer. The Tribunal found the breaches of the SAR and Principles 8 and 10 proved beyond reasonable doubt and therefore found Allegation 2.2 proved in full in respect of the First Respondent.

64.6 Second Respondent

64.6.1 The Tribunal was satisfied that the Second Respondent's admissions were properly made as they were clearly consistent with the evidence. The Tribunal found Allegation 2.2 proved in full in respect of the Second Respondent.

Previous Disciplinary Matters

65. There was no record of any previous disciplinary findings by the Tribunal in respect of either Respondent.

Mitigation

66. The First Respondent had not presented any mitigation, beyond the comments made in relation to the Allegations themselves, as referred to above.

67. The Second Respondent told the Tribunal that he had nothing to add to his oral submissions made in relation to the Allegations.

Sanction

68. The Tribunal had regard to the Guidance Note on Sanctions (November 2019). The Tribunal assessed the seriousness of the misconduct by considering each Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

69. First Respondent

69.1 In assessing the First Respondent's culpability, the Tribunal identified the following factors:-

- The First Respondent's motivation was financial gain;
- He was seeking to keep the firm afloat and to generate income for himself;
- The misconduct was planned and continued over a period of time;
- There was clearly a breach of trust as clients would expect him to safeguard their money;
- The First Respondent had absolute control over, and responsibility for, his misconduct;
- The First Respondent was a very experienced solicitor who was operating at the level of partner and Head of Department;

- On the Tribunal's findings in relation to Allegations 1.2 and 1.3 he had deliberately misled the SRA.

69.2 In assessing harm the Tribunal found that considerable harm had been caused for the following reasons:-

- There was an obvious and serious impact was on the clients – the First Respondent had been misappropriating their money and overcharging them;

- The Tribunal noted the distress caused to Client A's wife when matters had been explained to her by the FI Officer;

- The reputation of the profession was seriously damaged by this type of conduct, involving as it did the dishonest handling of client monies and deliberate misleading of the regulator.

69.3 The Tribunal found that the misconduct was aggravated by the following factors:-

- The misconduct was deliberate, calculated and repeated;

- The clients were vulnerable in many cases widows and beneficiaries;

- There had been concealment of wrongdoing;

- The First Respondent knew that he was in material breach of his obligations.

69.4 The only mitigating factors that were apparent were the First Respondent's lack of previous findings before the Tribunal and some limited admissions. However the Tribunal found that he had no insight as he had blamed everything on the bookkeeper's departure and the software systems.

69.5 The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. . Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

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

69.6 The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.

69.7 The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal found there to be nothing that would justify an indefinite suspension or other lesser sanction. There was no evidence of any health issues. The issue with the bookkeeper was in no way exceptional. The bookkeeper had retired and so it was not an unexpected absence. The circumstances in which she was not replaced were entirely in the First Respondent's control. He could

have replaced the bookkeeper and improved the software and he had done neither. Instead he had lifted monies out of the client account without any justification over a lengthy period. The only appropriate and proportionate sanction was that the First Respondent be struck-off the Roll.

70. Second Respondent

70.1 In assessing the First Respondent's culpability, the Tribunal identified the following factors:-

- The Second Respondent's motivation was taking shortcuts. He had allowed the misappropriations to happen but had also directed some of the withdrawals. However his misconduct was mainly by way of omissions;

- The Second Respondent had been the COLP and COFA as well as a partner and had a high level of responsibility;

- There was an element of breach of trust in that he was the COFA and had special responsibility for ensuring compliance by the Firm with all the SARs and Principles;

- The Second Respondent had a high level of experience.

70.2 In assessing harm, the Tribunal found that the level of harm caused was not as great as the First Respondent as there had been fewer instances of the Second Respondent making transfers. His conduct had not been dishonest. However the matters were still very serious and caused damage to the reputation of the profession as well as potential harm to clients.

70.3 The Tribunal found that the misconduct was aggravated by the following factors:-

- In two instances the misconduct had been deliberate;

- The misconduct had continued over a period of time;

- The Second Respondent had allowed advantage to be taken of clients;

- He knew or ought reasonably to have known that he was failing to discharge his duties and was therefore in material breach of his obligations;

70.4 The Tribunal found that the misconduct was aggravated by the following factors:-

- The Tribunal accepted that he was less involved than the First Respondent;

- The Tribunal noted that he had demonstrated more insight than the First Respondent;

- This was reflected in his open and frank admissions to the factual basis of the Allegations he faced and to many of the associated breaches of Principles;

- The Tribunal noted that he had co-operated fully with the SRA;

- The Second Respondent had no previous findings before the Tribunal.

70.5 The Second Respondent's conduct was so serious that it was not appropriate to make no order or to impose a reprimand.

70.6 The Tribunal considered whether a fine would be sufficient to protect the reputation of the profession. This case involved a significant lack of integrity on the part of the Second Respondent, resulting in a serious impact on clients. The Second Respondent had allowed the deterioration in the way the Firm was being run to continue. The reputation of the profession required that the Second Respondent be removed from practice but it did not require that he be struck-off. The Second Respondent's level of insight was such that a fixed term of suspension was appropriate. Taking into account all the relevant factors as set out above, the Tribunal determined that the appropriate length of suspension was 12 months.

70.7 The Tribunal considered whether it was necessary to impose restrictions on the Second Respondent at the expiry of the term of suspension to protect the public. The Tribunal did not find it was necessary. The insight shown and the admissions made were sufficient that the Tribunal did not consider it necessary to impose restrictions. In the future, if further issues arose, the SRA would be best placed to address those matters at the appropriate time.

Costs

Applicant's Submissions

71. Mr Mulchrone applied for costs in the sum of £51,747.64 as set out in a cost schedule provided to the Respondents and the Tribunal. The matter had taken two days rather than three. However it was right to have kept the time estimate at three days given the nature of the Allegations and the fact that the First Respondent might have attended the hearing. Mr Mulchrone had no submissions on the issues of apportionment and was content to leave that matter to the Tribunal.

First Respondent's Submissions

72. The First Respondent had not communicated on the question of the SRA's cost schedule. In his email of 18 August 2019 he had stated the following regarding his means:-

> "I have finally managed to find employment but on a vastly reduced salary. I am not practising as a solicitor and have no intention of doing so in the future. In relation to any costs award I would respectfully ask the Tribunal to consider that I now have a net monthly salary of £1,798 with main outgoings of mortgage £1,850, Loan £527, Car Loan £180. I also have other debts amounting to approximately £40,000 which I currently cannot pay and I am attempting to

reach agreements on payments schedule for. I have no equity in my property as it is fully mortgaged."

73. He had also provided a Personal Financial Statement in March 2019, which the Tribunal had regard to.

Second Respondent's Submissions

74. The Second Respondent asked the Tribunal to consider apportioning the costs due to the disparity of findings between himself and the First Respondent.

75. The Second Respondent told the Tribunal that he was in a "perilous" financial situation and there was a statutory demand already in place. He was likely to be made bankrupt in the near future. He told the Tribunal that the office had been sold for £170,000 and there had been negative equity in the property. His Personal Financial Statement, which he had served, had left out some of his outgoings.

The Tribunal's Decision

76. The Tribunal considered the level of costs claimed. The investigation costs were reasonable and the Rule 5 statement had been well drafted. The case had been ably presented and the equivalent hourly rate of £227 was not unreasonable.

77. The Tribunal did consider that it was appropriate to make some reduction for the case having concluded a day earlier than anticipated and reduced the total by £2,000 to reflect this.

78. This reduced the total amount to £49,747.64.

79. The Tribunal then considered the question of apportionment. The First Respondent had faced five Allegations, which included dishonesty. The Second Respondent had faced two Allegations and had not faced a dishonesty allegation. The Second Respondent had admitted large parts of the case against him. The Tribunal determined that there should be some apportionment to reflect the differing levels of gravity in the Allegations proved against each Respondent.

80. The First Respondent had faced the more serious Allegations and the Tribunal decided that he should pay 70% of the costs (£34,823.35). The Second Respondent would therefore pay 30% (£14,924.29).

81. The Tribunal considered the means of each of the Respondents.

82. The First Respondent had an income and an asset. The Tribunal saw no basis for a reduction in his case, mindful of the fact that the SRA took a sensible and pragmatic approach to enforcement of costs orders.

83. The Second Respondent was clearly in financial difficulty and the Tribunal acknowledged that he may be declared bankrupt. It could not speculate on the arrangements that might be made in that event. However the Tribunal did not want to

preclude the SRA from trying to recover its costs if it was possible to do so. The Tribunal therefore made no reduction in respect of the Second Respondent either.

Statement of Full Order

84. The Tribunal Ordered that the First Respondent, IEUAN MICHAEL JONES, 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 £34,823.35.

85. The Tribunal Ordered that the Second Respondent, solicitor, be suspended from practice as a solicitor for the period of 12 months to commence on the 8 January 2020 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,924.29.

Dated this 28th day of January 2020
On behalf of the Tribunal

P. Booth
Chairman