SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12090-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NICHOLAS PETER WILLIAM SKINNARD Respondent

Before:

Mr P Booth (in the chair)
Mrs J Martineau
Mrs L Barnett

Date of virtual hearing 17 and 18 September 2020

Appearances

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

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent (Nicholas Peter William Skinnard, Solicitor and Partner), made by the SRA and amended at allegation 1.6.5 with the permission of the Tribunal, were that whilst a Sole Principal of Blight Board & Skinnard ("the firm"), between about 2016 and 2019, he:

1.1 Caused or authorised improper payments of sums held on the firm's client account in relation to one or more of the following client account ledgers:

1.1.1 Estate A;
1.1.2 Estate B;
1.1.3 Estate C;
1.1.4 Estate D.

In doing so, he breached Rule 20.1 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

1.2 Caused or authorised improper inter-ledger transfers of sums held on the firm's client account in relation to one or more of the following client accounts ledgers:

1.2.1 Estate A;
1.2.2 Estate B;
1.2.3 Estate C;
1.2.4 Estate D;
1.2.5 Estate J.

In doing so he breached Rule 27.1 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

1.3 Improperly made loans from sums held on the firm's client account in relation to one or more of the following client account ledgers other than in the circumstances allowed for under Rules 27.2 and 27.3 of the SRA Accounts Rules 2011 and/or without the knowledge or consent of executors or beneficiaries or other parties on whose behalf the sums were held:

1.3.1 Estate A;
1.3.2 Estate B;
1.3.3 Estate C;
1.3.4 Estate D.

In doing so he breached all or any of Rules 1.2(c), 27.1, 27.2, and 27.3 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles.

1.4 Improperly utilised client monies for his personal benefit in that:

1.4.1 On 12 January 2018, he utilised monies from the client account ledger for Estate H for his personal benefit by using the sum of £83,748.39 from the client account ledger in order to meet his personal tax liability by way of a personal loan;

1.4.2 On 16 November 2018, instead of repaying the personal loan described in paragraph 1.4.1 with his own funds, he repaid the loan using monies from the unconnected client account of Estate A, thereby taking an unauthorised loan from those estate funds in the sum of £83,748.39 and avoiding repayment of the loan for his personal benefit;

In doing so he breached Rules 1.2(c) and 20.1 of the SRA Accounts Rules 2011, Outcome O (3.4) of the SRA Code of Conduct 2011 and Principles 2, 4, 5, 6, and 10 of the SRA Principles 2011.

1.5 Failed to:

1.5.1 actively progress one or more of the matters of Estate A, Estate J and Estate K;

1.5.2 provide accurate information to executors and/or beneficiaries with regards to the status of the case, the whereabouts/status of estate funds and/or the timescale for payment of legacy funds in relation to one or more of the matters of Estate A, Estate J and Estate K;

1.5.3 provide accurate information when in the matter of Estate J he advised the executor and sole beneficiary that probate had been granted when it had not;

1.5.4 provide accurate information when he advised a charitable beneficiary of Estate K on 24 May 2018 that a cheque would be sent in the next week and on 2 August 2018 that a cheque would be sent in the next week or two.

In doing so he breached Principles 5 and 6 of the SRA Principles 2011.

1.6 Improperly acted on or purported to act on behalf of borrowers and lenders when he brokered or caused loans to be entered into in relation to one or more of the following client matters when there was a conflict of interest or a significant risk of conflict of interests between clients and such work involved provided banking facilities through client account where he was not undertaking legal work:

1.6.1 Trust A;
1.6.2 PH;
1.6.3 Estate C;
1.6.4 Estate E;
1.6.5 Mr F;
1.6.6 Estate G;
1.6.7 ND.

In so acting he breached Principles 2, 4, 6 and 10 of the SRA Principles 2011 and Outcome (3.5) of the SRA Code of Conduct 2011 and Rule 14.5 of the SRA Accounts Rules 2011:

1.7 Failed to make payment promptly or at all to beneficiaries in relation to one or more of the following client matters:

1.7.1 Estate B;
1.7.2 Estate D;
1.7.3 Estate J;
1.7.4 Estate K.

In doing so he breached Principles 2, 4 and 6 of the SRA Principles 2011.

2. By reason of the conduct referred to at one or more of Allegations 1.1, 1.2, 1.3, 1.4, 1.5.3, 1.5.4, 1.6 and 1.7 and above, the Respondent acted dishonestly, but dishonesty is not a necessary ingredient to Allegations 1.1, 1.2, 1.3, 1.4, 1.5.3, 1.5.4, 1.6 or 1.7 being found proved.

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 12 Statement dated 24 April 2020 with Appendices 1 and 2 and exhibit HWP1
- Transaction diagrams
- Witness statement of MB dated 18 April 2020 with exhibits MB1- MB7
- Witness statement of EW with exhibit EW1
- Witness statement of PP dated 20 May 2020 with exhibits PP1-PP5
- Witness statement of RB dated 20 May 2020 with exhibits RB1 and RB2
- Witness statement of Sarah Taylor dated 21 May 2020 with exhibit ST1
- Witness statement of IB dated 10 June 2020 with exhibits IB1-6
- Civil Evidence Act notices dated 18 May 2020 and 17 June 2020
- Statement of costs as at date of issue
- Bundle relating to proposed IVA for Respondent
- Statement of costs relating to investigation, preparation and presentation of the hearing on 17 - 18 September 2020 dated 10 September 2020
- Authorities bundle
- Correspondence between Capsticks and the Respondent from 1 May 2020 to 16 July 2020 with Respondent
- Proceeding in absence bundle including correspondence between Capsticks and the Respondent between 21 July 2020 and 11 September 2020

Respondent

- Respondent's statement of mitigation with covering letter dated 27 August 2020

Preliminary Issues

<u>Proceeding in absence</u>

4. For the Applicant, Miss Culleton applied for the Tribunal to proceed in the absence of the Respondent. She submitted that the Respondent had indicated time and again from an early stage that he would not and did not wish to attend the substantive hearing and eventually his position appeared to be that he was content for the matter to be

considered in his absence. He had submitted written mitigation and he had made responses to the Rule 12 Statement by way of his (handwritten) annotations on a copy of the Rule 12 Statement and on all correspondence sent to him. Miss Culleton reminded the Tribunal that Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR") allowed the Tribunal to consider proceeding in the absence of the Respondent if it was satisfied as a first step that notice of the hearing was served on him in accordance with Rule 13(5) of the SDPR.

5. Miss Culleton drew the attention of the Tribunal to communications received from the Respondent as follows:

- The Respondent responded to Standard Directions dated 29 April 2020 served on him by the Tribunal with annotations dated 7 May 2020. Against Direction 1.2 listing the case for substantive hearing commencing on 21 October 2020, the Respondent had written "Not needed, not resisted". He had noted elsewhere on the Standard Directions "I am not contesting" and that he did "not wish to cross examine anyone". Furthermore, the Respondent stated explicitly at the end of the Standard Directions that he would not attend. He said he would send an Answer:

  > "dealing with the case statement already sent, in the broadest sense admitting all matters… I am fully aware that not attending the hearing may not be wholly advantageous but as I am admitting the case against me I am content that any mitigation be in writing"

  Miss Culleton pointed out that the Respondent's position remained consistent.

- On 24 April 2020, Capsticks served the proceedings and other relevant documents on the Respondent which he clearly received as he annotated the covering letter and returned it dated 1 May 2020 stating:

  > "It is not my intention to dispute these proceedings or seek to defend them. No hearing as to the allegations or evidence is sought by me."

- On 4 May 2020, Capsticks wrote to the Respondent about service. The Respondent returned the letter dated 7 May 2020 commenting in much the same vein as he had previously, including:

  > "Whilst I will have some comments and observations to make in mitigation I have no intention to resist these proceedings or protract them."

- The Respondent annotated a letter from Capsticks dated 15 May 2020, on 22 May 2020 including:

  > "…on reflection I will not file an Answer as I do not seek to contest the proceedings - but I will send some comments in Mitigation in due course…"

6. Miss Culleton submitted that there was then extensive communication in which the Respondent said that he had no wish to defend or contest the allegations and:

- On 10 July 2020, Capsticks wrote to the Respondent and he annotated the letter including:

  > "As a courtesy I confirm I only wish to be "heard" in mitigation - but do not intend to appear at any hearing - my representations will be in writing I wish that the hearing can be concluded without any need for witnesses to attend or people troubled by my erroneous ways. If the SDT diary allows, I am content for the matter to be brought forward and only wish for 21 days notice so I can draft and forward you my letter of mitigation to pass to the Tribunal..."

- On 29 July 2020, Capsticks wrote to the Respondent to update him after the CMH which had taken place that day. That letter clearly identified the date, the time and the substantive nature of the hearing listed for 17 September 2020. On 4 August 2020, the Respondent annotated the letter including the following:

  > "I will not attend nor defend, as previously stated…"

  Miss Culleton submitted that this was a key document for the purposes of her application to proceed in absence; the Respondent was clearly on notice of the details of the hearing.

7. Miss Culleton submitted that Rule 13(5) of the SDPR had been satisfied regarding good service and that proper notice of the hearing had been given. The Tribunal was aware that its discretion must be exercised with the utmost care and caution applying the well-known principles set out in R v Hayward [2001] QB 862, CA which was qualified and explained in R v Jones [2003] 1 AC. Applying those principles so far as relevant, Miss Culleton submitted that the Respondent had voluntarily absented himself and thereby waived his right to be present. Whilst fairness to the Respondent was of prime importance equally fairness to the Applicant must be considered. The Applicant had done everything to progress the case to a substantive hearing. There was no application for an adjournment. From the Respondent's position there was little prospect of him attending in the future. He had already chosen not to give his version of events at the hearing. He had submitted responses in writing. Miss Culleton also submitted that there was little risk of the Tribunal reaching an improper conclusion given that the Respondent clearly did not seek to defend the allegations (save that of dishonesty). There was a general public interest in the hearing proceeding expeditiously. It would also be in the interests of the witnesses referred to in the Rule 12 Statement and relied upon by the Applicant. Any further delay was likely to have an adverse effect on the memory of any witnesses although the Applicant would not call any witnesses save that the Forensic Investigation Officer ("FIO") Miss Sarah Taylor was available should she be required. In the case of GMC v Adeogba [2016] 1 WLR the Court of Appeal said it was important to bear in mind the difference between criminal trials and the absence of a defendant and these proceedings which should be guided by the context provided by the main statutory objective of the regulator. In that regard the fair, economic and expeditious disposal of the allegations was of very real importance. Miss Culleton also pointed out that under Rule 37 of the SDPR of the Respondent could seek an application for a re-hearing if the hearing went ahead in his absence.

8. The Tribunal had regard to the submissions for the Applicant and to the communications from the Respondent to Capsticks which clearly indicated that he had no intention or desire to attend the substantive hearing. His only wish was that his mitigation, which he had sent to Capsticks in a sealed envelope, should be before the Tribunal at the appropriate point in the hearing. Applying the principles in R v Jones, the Tribunal considered that the Respondent had voluntarily absented himself and to adjourn would not change his position. The Tribunal exercised its discretion to proceed in the absence of the Respondent under Rule 36 which stated:

> "If a party fails to attend and is not represented at the hearing and the Tribunal is satisfied that notice of the hearing was served on the party in accordance with these Rules, the Tribunal may hear and determine any application and make findings, hand down sanctions, order the payment of costs and make orders as it considers appropriate notwithstanding that the party failed to attend and is not represented at the hearing."

Amendment to the Rule 12 Statement

9. Miss Culleton applied to amend the wording of allegation 1.6.5 in the Rule 12 Statement which referred to "Estate F" when it should have read "Mr F". The FIO had confirmed this to Miss Culleton the previous day. The amendment should extend also to Appendix 2 to the Rule 12 Statement the Anonymisation Schedule. In making her application Miss Culleton referred to Rule 24 of the SDPR which provided "No allegation made in an application may be amended or withdrawn without leave of the Tribunal." The Tribunal gave permission for the amendment to be made.

Factual Background

10. The Respondent was admitted to the Roll in September 1983. He was at all material times a Sole Practitioner at Blight Broad & Skinnard ("the firm") which was based in Callington, Cornwall. The Respondent was the firm's Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA").

11. The Respondent held a current practising certificate, which was suspended on 14 November 2019 following the Applicant's intervention into the firm.

12. The Respondent advised the FIO that 82% of the firm's fee income was generated from three areas: wills and probate (41%), conveyancing (32%) and non-litigation (9%). The firm also employed an office manager and two qualified associates, one of whom undertook wills and probate work.

13. On 10 December 2018, the Applicant received a complaint from DW of Charity Beneficiary A, a Charity Registered in England & Wales, in relation to the firm's delay in making payment of a legacy to the complainant.

14. An inspection of the firm commenced on 7 August 2019 by the FIO. On 22 August 2019, the Respondent attended a recorded interview with the FIO. A Forensic Investigation Report ("the FI Report") was produced by the FIO on 3 October 2019.

15. During the investigation it was identified that the firm arranged facilities of loans to clients or other known individuals, including loans from client funds held by the firm, estimated to be in the sum of £3,442,474.35 as at 20 August 2019. The loans system involved: loans made with funds introduced from private lenders ("private loans"); and loans made from estate assets ("probate loans") where the Respondent/the firm was instructed as estate solicitor or as executor (whether joint or sole) and such funds were held by the firm on client account ledgers. Many of the loans were made by inter-ledger transfers between client ledger accounts maintained by the firm.

16. Six ledger transfers considered to be improper were identified as examples of probate loans giving rise to a minimum cash shortage on client accounts of £287,070.19 of which £122,884.80 remained outstanding at the date of the FI Report. All the transactions exemplified in the FI Report were authorised by the Respondent.

From client account ledger of	To client account ledger of	Amount
Estate C	Estate J	£40,437
Estate D	Mr and Mrs Be	£40,000
Estate D	Trust A	£6,202.69
Estate A	GA	£13,993
Estate A	Estate B	£166,437.50
Estate A	Estate H	£120,000
	Total	**£287,070.19**

17. The FIO reported that private loans were offered and administered by the Respondent without the firm conducting any legal work or underlying transactions. The investigation identified circumstances in which loans were entered into:

- without the consent or knowledge of executors or beneficiaries;
- where the Respondent acted for both the borrower and the lender;
- without loan agreements being prepared;
- without the loans being secured or properly secured.

Where estate assets had been loaned to other unrelated client matters, the investigation identified that the Respondent caused funds to be transferred from private lenders or other unrelated client matters to meet shortfalls on client ledgers in order to be able to pay legacies to beneficiaries. The FI Report identified delays in the administration of estates and paying legacies.

18. On 12 November 2019, the Adjudication Panel of the Applicant determined that the firm should be intervened into. The grounds for intervention were that there was reason to suspect dishonesty on the part of the Respondent in connection with his practice, and that the Respondent had breached the SRA Principles 2011 and the SRA Accounts Rules 2011.

Witnesses

19. There were no witnesses.

Findings of Fact and Law

20. The Applicant was required to prove the allegations to the standard applicable in civil proceedings that is on the balance of probabilities. The Tribunal had due regard to 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.

(The submissions below include those in the documents and those made orally.)
The regulatory provisions relied upon by the Applicant are set out at Appendix 1 to this judgment.

22. **Allegation 1 - The Respondent whilst a Sole Principal of Blight Board & Skinnard ("the firm"), between about 2016 and 2019:**

1.1 Caused or authorised improper payments of sums held on the firm's client account in relation to one or more of the following client account ledgers:

1.1.1 Estate A;
1.1.2 Estate B;
1.1.3 Estate C;
1.1.4 Estate D.

In doing so, he breached Rule 20.1 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

1.2 Caused or authorised improper inter-ledger transfers of sums held on the firm's client account in relation to one or more of the following client accounts ledgers:

1.2.1 Estate A;
1.2.2 Estate B;
1.2.3 Estate C;
1.2.4 Estate D;
1.2.5 Estate J.

In doing so he breached Rule 27.1 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

1.3 Improperly made loans from sums held on the firm's client account in relation to one or more of the following client account ledgers other than in the circumstances allowed for under Rules 27.2 and 27.3 of the SRA Accounts Rules 2011 and/or without the knowledge or consent of executors or beneficiaries or other parties on whose behalf the sums were held:

1.3.1 Estate A;
1.3.2 Estate B;
1.3.3 Estate C;
1.3.4 Estate D.

In doing so he breached all or any of Rules 1.2(c), 27.1, 27.2, and 27.3 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles.

Submissions for the Applicant in respect of allegations 1.1, 1.2 and 1.3

22.1 For the Applicant, Miss Culleton asked that all the allegations be considered in the context that the Respondent wished the Tribunal to proceed with an uncontested case. Miss Culleton relied on the Rule 12 Statement and supporting evidence. She submitted that the allegations referred to numerous breaches of the Accounts Rules by the Respondent. She drew the attention of the Tribunal to diagrams which the Applicant had filed setting out for each estate the three steps of transfers, loans and payments set out in allegations 1.1, 1.2 and 1.3. Miss Culleton referred to the six probate loans referred to in the FI Report which she submitted indicated that not insignificant sums were involved. Loans were made from estate assets where the Respondent was instructed as a solicitor or executor. The system appeared to be that the Respondent recorded or created a loan between estates and made a transfer between accounts thereby creating a loan from one estate to the other and then made payments out either to third parties or further unrelated ledgers. It was the Applicant's case that these transfers, loans and payments were improper for the following reasons. Where the Respondent was a joint executor or trustee he should have consulted and sought authority from the other executors or trustees, as trustees must act jointly and make unanimous decisions. The Respondent was effectively acting unilaterally in making these transfers, loans and payments where he should not have been. Contrary to what the Respondent indicated in interview about the recipient or borrower being aware of the loans, for example from Estate C to MB (the beneficiary of Estate J), MB the borrower was not aware. Furthermore, the Respondent was relying on powers which were not there; for example the Respondent very much sought to rely on the STEP (Society of Trust and Estate Practitioners) clause which allowed trustees to borrow money for investment or any other purpose. He also sought to rely on the Trustee Act which again would provide certain authority to take certain action where it fell within the parameters of that legislation. In fact in the matters identified in the allegations there either was not a STEP clause in the relevant Will or the Respondent was not a trustee or executor for example in Estate D. He acted on assumptions he had power but it was not evidenced on the papers. He unilaterally made loans without the authority of the lender party and beneficiaries where he acted for both, without any loan agreement being prepared. Also if he was acting as a trustee he had a duty of care to act in the best interests of the estates but often did not do so because of the lack of interest payments to the estates, the lack of security for the loan and the lack of documentation all of which created considerable risk.

22.2 Miss Culleton submitted that in addition and most significantly, this movement of money between client ledgers and the creation of loans and payments were inherently improper because of the Respondent's failure to act in accordance with the various parts of the Accounts Rules referred to in the allegations. These inter-ledger transfers between the various estates were used to fund payments or used to take over loans which had been made from other un-related estates so this was a circular system and flow of money. Miss Culleton submitted that essentially this was what was termed "teeming and lading"; transfers effected between client ledgers to cover a shortage on one and then further client funds needing to be moved to cover a shortage, again

meaning that the funds of clients were being used without their knowledge for someone else's benefit. Rule 30 of the 1998 Accounts Rules was introduced in an attempt to inhibit this practice. It became Rule 27 of the 2011 Accounts Rules which made it impermissible to make a private loan of one client's funds to another even by means of a paper transfer between ledgers except with the prior written authority of both clients which was not present in the instances identified in this case.

22.3 It was the Applicant's case that the Respondent could not simply claim ignorance of such clear and well-rehearsed rules and principles dating from as far back as 1998 let alone ignorance of the 2011 Rules. Alternatively, it was simply quite extraordinary and still very improper if the Respondent acting in such a total vacuum and unaware of the impropriety of such matters simply continued with this historical practice of the provision of loans. Ms Culleton referred again to the correspondence to which she had taken the Tribunal and in addition to the letter of 14 August 2019 to the FIO from the Respondent where he set out that the system was something that they had done for decades as a normal part of their practice but he accepted that it should not be continued and said that they would not continue it. The Respondent said that he accepted the FIO's analysis because that was her job and the Applicant was his regulator. He continued:

> "Please excuse me for going on at some length but I do hope you understand from your time in the office that I believe we run a fairly tight ship albeit that in certain respects we are on a historic course as opposed to the one you (the SRA) feel we should in the way, we apply funds…"

In interview, the Respondent sought to explain the authority under which he felt he was acting in relation to the STEP clause or the various legislation. He sought to explain his position which he thought was completely proper in the transfer of funds around the estates and the loans out but he equally began to accept that there had been breaches of the Accounts Rules when they were pointed out to him. In his annotations and ticks on the Rule 12 Statement the Respondent appeared to accept these allegations and the breaches of the Principles alleged except for the allegation of dishonesty. He also disputed certain specific statements and points made in the Rule 12 Statement in his annotations. His position appeared to be that he acted in good faith at the time; that was how it had been done for decades and how the firm had acted for even longer than that before him. Miss Culleton submitted that in essence the Respondent operated a loan facility or service in circumstances which were improper or in breach of the Accounts Rules.

22.4 The following matters were set out in the Rule 12 Statement in respect of allegations 1.1 to 1.3:

Estate C: Improper ledger transfer and loan to Estate J: £40,437.00

22.5 The Respondent was the sole executor of Estate C. The deceased had died on 18 February 2019 and probate was granted on 11 July 2019. On 25 July 2019, the Respondent authorised a transfer of funds from the client ledger of Estate C to the client ledger of Estate J in the sum of £40,437.00. The client ledgers and client matters were unrelated. The sum of £40,437.00 was thereafter paid by the Respondent to MB, sole beneficiary of Estate J. However, at the time of the transfer, probate had not been obtained for Estate J and the Respondent/the firm was not holding any estate monies

which could properly be transferred to MB. The monies transferred to MB were monies properly belonging to Estate C to which MB had no claim. The Respondent advised the FIO that the transfer was authorised by himself as sole executor of Estate C by way of a loan to MB authorised by himself as sole executor and by verbal agreement with MB. The loan was recorded in the firm's register. The deceased's Will contained a clause (the STEP clause) said by the Respondent to allow investment or lending of estate money. However the matter files for Estate C and Estate J did not contain any written agreement for the loan and the Respondent confirmed that there was no written loan agreement; the matter files did not contain any evidence that the beneficiaries of Estate C were advised of any loan of estate monies being made; the loan was not secured; and MB had provided a statement to the FIO confirming that he was not offered and did not agree to a loan. The loan was therefore unauthorised and not agreed to by the borrower. The matter file for Estate J indicated that MB had been chasing the Respondent to deal with the Estate.

Probate loans

Estate D: Transfer and loan to Mr and Mrs Be: £40,000

22.6 The Respondent was instructed by the joint executors of Estate D to deal with the administration of that estate. At the date of the improper ledger transfer, probate had been obtained. The Will did not contain a clause allowing investment or lending of estate funds. On 20 February 2019, the Respondent caused an inter-ledger transfer in the sum of £40,000 from the client ledger account of Estate D to the client account ledger of Mr and Mrs Be, private borrower clients of the firm. On 20 February 2019, the Respondent signed an authority ostensibly on behalf of Estate D authorising a bridging loan to Mr and Mrs Be at 4% interest and "to all necessary ledger transfers" in relation to 'new build at [property name]'. The matters of Estate D and Mrs and Mrs B were unconnected. There was no written loan agreement. The matter files provided no indication that the executors or beneficiaries of Estate D instructed or authorised the Respondent to enter into a loan, or were informed of or consented to any loan being made. During the course of the investigation the Respondent stated to the FIO that he "would have" spoken to the executors of Estate D prior to authorising the loan. There was no evidence on the case file of the Respondent consulting with the executors. Both executors of Estate D confirmed to the FIO that they did not consent to and were not aware of the loan. The Respondent stated that he considered that the loan was authorised under the Trustee Act (presumed to be the Trustee Act 2000) as an 'authorised investment' but the Respondent was not an executor or appointed trustee of Estate D. He was solely instructed as solicitor to administer the estate. The executors and Trustees had confirmed that they did not instruct the Respondent to make loans or consent to loans being made of estate monies and therefore the loan was unauthorised and inappropriate in any event.

Estate D: Transfer to Trust A: £6,202.69

22.7 On 9 January 2019, the Respondent authorised a transfer of £6,202.69 from the client ledger of Estate D to the client ledger for Trust A, an unrelated probate matter. As with the transfers outlined above there was no evidence of any loan agreement, or authority from the executors of the estate. The Will did not authorise or allow the investment or lending of the estate funds by executors. The FI Report confirmed that the funds were

then further transferred to the unrelated client ledger for Mr F and thereafter further transferred out of the firm as two payments totalling £6,000.

Estate A: transfers and loans to GA, Estate B and Estate H

22.8 The Respondent was the sole executor of Estate A, and was instructed to administer the estate. The terms of the Will did not allow lending or investment of estate funds or assets. A client account shortfall for this matter was caused due to three improper inter-ledger transfers/loans from the client account ledger from 18 September 2017, which were authorised and effected by the Respondent and which totalled £200,430.50. These transfers were made to unrelated client ledgers for the following sums:

- GA £13,993
- Estate B, £66,437.50
- Estate H, £120,000

As at the date of the FI Report there remained a shortfall on the client account in the sum of £66,437.50. On 18 September 2017, the Respondent authorised an inter-ledger transfer and loan from Estate A to Estate H in the sum of £120,000. The ledgers reviewed by the FIO indicated that the transfer was made in order to replace funds which had been transferred from the client account ledger of Estate H on three occasions, namely a loan to the Respondent, a loan to Mr Be (private borrower) and a loan to Mr C, all unrelated matters and which amounted to a total of £120,000.

Estate B: transfers to three unrelated matters in the sum of £709,998

22.9 The Respondent was sole executor of Estate B and the firm was instructed to administer the estate. The Will did not contain a clause allowing borrowing, investment or lending of estate assets. As at 29 January 2016, the ledger showed estate funds were held in the sum of £1,559,548.12. The Will provided for five specific beneficiaries in the sum of £16,000 with the residual estate to a registered charity "Charity Beneficiary B". Thereafter the Respondent caused or authorised transfers from the client ledger of Estate B to three unrelated legacies totalling £709,998: RHP (private loan), ABP (private loan) and YWW (private loan). In October 2016, the five specific beneficiaries of Estate B had been paid legacies amounting to £16,000. The remainder was due to be paid to Charity Beneficiary B. Interim accounts in May 2017 indicated estate funds of £1,634,669.56 available for distribution. By 22 May 2017, interim payments amounting to £1,100,000 had been made to Charity Beneficiary B. The matter file contained a note that the majority of the funds to be paid to Charity Beneficiary B under the terms of the Will were "out on private loan" and "needs to be brought in". On 26 July 2018, interim accounts having been approved, Charity Beneficiary B stated they were extremely keen to receive the balance of the legacy of £541,415.48. At the time the balance on the client ledger was £36,968.76 and there was therefore a client account shortfall in excess of £500,000 arising due to the transfer of estate monies to unrelated client ledgers. In October 2018, the remainder of the legacy was paid to Charity Beneficiary B. The shortfall on the client ledger was met by four inter-client ledgers transfers from four unrelated matters, including £120,000 from the client ledger of Estate A. Had that transfer not been made, the Respondent would have been unable to make payment of the legacy due to be paid to Charity Beneficiary B.

Private Loans

22.10 It was submitted that the firm had a practice, authorised and effected by the Respondent, of providing the facility of "private loans" between clients of the firm and known individuals. The facility included brokering and administering the loans and interest payments. Private lenders deposited the money into the firm's client account after which it was paid out by the firm to the borrower, or transferred to the client account ledger for the borrower matter. The firm was not registered with the Financial Conduct Authority ("the FCA") during the relevant time. The Respondent stated that some of the loans were secured and some unsecured but had not at the time of the FI Report provided the requested schedule identifying which loans were secured and unsecured. At the time of the FI Report the amount of loans was estimated to be ££442,474.35. The Respondent stated to the FIO that the firm would benefit from the loan arrangements by:

- repeat business;
- charging a fee of £24 to collect and administer interest payments; and
- on occasion charging an arrangement fee of 1/2%.

The Respondent stated to the FIO that the firm would not prepare formal loan agreements, but that a letter setting out terms would be sent to the lender. This appeared to be the case for private lenders but not in relation to estates whose funds were loaned to other matters.

Breaches of Principles alleged

22.11 Principle 2: You must act with integrity

22.11.1 It was submitted that the Respondent's actions as set out in allegations 1.1, 1.2 and 1.3 amounted to a failure to act with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code) in breach of Principle 2 of the SRA Principles. In Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession. The Respondent failed to act with integrity in that he: caused improper payments to be made from client accounts; (Allegation 1.1), caused inappropriate transfers; (Allegation 1.2) and caused loans to and from unrelated client account ledgers and indeed purported to procure loans to individuals without the knowledge or consent of the borrowers, exposing them to liability to interest, and exposing estate funds to risk. (Allegation 1.3).

22.11.2 The Respondent had caused such transfers and payments in order to "cover" shortfalls on client account ledgers caused by earlier transfers and in order to avoid non and/or late payment of legacies and to avoid the escalation of complaints. Loans to private clients had been made in relation to which the Respondent and/or the firm would or would intend to benefit financially by way of repeat business, interest collection fees and/or arrangement fees. The Respondent did so without authority, or the consent or knowledge of executors or beneficiaries of the relevant estates. In utilising client monies in this way, the Respondent failed to act with integrity.

22.12 Principle 4: You must act in the best interests of each client:

22.12.1 It was submitted that the Respondent breached this Principle in that he:

- caused improper payments to be made from client accounts without being honest with his clients and/or executors and/or beneficiaries as to the fact of or reason for the payment and without giving information regarding the proposed payment and/or any attendant risks and obtaining necessary instructions or approval and in doing so exposed those funds to risk of diminished or delayed payments; (Allegation 1.1)

- caused inappropriate transfers, in the same circumstances as with the improper payments and exposed 'borrowers' to liability for interest; (Allegation 1.2)

- caused loans to and from unrelated client account ledgers and purported to procure loans to individuals without the knowledge or consent of the borrowers, exposing them to liability to interest, and exposing estate funds to risk and borrowers to interest. The loans were made without written loan agreements and without the Respondent obtaining instructions from borrowers as to terms, or lenders as to terms or any risks associated with the loan and in doing so the Respondent was not acting in good faith or doing the best for his clients. The conduct exposed the estates and therefore executors and/or beneficiaries to risk and delay arising from sums being utilised for unsecured and inappropriate loans. The purported loans further exposed the borrowers to liability for interest without consent. (Allegation 1.3)

22.13 Principle 5: You must provide a proper standard of service to your clients

22.13.1 In summary it was submitted that the Respondent breached this Principle because a proper standard of service would have entailed the Respondent maintaining the funds of his clients securely, only utilising funds as necessary to carry out his instructions and/or duties as solicitor and/or executor, obtaining necessary authorisation and consents to any transfers withdrawals or loans, and thereafter not misleading them.

22.14 Principle 6: You must behave in a way that maintains the trust the public places in you and in the provision of legal services

22.14.1 It was submitted that the Respondent breached this Principle because the public must believe that when they give their money to a solicitor, or when they instruct a solicitor to act as an executor or to administer estate monies, that such monies will be safe and will not be misused or transferred elsewhere without their consent or knowledge. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by the Respondent's actions in causing risk to client funds and causing shortfalls on client accounts; (Allegations 1.1 and Allegation 1.2) and causing risk to the lender and liability for interest to the borrower. (Allegation 1.3)

22.15 Principle 10: You must protect client money and assets

22.15.1 The Respondent had a duty to protect his clients' money but deliberately chose to ignore that obligation and repeatedly to withdraw, transfer or lend his clients' funds, or funds for which he was responsible, including by way of unsecured and/or undocumented loans. The Respondent therefore failed to protect his clients' money by:

- making unjustified and/or unauthorised payments of estate funds out of client accounts, thereby causing risk to those funds and failing to maintain client funds in a client account for that matter; (Allegation 1.1)

- making unjustified and/or unauthorised transfers of client and estate funds between unrelated client ledgers when unnecessary, thereby causing risk to those funds and failing to maintain client funds in a client account for that matter; (Allegation 1.2)

- making unjustified and/or unauthorised loans of client and estate funds which were unsecured or improperly secured, without loan agreements and without the consent or knowledge of lenders and/or borrowers placing client and estate funds at risk and failing to maintain client funds in a client account for that matter. (Allegation 1.3)

Accounts Rules

22.16 In addition, it was submitted that the Respondent breached Rules 1.2(c), 20.1, 27.1, 27.2, and 27.3 of the SRA Accounts Rules 2011 by way of the conduct at allegations 1.1, 1.2 and 1.3 above.

22.17 Rule 1 of the SRA Accounts Rules 2011: The Respondent failed to keep his clients' money safe and in breach of Rule 1.2 (c) failed to use the client's monies for their matters only. The Respondent therefore breached Rule 1 in that he:

- made payments out of client accounts without proper reason, to enable payments to other and unrelated matters, and in doing so failed to keep the money safely in the appropriate client account; (Allegation 1.1)

- made unjustified and/or unauthorised transfers of client and estate funds between unrelated client ledgers when unnecessary, thereby failed to keep client and estate funds safe and failed to maintain client funds in a client account for that matter; (Allegation 1.2)

- made unjustified and/or unauthorised loans of client and estate funds which were unsecured or improperly secured, without loan agreements and without the consent or knowledge of lenders and/or borrowers placing client and estate funds at risk and failing to use client funds for that matter only. By making loans of client and estate funds for the purposes of the Respondent's loan practice and without necessary consent and authorisation the funds were used for the Respondent's benefit and the benefit of others and for other matters. (Allegation 1.3)

22.18 Rule 20 of the SRA Accounts Rules 2011: The Respondent caused or authorised client money to be withdrawn from client accounts when there was no proper justification for the withdrawal(s) (as set out in 20.1). In breach of Rules 27.1, 27.2 and 27.3 the Respondent:

- made payments out of client account when there was no proper justification; (Allegation 1.1)

- transferred money held in a general client account between client ledgers, transferred sums in respect of a private loan from one client to another by payment between client account ledgers and/or to the borrower directly without the prior written authority of both clients; (Allegation 1.2)

- made withdrawals of funds from client accounts for the purposes of loans of those funds without the knowledge and/or consent of the lender and/or borrower and without justification. (Allegation 1.3)

Comments by the Respondent on allegations 1.1, 1.2 and 1.3

22.19 The Respondent had indicated in his communications with Capsticks that he did not contest the allegations but denied dishonesty. (The allegation of dishonesty is addressed separately below.) In his annotations dated 1 May 2020 on the letter from Capsticks dated 27 April 2020 serving the proceedings upon him, the Respondent stated:

> "The statement is, more or less, along the lines of the original SRA report sent to me before the intervention, which I responded to, indeed objected to but without success. Save for a few comments in these current communications my position is unchanged, I accept that it seems I have fallen foul of the various regulations referred to in the statement…."

The Respondent had not filed an Answer but at the top of the Rule 12 Statement which he had returned to Capsticks dated 1 May 2020 he had hand written "Annotated responses" and added his signature and address. On that document he ticked various paragraphs in the Rule 12 Statement and made annotations against others. He had ticked all aspects of allegation 1.1 and referred to notes on the reverse of page 46 of the documents. It was not easily apparent to which notes he referred on this point but the Tribunal took into account all the annotations in reaching its determination of all the allegations and does not recite the detail of all the annotations in this judgment. The Tribunal did not rely on ticks on the documents.

22.20 Against allegation 1.2, the Respondent had written:

> "For the reasons set out my substantive interview with the FIO Miss Taylor I believed that these were proper at the time, and represented something I had done for many years."

Against breach of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 set out under allegation 1.2, the Respondent had written "Agreed". Against allegation 1.3 he had written "Ditto" and against the breach of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 set

out under allegation 1.3, the Respondent had again written "Agreed". The Respondent had also annotated the body of the Rule 12 Statement in respect of the allegations. Against the allegation of breach of Principle 2 failing to act with integrity in respect of allegations 1.1, 1.2 and 1.3, in the body of the Rule 12 Statement he wrote:

> "At the time I thought these things proper, and had done so for many years, but accept the SRA's allegations."

As to his acting without authority, or the consent or knowledge of executors or beneficiaries of the relevant estates in respect of Principle 2 he wrote:

> "Incorrect, there are numerous, indeed majority instances of authorities, our auditors were very hot on this."

In respect of Principle 4 and the allegation he did not act in good faith and exposed the estates and therefore executors and/or beneficiaries to risk and delay arising from funds being utilised for unsecured and inappropriate loans and that the purported loans further exposed the borrowers to liability for interest without consent, the Respondent wrote:

> "I believe I was generally acting in good faith, we had a large and very loyal band of lenders who had supported us for decades."

As to particular transfers and loans, in respect of the ledger transfer and loan to Estate J of £40.437.30 from Estate C, the Respondent wrote:

> "At the time, for the reasons stated I thought this to be proper, clearly the paperwork was amiss so I am at fault."

Regarding the transfer and loan from Estate D to Mr and Mrs Be of £40,950 the Respondent relied upon the Trustee Act where he was not a trustee. He wrote:

> "All noted, but the loans benefited the estate and I errered (sic) in believing my acting as a solicitor gave me more authority than I had. Sorry."

Regarding Estate D, the transfer to Trust A of £8 202.60, the Respondent wrote:

> "I clearly made a mistake, as over the years SRA has evidence of written authorities in most cases."

Regarding Estate B and transfers to three unrelated matters in the sum of £709,998 and the resulting client account shortfall in the region of £500,000, the Respondent wrote:

> "From my point of view this was a loan, l accept the SRA analysis"

<u>Determination of the Tribunal in respect of allegations 1.1, 1.2 and 1.3</u>

22.21 The Tribunal had regard to the evidence, the submissions for the Applicant and the annotations made by the Respondent upon the Rule 12 Statement and his correspondence with Capsticks. Allegations 1.1, 1.2 and 1.3 related to the steps which made up the loan system which the Respondent operated and so the Tribunal considered

them together. The Respondent indicated that he only had technical points to raise and, in the event, did not file an Answer. The Respondent did not dispute that he operated the loan system as the Applicant described or indeed any of the facts underlying allegations 1.1, 1.2 and 1.3 and the Tribunal found the facts as set out in the Rule 12 Statement proved to the required standard on the evidence. While the Respondent conceded that his conduct contravened the Accounts Rules and constituted breach of all the Principles cited in allegations 1.1, 1.2 and 1.3, he asserted that he had inherited the loan system, that it had been in place for decades, was generally in the interests of estates and clients and that it had not been criticised by either his auditors or the Law Society until the FIO carried out her investigation. In spite of his various comments the Respondent admitted the allegations. The Tribunal considered that the Respondent could not pass the responsibility for compliance with the rules to his auditors or to the Law Society; it was his responsibility. The Respondent's view regarding benefit to the estates was undermined because he was not lending in a way that safeguarded estate assets. Furthermore, although he referred to the existence of numerous authorities for what he did, there was no evidence to support his assertion that there was authority or consent in respect of the matters the subject of the allegations and his assertion did not relate to the transactions which were the subject of the allegations. The Respondent's reliance on a STEP clause was misplaced because where the clause was present it was not properly exercised and there were instances where the relevant Will did not contain the clause. Where the Respondent relied on the Trustee legislation he seemed to have overlooked that in order to make a valid investment there must be a paper trail with a signed investment agreement or signed loan agreement but there was no proper documentation regarding these loans and they were unsecured. One obligation of a trustee is to preserve the estate of which he is trustee and this the Respondent clearly did not do. The Tribunal noted incidentally that when the Respondent asserted he was acting generally in good faith he did so by reference to the lenders and not the beneficiaries which the Tribunal felt reflected his view of the world.

22.22 The Tribunal found that the payments (allegation 1.1) the inter-ledger transfers (allegation 1.2) and the loans (allegation 1.3) were all improperly made and that the Respondent's conduct in making them gave rise to breaches of the Accounts Rules as follows: allegation 1.1 Rule 20.1, allegation 1.2 Rule 27.1, allegation 1.3 Rules 1.2(c), 27.1, 27.2, and 27.3. The Tribunal also found proved to the required standard on the evidence that the Respondent by his actions breached Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 which were alleged in respect of allegations 1.1, 1.2 and 1.3. In respect of the most serious of the breaches of Principles, that is breach of Principle 2, the requirement to act with integrity, in respect of the loan system generally and the improper payments in allegation 1.1, the Tribunal found a clear lack of moral soundness in the Respondent's approach to client account which, as set out in the case of Bolton v The Law Society [1994] 1 WLR 512, is sacrosanct. In respect of the improper inter-ledger transfers the subject of allegation 1.2, the Respondent acted without authority or consent in making the transfers from one ledger to another which showed a clear disregard for his obligations and as with the payments a failure to adhere to the ethical standards of his profession. In respect of allegation 1.3, the Respondent had made loans improperly in breach of the Accounts Rules and there was nothing to indicate he had made the loans with the knowledge or consent of executors or beneficiaries or other parties on whose behalf the sums were held. The most glaring example of this was the loan to MB who clearly set out in his witness statement that he had never been asked if he wanted a loan. For the loan to be proper under Rule 27.2 the

consent of both the lender and borrower was required. In making the loans the Respondent had no regard to safeguarding the money for which he was responsible which constituted a lack of integrity.

22.23 The Tribunal therefore found all aspects of allegations 1.1, 1.2 and 1.3 proved on the evidence to the required standard, the balance of probabilities; indeed they were admitted by the Respondent.

23. **Allegation 1.4 - Improperly utilised client monies for his personal benefit in that:**

1.4.1 On 12 January 2018, he utilised monies from the client account ledger for Estate H for his personal benefit by using the sum of £83,748.39 from the client account ledger in order to meet his personal tax liability by way of a personal loan;

1.4.2 On 16 November 2018, instead of repaying the personal loan described in paragraph 1.4.1 with his own funds, he repaid the loan using monies from the unconnected client account of Estate A, thereby taking an unauthorised loan from those estate funds in the sum of £83,748.39 and avoiding repayment of the loan for his personal benefit;

In doing so he breached Rules 1.2(c) and 20.1 of the SRA Accounts Rules 2011, Outcome O (3.4) of the SRA Code of Conduct 2011 and Principles 2, 4, 5, 6, and 10 of the SRA Principles 2011.

23.1 For the Applicant, Miss Culleton relied on the Rule 12 Statement and supporting evidence, where it was set out that on 12 January 2018, the Respondent authorised and effected a transfer from the client account ledger of Estate H in the sum of £83,748.39 to the firm's office account. The narrative on the ledger indicated "To NPW Skinnard - private loan advance". On the same day this sum was transferred to HMRC from the firm's office account. This was in order to settle the Respondent's personal tax bill. The Respondent was joint executor and Trustee of Estate H along with a close family member of his. The Will did contain the STEP clause. The loan was not recorded in the firm's private loan register, and was instead included on a separate register. As set out in the FI Report, the Respondent had delayed in making all necessary interest payments arising from the loan agreement which included an interest rate of 5%. It was submitted that this indicated that the Respondent was acting in his personal interest rather than for the benefit of the estate. When those funds needed to be repaid to the Estate H client account to allow necessary payments out, instead of repaying the loan from personal or other appropriate and/or legitimate source of funds, the Respondent repaid the loan using funds from an unrelated client account ledger in the name of Estate A. The Respondent thereafter owed the client account of Estate A the sum of £83,748.39. It was submitted that in using the client funds of Estate A to repay the loan to Estate H, the Respondent avoided having to use his own funds to repay his personal loan and deferred the need to repay the funds. In order to do so, the Respondent authorised and caused inter-ledger transfers to effect the transfer of the loan from Estate H to Estate A. The Will for Estate A did not provide for the Respondent (as sole Executor) to have any power of investment, lending or borrowing. The loan from Estate A was therefore unauthorised under the terms of the Will.

Breach of Accounts Rules and Outcome

23.2 It was submitted that in utilising funds from a client account for his personal benefit by way of an unsecured private loan, the Respondent failed to keep his clients' money safe and in breach of Rule 1.2 (c) failed to use the client's monies for their matters only. The Respondent caused or authorised client money to be withdrawn from client accounts when there was no proper justification for the withdrawal (as set out in Rule 20.1). Outcome O (3.4) of the SRA Code of Conduct 2011 requires that a solicitor does not act if there is an own interest conflict or a significant risk of an own interest conflict. In unilaterally deciding to withdraw client funds to meet a personal tax liability by way of a personal, unsecured loan, in self-determining an interest rate and in failing to document repayment terms and without any third party consent or authorisation, the Respondent acted in circumstances where there was either an own interest conflict, and at the least there was significant risk of an own interest conflict.

Principles

23.3 Principle 2: It was submitted that the Respondent's actions amounted to a failure to act with integrity as defined in Malins in that he unilaterally decided to use client funds for his own personal benefit in allowing him to meet a personal tax liability and in circumstances where there was a clear conflict of interest and at the least a significant risk of such a conflict of interest. Further, the Respondent decided not to seek the authority or consent of, or notify any relevant third party and in doing so concealed the situation from those with an interest in the funds.

23.4 Principle 4: By effecting such a loan of client monies without informing his joint executor and/or estate beneficiaries and without justification, rather than being open and honest with them about the unsecured loan he had taken from the relevant account, and in delaying interest payments, it was submitted that the Respondent was not acting in good faith or doing the best for his clients.

23.5 Principle 5: It was submitted that a proper standard of service would have entailed the Respondent deciding not to act in circumstances where there was a conflict of interest, or a significant risk of a conflict of interest, and a risk of breaches of professional standards and deciding not to take a personal loan from client funds at all, when a commercial loan was likely to have been available, and in any event not without the consent and knowledge of any joint executor and/or the residual beneficiary(ies) of the estate.

23.6 Principle 6: The public must believe that when they gave their money to a solicitor, or when they instructed a solicitor to act as an executor or to administer estate monies, that such monies would be safe and would not be misused or transferred elsewhere without their consent. It was submitted that public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by the Respondent's actions in taking the successive loans.

23.7 Principle 10: The Respondent had a duty to protect his clients' money but it was submitted that he deliberately chose to ignore that obligation and to withdraw funds for his own personal purposes, by taking an unsecured personal loan, without a loan

agreement being in place, and without the knowledge of the executors and/or beneficiaries thereby placing those funds at risk and failing to protect them.

23.8 The Respondent had annotated the Rule 12 Statement regarding allegation 1.4.1 with the following:

> "I informed Miss Taylor that I believed it was perfectly [?] proper under STEP - loan to a beneficiary. I fully documented this as is acknowledged."

23.9 In respect of allegation 1.4.2 the Respondent wrote:

> "Yes, this was a mistake I assumed, mistakenly a STEP clause - within 2 weeks of Miss Taylor pointing out the error I had repaid the estate in full from my own money."

23.10 The Respondent had also pointed out that he repaid the loan before the intervention. The Respondent also wrote:

> "In my interview and subsequently, I have made the point that all the information was properly recorded a) on the client A/C and office ledger b) the client file c) Had been routinely reported to the Inland Revenue by the Accountants for the Estate and my own Accountants - in other words totally transparent. Because it was a loan to me (unreadable) I was assiduous in getting the paper work right. I believe the only technical error was in swapping the loan to the [B] matter where there was no STEP clause."

23.11 He also commented:

> "It [the loan] was not in a separate book - it was recorded on the firm's client Account, office Account, and on the relevant file."

And

> "At all times in this process my firm was in profit, year on year"

The Respondent also maintained that there was no risk to clients in this loan.

23.12 The Tribunal had regard to evidence, the submissions for the Applicant and the annotations made by the Respondent upon the Rule 12 Statement and his correspondence with Capsticks. The Respondent did not dispute the facts save in respect of the way the loan was recorded. He asserted that his only mistake was to replace the original loan from an estate where the Will contained a STEP clause with a loan from an estate where the Will did not. This was the clearest breach of the Respondent's duties and particularly reprehensible because it was purely for his own benefit. The Tribunal noted that the Respondent regarded himself as only having made a technical error in respect of this loan because the second estate from which the money was "lent" was in respect of a Will lacking a STEP clause. The Tribunal found proved to the required standard on the evidence that in making an unauthorised borrowing to pay his tax bill, first from one estate and then when he had to make payments to beneficiaries of that estate by replacing the loan with a further unauthorised loan from

another estate, the Respondent breached Rules 1.2(c) and 20.1 of the SRA Accounts Rules 2011, Outcome O (3.4) of the SRA Code of Conduct 2011 and Principles 2, 4, 5, 6, and 10 of the SRA Principles 2011. The Tribunal considered that this was a particularly serious instance of lack of integrity.

24. **Allegation 1.5 - [The Respondent] failed to:**

1.5.1 actively progress one or more of the matters of Estate A, Estate J and Estate K;

1.5.2 provide accurate information to executors and/or beneficiaries with regards to the status of the case, the whereabouts/status of estate funds and/or the timescale for payment of legacy funds in relation to one or more of the matters of Estate A, Estate J and Estate K;

1.5.3 provide accurate information when in the matter of Estate J he advised the executor and sole beneficiary that probate had been granted when it had not;

1.5.4 provide accurate information when he advised a charitable beneficiary of Estate K on 24 May 2018 that a cheque would be sent in the next week and on 2 August 2018 that a cheque would be sent in the next week or two.

In doing so he breached Principles 5 and 6 of the SRA Principles 2011.

24.1 Again Miss Culleton relied on the Rule 12 Statement and supporting evidence. She submitted that allegation 1.5 stemmed from the loan system which the Respondent was operating; delays to payments to beneficiaries being caused by shortfalls on those ledgers as a result of other transfers. The following matters were set out in the Rule 12 Statement.

24.2 In the matter of Estate J, the Respondent applied for probate on 23 August 2019 (some four and a half years after the date of death which was 20 January 2015), with no available evidence to justify or explain the delay in progressing the administration of the Estate. MB was the sole beneficiary of Estate J (his mother) and the sole executor. MB instructed the Respondent to administer his mother's estate. MB stated that he had been chasing the Respondent over four years and (prior to any payment of estate funds being made to MB) the Respondent informed him that the matter had gone to probate. 0n 26 July 2019, the sum of £40,437.00 was paid to MB. This payment was made by way of funds transferred from an unrelated probate matter. At the time of this payment the Respondent had not made an application for probate. At the time of commencement of the Forensic Investigation on 7 August 2019, no application for probate had been made and the firm was not holding any estate monies. It was submitted that the Respondent advised the sole executor and beneficiary (MB) that probate had been granted and or applied for when in fact at that time no application for probate had been made and probate had not been granted.

24.3 In the matter of Estate K, on 22 March 2017 the firm informed the charitable beneficiaries that the administration of the estate had been concluded and enclosed copies of the draft estate accounts which were thereafter approved. The Respondent

failed to properly progress the matter in order to ensure payments were made to the beneficiaries at the appropriate time. Further, on 24 May 2018, the Respondent advised Charity Beneficiary A that a cheque would be sent within the next week or two. That cheque was not sent. On 2 August 2018, the Respondent advised Charity Beneficiary A that he had authorised his cashier to make payment and that payment would be sent in the next week or two. The matter file did not evidence such instructions to the cashier and no such payment was made. It was submitted that the Respondent thereby provided inaccurate information to a beneficiary on two occasions.

24.4 In the matter of Estate A, probate was granted on 13 June 2017. On 7 May 2019, IB, a beneficiary, emailed the Respondent to raise a concern that no update had been provided for some 18 months and over the progression of the estate. In responding to the email from IB, the Respondent stated that he had been busy in the first few months of the year and had therefore not written in detail following informal discussions in 2018. He stated that the file had been all but dormant since July 2013 and this was why no bills had been raised. On 17 September 2017 the client ledger for the estate showed a balance of monies collected in of £216,659.31. Inter-ledger transfers to unconnected matters were made in September 2017, October 2018 and November 2018 totalling £250,430.53. As at 8 August 2019, the client ledger balance was £17,985.06 despite no beneficiaries having received a payment by 22 August 2019 and it was submitted that there was therefore a failure actively to progress this matter.

Principles

24.5 Principle 2: It was submitted in the body of the Rule 12 Statement (although not in the list of allegations at paragraph 1 of that document) that the conduct at allegations 1.5.3 and 1.5.4 amount to a failure to act with integrity. The Respondent's actions in providing, to MB in relation to Estate J and to Charity Beneficiary A in relation to Estate K, clearly inaccurate information or without verifying the accuracy of the information being provided and with a view to preventing complaints and/or covering up a lack of progress on a matter amounted to a failure to act with integrity The Respondent failed to act with integrity in that he provided inaccurate information to the executor and beneficiaries of Estate J and Estate K and in doing so concealed the fact that no application for probate had been made, that progress of the matter had been significantly delayed, and that estate funds were not on the client ledger and available for distribution.

24.6 Principle 5: It was submitted that in failing to actively progress matters, not actively pursuing the administration of estates, failing to apply for probate in a timely manner, utilising client funds for unrelated matters so that they were not available for distribution, and providing inaccurate information to clients and beneficiaries as to the status and progress of matters, the Respondent was in breach of Principle 5 as a proper standard of service would have involved matters being properly progressed, and regular and accurate updates being provided to executors and/or beneficiaries.

24.7 Principle 6: It was submitted that the Respondent's conduct set out in relation to Principle 5 above was also such that it would adversely affect that trust which the public placed in the Respondent and in the provision of legal services.

24.8 As to allegations 1.5.3 and 1.5.4 in particular: it was submitted that the provision of inaccurate information in these circumstances to the Respondent's instructing executor and to a charitable beneficiary was such that it would adversely affect the trust which the public placed in the Respondent and in the provision of legal services. The public must believe that the information and advice given to them by as solicitor will be complete, honest and accurate. At allegation 1.5.3, the Respondent should have confirmed that no application had been made, and that therefore distribution of estate funds would be delayed and at allegation 1.5.4 confirmed that funds were not yet properly available for distribution and would be delayed.

24.9 The Respondent made no written comment on the Rule 12 Statement in respect of allegation 1.5. Elsewhere on the Rule 12 Statement in respect of allegation 1.7 below he referred to becoming tardy and inefficient and attributed this to taking on too much work.

24.10 The Tribunal had regard to the evidence, and the submissions for the Applicant. The facts were not in dispute and the Tribunal found them proved on the evidence to the required standard. The Tribunal also found proved in respect of allegation 1.5.1, 1.5.2, 1.5.3 and 1.5.4 that the Respondent had by his conduct breached Principles 5 and 6. The Tribunal made no finding upon the submissions regarding breach of Principle 2 in respect of allegation 1.5.3 and 1.5.4 as it was not listed at the beginning of the Rule 12 Statement although submissions regarding it were made in the body of the document

25. **Allegation 1.6 [The Respondent] Improperly acted on or purported to act on behalf of borrowers and lenders when he brokered or caused loans to be entered into in relation to one or more of the following client matters when there was a conflict of interest or a significant risk of conflict of interests between clients and such work involved provided banking facilities through a client account where he was not undertaking legal work:**

1.6.1 Trust A;
1.6.2 PH;
1.6.3 Estate C;
1.6.4 Estate E;
1.6.5 Mr F;
1.6.6 Estate G;
1.6.7 ND.

In so acting he breached Principles 2, 4, 6 and 10 of the SRA Principles 2011 and Outcome O (3.5) of the SRA Code of Conduct 2011 and Rule 14.5 of the SRA Accounts Rules 2011:

25.1 Miss Culleton relied on the Rule 12 Statement and supporting evidence. She submitted that the system the Respondent operated was a service that was more akin to a commercial loan service to third party borrowers. In effecting and authorising "private loan" and "probate loans" and related transfers, the Respondent facilitated loans in circumstances where he acted for both lender and borrower and who were both clients of the firm, or where the Respondent was a joint or sole executor of a relevant estate. Regarding Rule 14.5, Miss Culleton submitted that the Accounts Rules made it clear that it was improper and impermissible to provide a banking facility through a client

account and that payments into or withdrawals from a client account must be in relation to instructions relating to an underlying transaction or to a service forming part of normal regulated activities. This was at the foundation of the case following on from which there were breaches of other parts of the Rules.

25.2 Miss Culleton directed the Tribunal to the authorities which commenced with the Tribunal case number 8669-2002 Wood and Burdett through Patel v SRA [2012] EWHC 3373 (Admin) to Fuglers & Ors v SRA [2014] EWHC 179 (Admin) (QB) which had developed and elucidated the basic principle of solicitors not being permitted to provide banking facilities as it was alleged the Respondent was doing in this case. The first principle to be taken from those authorities, which was perhaps the most relevant, was that it was objectionable in itself for solicitors to carry out or facilitate banking activities because they were that extent not acting as a solicitor. If solicitors provided banking activities which were not linked to an underlying transaction, they were engaged in carrying out or facilitating day to day commercial trading in the same way as a banker. This was objectionable because solicitors were qualified and regulated in relation to their activities as solicitors, and were held out by the profession as being regulated in relation to such activities, not as bankers. The principle also set out that if solicitors could operate a banking facility which was divorced from any legal work, the solicitor would be trading on the trust and reputation which they acquired through their status as a solicitor in circumstances where such trust would not be justified by the regulatory regime and that, it was submitted, was essentially what the Respondent was doing here. He was trading on the trust of clients and other known individuals because he was a solicitor.

25.3 The second principle important to this case to be taken from the authorities was that there must be a proper connection to the delivery of regulated services and payments that solicitors make or receive or were asked to make or receive; there must be an underlying legal transaction and in this matter there was no evidence of underlying transactions to the movement of money that the Respondent was causing to happen.

25.4 Miss Culleton also referred to the further guidance in the form of the Warning Notice from 2014 in force at the time of these matters. It set out that since 1998, guidance note (ix) to Rule 15 of the Solicitors Accounts Rules 1998 had warned solicitors of the need to exercise caution if asked to provide banking facilities through a client account and in 2004 the note was amended to state expressly that solicitors "should not provide banking facilities through a client account". In 2011, the guidance note was elevated to an Accounts Rule (Rule 14.5 of the SRA Accounts Rules 2011). She submitted that there was therefore a wealth of rules, authorities and guidance on this subject and despite that the Respondent appeared to have acted in a vacuum providing what was clearly an improper loan facility and therefore essentially a banking service just because, according to his response, that was what he had inherited, something he and the firm had operated for decades as a normal part of their practice dealing with private loans since the 1900s or 1920s. He said in interview "we've rather stuck to the old fashioned things" and:

> "I've obviously therefore effectively pleaded guilty to multiple breaches of rule 14.5 to the extent that you [Miss Taylor] know your analysis is correct…"

Loans: ND

25.5 The Rule 12 Statement detailed loans to ND who was a client of the firm, and a "private borrower". It was submitted that as at 20 August 2019, the loans to ND (as set out below) had been brokered and administered by the Respondent. The lenders were either introduced by the Respondent in circumstances of private loans, or were probate matter client accounts in relation to which the Respondent was instructed to act on behalf of the estate and/or the Respondent was an executor of the estate. The Respondent stated to the FIO that a confirmatory note of authority had been prepared for the first loan, but that this could not be found. The Respondent stated that he held the deeds to unregistered property ("Property A") as security. The Respondent stated that he considered that holding the title deeds gave him the same power as having a mortgage over registered land and meant that he was entitled to lend monies under the 'Trustee Act' where not expressly authorised to lend monies by the terms of the Will. It was understood that the deeds were held by the Respondent rather than on behalf of any specific client.

Trust A	£28,000	Probate
PH	£27,000	Private
Mr F	£15,000	Private
Estate G	£5,000	Probate
MP	£8,104.02	Private lender
Estate C	£81,895.38	Probate
Estate E	£34,300	Probate
	Total	**£149,300**

25.6 By letter dated 15 August 2019, the Respondent wrote to the borrower including:

> "...there was an understanding that perhaps by now something would have been moving in terms of a sale of part and I wonder if we can move that forward."

The Respondent effected a loan via inter-ledger transfer between Estate B and ND by way of a ledger entitled H & M relating to a loan for a property purchase. There were no provisions in the deceased's Will allowing investment or lending of estate assets or funds. There was no written loan agreement on the matter file. Thereafter the Respondent effected a loan via inter-ledger transfer between Estate K and ND to allow for repayment of the loan from Estate B. The Respondent was joint executor of Estate K. There was no evidence of the consent of the joint executor for the estate for funds to be loaned to ND. There was no written loan agreement on the file. The loan of funds from Estate K thereafter caused a shortfall on the client account delaying payment of legacies to charitable beneficiaries.

25.7 The shortfall necessitated the Respondent effecting further loans by way of inter-ledger transfer from the client ledger of MP, a private lender, to ND in the sum of £8,104.20 to allow repayment to Estate K and as a private loan from Mr and Mrs Bu to Estate K in the sum of £33,521.20. There was no evidence of the joint executor's consent for funds to be borrowed from Mr and Mrs Bu. The Respondent confirmed to the FIO that he had not sought the consent of the joint executor. There was no evidence of authority on behalf of MP to lend funds to ND.

25.8 In relation to the loans above, it was alleged that the Respondent:

- acted or purported to act for both borrower and lender in circumstances where the firm also stood to benefit by way of fees for interest collection and/or loan arrangement
- did not prepare formal loan agreements, and therefore did not set out or agree to repayment terms
- appeared to have determined and set or brokered applicable interest rates
- did not properly keep or retain a confirmatory note of authority
- acted without the knowledge and/or consent of borrowers and/or lenders and variously without authority to do so entered into loans from probate estates causing a shortfall on client accounts
- entered into unsecured loans using estate funds, thereby placing such funds at risk
- applied funds from private lender clients to third party ledgers without the knowledge or consent of the lenders in the case of a loan brokered by the Respondent from Mr and Mrs Bu to ND when the loan funds were actually transferred to the client account ledger of Estate K to pay remaining beneficiaries.

25.9 Given any and all of the matters above, it was submitted that the circumstances gave rise to a conflict of interest or significant risk of conflict of interest between lender and borrower and with regard to the Respondent's duties as executor and/or solicitor on behalf of the Estates. The FIO was provided with no documentation indicating that the Respondent had considered potential conflicts of interest between borrower and lender or that any consent to act in such circumstances had been obtained. The Respondent has confirmed to the FIO that with regards to the facilitation of private loans, the firm was not conducting and did not conduct any legal work in relation to receiving the funds and distributing them. The Respondent admitted breach of Rule 14.5 of the Accounts Rules.

Principles, Outcomes and Accounts Rules

25.10 Principle 2: it was submitted that the Respondent failed to act with integrity in that he failed to consider, or to act upon, the risk of or an actual conflict of interest. He continued to act on matters and in relation to transactions where there was a conflict or a significant risk of a conflict of interest between lenders and borrowers, and did not advise those clients or ensure that their interests were protected.

25.11 Principle 4: it was submitted that in brokering loans between clients, and in acting or purporting to act for both borrower and lender, and in circumstances where the loans were on occasion unsecured, and where loans were entered into unbeknown to either lender or borrower, without detailed loan agreements, without repayment terms and without credit referencing of borrowers being conducted or evidenced, the Respondent failed to act in the best interests of each client. The Respondent preferred his own

interests in continuing his practice of inter-ledger loans and private loans with the benefit to himself and to the firm, over the interests of others.

25.12 Principle 6: It was submitted that in acting or purporting to act for both borrower and lender in circumstances where the firm also stood to benefit, the Respondent's conduct in respect of the loans detailed above and in using his client account as a banking facility, the Respondent failed to act in a way that maintained the trust which the public placed in him and in the provision of legal services. The public was entitled to expect a solicitor to act properly and to conduct themselves in accordance with rules, regulations and Warning Notices, and to do so in such a way as to protect client interests and to prevent conflicts of interests and unnecessary risks from arising. The Respondent's conduct did not protect his client's interests, and did not prioritise those interests over the Respondent's own and those of the firm. It was also submitted that the Respondent should not have provided a banking facility and should have known that to do so was inappropriate and in breach of professional standards. The Respondent provided banking facilities when he was not qualified, not authorised to do so and was not subject to the relevant controls and regulations.

25.13 Outcome O (3.5): You do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 and 3.7 apply. It was submitted that in acting or purporting to act for both borrower and lender, and in circumstances where loans were unsecured, where lenders were not institutional lenders and in the absence of detailed loan agreements, credit referencing and at least the opportunity to obtain independent advice, the Respondent acted where there was a client conflict or a significant risk of a client conflict, and where Outcomes 3.6 and 3.7 did not apply.

25.14 Rule 14.5 of the SRA Accounts Rules 2011: You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities. It was submitted that in operating a loan facility through the firm, receiving funds from private lenders and in brokering loans and transferring funds to private borrowers, and to unrelated estate client accounts without being instructed in relation to any underlying transaction, the Respondent was in breach of this Rule.

25.15 On the Rule 12 Statement against allegation 1.6, the Respondent commented:

> "Banking Facilities – as explained in my FIO Interview we felt we were careful never to be involved in banking or taking of deposits."

The Respondent also commented regarding the assertion that the private loans were being conducted without legal work or underlying transactions:

> "This is the point of Rule 14.5 2011 - because I was for 30 years running this mortgage and loan system I assumed it was "legal" work in itself.

Referring to private loans the Respondent commented that the firm did not need to be registered with the FCA "as we were neither banking nor carrying on a financial business". He also stated:

> "Deposits were only taken for loans agreed- these were not banking/or deposits in the general sense – the deposits were made for loans already agreed."

Against paragraph in the Rule 12 Statement about Rule 14.5 reflecting Tribunal decisions, the Respondent wrote:

> "I have commented before on Rule 14.5 and this aspect. Please refer to my interview with Miss Taylor. Had I realised how SRA viewed Rule 14.5 we would have wound up these loans after its introduction.
>
> We never, before or after, invited deposits from clients – they only ever sent in funds for specific transactions that had been agreed."

On 11 May 2020, in respect of his then proposed Answer the Respondent wrote to Capsticks:

> "… I seem to have serially breached rule 14.5 since its introduction in 2011. I feel I can broadly only raise a white flag of mea culpa and take my punishment!"

25.16 The Tribunal had regard to the evidence, the submissions for the Applicant and the Respondent's annotations on the Rule 12 Statement and his correspondence with Capsticks. This allegation had two facets: one relating to a conflict of interest or risk of conflict of interests between clients and the other to breach of Rule 14.5 in that such work involved provided banking facilities through a client account where the Respondent was not undertaking legal work. The facts were not disputed and the Tribunal found them proved on the evidence to the required standard. The Respondent was clear about how he had operated his practice in respect of the loan system. The Tribunal found there to be no evidence that any of the loans or transfers relating to them were based in any legal work and therefore what the Respondent did was in breach of Rule 14.5. He also failed to achieve Outcome O (3.5) because he acted for both parties to the loans. In the case of the probate loans, the clients/executors and beneficiaries were unaware that the probate loans were taking place. The Tribunal determined that the Respondent had acted without any regard to the issues of conflict between his clients and consequent risks to them which the loan system involved and that he was in breach of the well-publicised prohibition on providing a banking facility. The Tribunal therefore found proved to the required standard that the Respondent's conduct amounted to breach of Principles 2, 4, 6 and 10. Allegation 1.6 was found proved on the evidence to the required standard indeed it was admitted.

26. **Allegation 1.7 - [The Respondent] Failed to make payment promptly or at all to beneficiaries in relation to one or more of the following client matters:**

1.7.1 Estate B;
1.7.2 Estate D;
1.7.3 Estate J;

1.7.4 Estate K.

In doing so he breached Principles 2, 4 and 6 of the SRA Principles 2011.

26.1 Miss Culleton relied on the Rule 12 Statement and supporting evidence. The following matters were detailed in the Rule 12 Statement:

- Estate D: delayed payment of legacy: Under the Will related to Estate D, CA (also known as CB) had been bequeathed the sum of £25,000. On 18 March 2018, the Respondent made a payment of £5,000 to CA. The case file showed no evidence as to why a payment of £5,000 rather than £25,000 was made or any evidence of agreement from CA to accept staged or delayed payments. At the time of the transfer to CA, the client ledger for Estate D did not contain funds of £25,000 due to a loan to Mr and Mrs Be as set out above. The Respondent's inter-transfer ledgers from the client account ledger for Estate D therefore delayed the payment of the legacy to CA.

- Estate B: delayed payment of residual legacy to Charity Beneficiary B: In October 2016, five specific beneficiaries named in the Will had been paid their legacies amounting to £16,000. The remainder of the estate monies were due to be paid to Charity Beneficiary B, the residual beneficiary. Interim accounts in May 2017 indicated estate funds of £1,634,669.56 were available for distribution. By 22 May 2017 interim payments amounting to £1,100,000 had been made to Charity Beneficiary B. On 26 July 2018, interim accounts having been approved, Charity Beneficiary B stated they were extremely keen to receive the balance of the legacy of £541,415.48. At the time the balance on the client ledger was £36,968.76 and there was therefore a client account shortfall. The remainder of the legacy was not paid to Charity Beneficiary B until October 2018 and was therefore delayed as a result of the Respondent's inter-ledger transfers and loans of estate monies.

- Estate K: delayed payment of legacies to charitable beneficiaries: The Respondent was joint executor of the estate. On 22 March 2017, Charity Beneficiary A, a registered charity and a beneficiary under the Will, was advised by the Respondent that the administration of the estate had been concluded. Charity Beneficiary A was entitled to a legacy of £8,104.02. Despite being contacted on a number of occasions by Charity Beneficiary A, at the time of the complaint to the Applicant, no payment had been made in satisfaction of the legacy. Payment was not made until 27 June 2019 as set out below.

- Charity Beneficiary C, a registered charity, was also a beneficiary of the estate. On 22 March 2017, Charity Beneficiary C was advised by the Respondent that the administration of the estate had been concluded. Charity Beneficiary C was also entitled to a legacy of £8,104.02. By 5 July 2018, the legacy had not been paid, despite Charity Beneficiary C seeking to contact the Respondent and the firm on a number of occasions. Charity Beneficiary C was advised by the firm's practice manager that final distribution monies had been invested in a "peer to peer mortgage scheme". Charity Beneficiary C confirmed in its letter to the firm on 5 July 2018 that it had not consented to such an investment and that complaints would be pursued to the Applicant if the funds were not forthcoming. Payment to Charity Beneficiary C was not made until 23 July 2019. These funds were only available

due to the Respondent authorising an inter-ledger transfer from MP, an unrelated private lender, to the client account ledger of Estate K. The Respondent confirmed that, in summary, Charity Beneficiary C had only been paid at that time (and in advance of the remaining charitable beneficiaries) because they had complained. The Respondent commented in interview:

> "...I think they raised a complaint, we thought "Oh gosh, forgotten all about this, must sort this out".

26.2 On 27 June 2019, payment was made to the four remaining charitable beneficiaries, with an additional payment to reflect "interest" made to Charity Beneficiary C. These funds were available due to the Respondent authorising an inter-ledger transfer from Mr and Mrs Bu (an unrelated matter) to the client account ledger of Estate K.

Principles

26.3 Principle 2: It was submitted that the Respondent's actions amounted to a failure to act with integrity in that he delayed in paying legacies from client funds after they fell due because those funds had been loaned to or transferred to unrelated client ledgers. The Respondent instead used funds for the benefit of the firm, himself or others rather than the persons on whose behalf the funds were held.

26.4 Principle 4: It was submitted that by delaying the payment of legacies in this way, the Respondent failed to act in the best interests of his clients (where he was instructed to administer the estate), the executors and/or the beneficiaries.

26.5 Principle 6: It was submitted that behaving in a way that maintained the trust the public places in the Respondent and in the provision of legal services would have entailed the Respondent maintaining the funds of his clients securely to ensure that no client account shortfall arose and making payment of legacies and/or distributing estate assets promptly and without undue delay after the estate was wound up. Instead, due to the Respondent's decision to transfer or lend estate funds, payment was delayed, in some cases for a considerable period of time and despite complaints having been received.

26.6 The Respondent commented on allegation 1.7:

> "I accept, as a general criticism that I had become tardy and inefficient in a number of ways. Ironically I do not believe the loan/mortgage system was the cause, at all. I think that over several years, perhaps a decade, I had taken on rather too much work, was not processing it as efficiently as I should and that delay become unacceptable. Much regret this"

26.7 The Tribunal had regard to the evidence, to the submissions for the Applicant and the comments of the Respondent on the Rule 12 Statement and his correspondence with Capsticks. The facts were not in dispute and the Tribunal found them proved on the evidence to the required standard. The Tribunal considered that the Respondent's conduct in respect of the delayed payments amounted as alleged to breaches of Principles 2, 4 and 6 of the SRA Principles 2011. The Tribunal therefore found all aspects of allegation 1.7 that is allegations 1.7.1. 1.7.2, 1.7.3 and 1.7.4 proved on the evidence to the required standard indeed they were admitted.

27. **Allegation 2 - By reason of the conduct referred to at one or more of Allegations 1.1, 1.2, 1.3, 1.4, 1.5.3, 1.5.4, 1.6 and 1.7 and above, the Respondent acted dishonestly, but dishonesty is not a necessary ingredient to Allegations 1.1, 1.2, 1.3, 1.4, 1.5.3, 1.5.4, 1.6 or 1.7 being found proved.**

Submissions for the Applicant

27.1 For the Applicant, Miss Culleton submitted that the Applicant's case for dishonesty was set out in the Rule 12 Statement. She relied on the test for dishonesty in the case of Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC). Miss Culleton submitted that there were three elements of dishonesty. The system was inherently dishonest, used by the Respondent for his own convenience which therefore was a benefit to him. There was clear and very obvious dishonesty in his communications with relevant interested parties and there was financial benefit to him in terms of any motivation for his conduct.

27.2 Miss Culleton submitted that there were clear and obvious lies in the communications to beneficiaries and executors as alleged at allegations 1.5 and 1.7. The dishonest communications were as a result of the delays to progression of the estates and as a result of the Respondent being contacted and chased by beneficiaries. The delay was a direct consequence of the churn of money in respect of the transfers and loans between estates and individuals both executor and beneficiaries who from their evidence were completely unaware of what the Respondent was doing with the estates. Both sides were unaware and received inaccurate dishonest communication. Direct examples were:

27.3 Estate C: Beneficiaries of Estate C were not informed that their inheritance would be lent or paid to MB the beneficiary of Estate J. MB did not enter any agreement to borrow money. Contrary to what the Respondent indicated to the FIO in interview MB knew nothing of such an arrangement and was not aware that the money paid out to him was not in fact from his mother's estate. The following from MB's statement was particularly relevant:

> "I did not make any arrangements with [the Respondent] in relations (sic) to a loan from an unrelated probate matter and that I was going to be charged at 2% interest"

Miss Culleton submitted that there was a direct lie from the Respondent to MB at the point the Respondent made the payment out to MB in the guise of its being MB's inheritance. The Respondent also benefitted from the loan to MB because MB would not realise that the Respondent had not yet applied for probate although it was four years from the mother's death so the Respondent was covering up his lack of work and progression in the matter.

27.4 Estate D: The loan to Mr and Mrs Be. The Respondent stated to the FIO in interview that he could have obtained instructions from Estate D but the evidence from the executors was that they had not instructed or authorised such a transfer, loan or payment and both executors confirmed to the FIO that they did not consent to the loan and were not aware of it; the witness statements from PP and RB were before the Tribunal. Once

again, the Respondent was not open or honest in relation to his communication about what he was doing with people's money.

27.5 Estate A: Probate was granted on 13 June 2917. When one of the beneficiaries contacted the Respondent on 7 May 2019 and raised concerns about the progression of the estate the Respondent indicated that one of the reasons for the delay to finalising it was due to various family members not reaching agreement and that the file had been all but dormant since July 2018 which was why no bills had been raised. At that time the Respondent would have known that sums of over £200,000 had been transferred and loaned out to unrelated matters so the delay was due to the fact that the funds had been loaned out elsewhere.

27.6 Estate K: This estate formed the subject matter of a complaint from Charity Beneficiary A to the Applicant. K died on 19 March 2017. The firm was instructed by the executors and the Respondent was one of them. The charity was informed by the firm that administration of the estate had been concluded and the firm enclosed draft estate accounts. The entitlement was shown as £8,104. In May 2018, the charity spoke to the Respondent who stated that a cheque could be sent within the next week or two. On 2 August 2018, the charity still not having received any payment from the firm phoned the Respondent who stated that he had authorised payment and that it would be sent in the next two weeks and once again no payment was received so at the end of October 2018 the charity sent a letter of complaint requesting payment by 30 November 2018. No response was received. On 3 December 2018, they spoke to the firm's receptionist saying that failure to pay would result in a complaint being made to the Applicant. At the time of the report to the Applicant still no payment had been made. It was submitted that on repeated occasions the Respondent provided inaccurate information to that charitable beneficiary in terms of sending payment out that did not materialise.

27.7 Overall in summary, Miss Culleton submitted that as evidenced by some of the examples just provided when faced with request for payments or queries about progress the Tribunal could see from the evidence that the Respondent knowingly provided inaccurate information to hide what he was doing with the funds for the estates or he simply moved money around from yet further ledgers to pay the person out and then replaced any shortfall caused by that with a further transfer. In that way his communications were dishonest as alleged in 1.5 and 1.7 in respect of the delay of payment. The context being that he was hiding what was happening with the estates.

27.8 It was also submitted that the movement of money and what the Respondent was doing in relation to the allegations that had been made was dishonest and of benefit to him in terms of allowing him to pay out individuals chasing him from sources of funds which were not related to them. This occurred when the Respondent had transferred their money away to other matters to cover the same shortfall or to make payments out to private borrowers. There was a circuitous system with inter-ledger transfers, loans and payments across numerous estates and private clients who were entirely unrelated to each other but were caused to be linked by the Respondent's system in circumstances clearly envisaged by the Accounts Rules to be prohibited. The system was inherently dishonest because its purpose was to cover shortfalls and to conceal that from the interested parties. This was an intricate system; quite a lot of thought and care had to go into it to keep everything balanced and it was therefore a considered practice. This went to allegation 1.1, 1.2 and 1.3 and also 1.4 and 1.6. The dishonest communications

and the inherently dishonest system and reasons for the system were linked; both were of benefit to the Respondent in terms of allowing him to pay out individuals who were chasing him and so the cycle continued.

27.9 Miss Culleton submitted that there were a number of aspects to the financial benefit to the Respondent. The most obvious was set out in allegation 1.4 where it was alleged that the Respondent's system of transfers and loans was developed further to use funds successively from the client ledgers Estates A and then H for a personal loan to himself to meet a tax bill in the sum of £83,748.39 on 6 November 2018, instead of repaying that personal loan with his own funds he repaid the loan using monies from a further unconnected client account Estate A. He thereby avoided repayment of the loan which clearly was a personal benefit to him. It was set out in the FI Report that as a result of that second loan the Respondent had delayed making all necessary interest payments arising from the loan agreement which included an interest rate of 5%. Overall this indicated the Respondent was acting in his personal interests rather than for the benefit of the estate. In interview the Respondent said that he was very careful because the loan was to himself which he believed was "perfectly authorised under STEP" provisions. He said if he had not been clear on it he would not have done it. He said he checked because "obviously I was aware … that if you're going to make a loan …to yourself you have to be able to tick boxes". In relation to the second aspect of the loan when he used a second estate's funds to repay it rather than repaying it himself he agreed it was improper from a technical point of view because there was not a STEP clause on that estate. However the record of that loan to himself was not on the transfer loan book or record where all another matters had been recorded. It was on a separate book which only became apparent from the FIO's asking questions. She was available to give evidence on that point if the Tribunal wished to hear her. It was submitted that there was clearly a direct financial benefit to the Respondent in respect of allegation 1.4.

27.10 It was submitted that another strand of financial benefit to the Respondent was to be found at allegation 1.6. Private loans were offered and administered by the Respondent without the firm conducting any legal work or without any underlying transactions. The Respondent informed the FIO in interview that that system had been going on for decades and lenders deposited the money into the firm's client bank account which was then paid out to the borrower. The firm collected interest and paid it out to the lenders but there was a benefit which the Respondent himself stated to the FIO. The benefit was to the firm and therefore to the Respondent: it helped generate repeat business, the firm took a £24 charge to collect the interest and also used to charge a half a per cent arrangement fee. Miss Culleton clarified for the Tribunal that the Respondent appeared to charge a variable rate of interest ranging from 2% to 4% to 5%. The lenders would then receive that money. The FIO calculated that out of the over £3 million loaned over £1 million related to loans on probate matters. She provided a schedule to her report which showed the extent of the loans.

27.11 Ms Culleton submitted that the Respondent's response was essentially that he was naïve or ignorant of these matters being improper but that did not sit squarely with his conduct alleged at 1.4, 1.5.3, 1.5.4, 1.6 and 1.7; the probate loans where he claimed naivety and ignorance and the other allegations where he moved around estate funds to cover up ledger shortfalls or to cover up lack of sufficient progress on his part as well as being a direct financial benefit to himself. The Tribunal could be satisfied that dishonesty was made out according to the proper test set out in the case of Ivey. Miss Culleton also

submitted generally that Tribunal could draw an adverse inference from the Respondent's failure to attend the hearing and open himself to cross examination.

Respondent's comments on the allegation of dishonesty

27.13 In respect of allegations 1.1, 1.2 and 1.3, the Respondent denied all the allegations of dishonesty. He rejected the suggestion in the Rule 12 Statement that he deliberately chose to ignore his obligations to protect client funds. He also rejected the assertion that he benefitted from the misuse of client monies as detailed by Miss Culleton and that he knew that to be the case. The Respondent commented:

> "No we were paid for work done!"

The Respondent also rejected the suggestion that he knew that in order to attempt to continue operating without detection or without failing to make payments when required, he needed a mechanism to cover the depleting balance on any particular client account ledger. The Respondent commented:

> "The mechanism" was open and apparent and in plain view of the Auditors who looked at all these arrangements in their annual audit. We did not hide anything, it was all perfectly documented on inter ledger transfers."

27.14 In respect of allegation 1.4, the Respondent commented on the Rule 12 Statement:

> "I do not believe I acted dishonestly. The loan on my tax bill was perfectly documented, aid in all other cases quoted in this statement I have not done things for personal benefit. I accept some administrative errors ie some cases where an authority may have been missing, but there is a contrast between administrative incompetence and dishonesty. Had I been dishonest, then the 83k loan could have been "hidden" – I did not – the Estate accountant and my own were given full details, and the ledger client and office transfers were recorded in full on the relevant days."

The Respondent noted in respect of the replacement loan:

> "For the benefit of the estate that took on the loan - this was a commercial agreement, not dishonest."

The Tribunal's determination in respect of allegations of dishonesty

27.15 Dishonesty was alleged in respect of all the allegations save allegations 1.5.1 and 1.5.2. The Respondent denied the allegations of dishonesty. The Tribunal applied the test for dishonesty set out in the case of Ivey:

> "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"

The standard of proof was the balance of probabilities. In respect of all the allegations where dishonesty was alleged the Tribunal had regard to the evidence, the submissions for the Applicant and the annotations made by the Respondent on the Rule 12 and his correspondence with Capsticks. The Tribunal did not attribute any meaning to the Respondent having ticked a page or paragraph in respect of any of the allegations.

Allegation 1.1, 1.2 and 1.3

27.16 The Tribunal first considered the state of the Respondent's knowledge or belief as to the facts. The Respondent claimed naivety and ignorance of the regulatory provisions. He had been a solicitor for a very long time (since 1983). As to what the Respondent knew and believed in terms of the facts, he knew exactly how the scheme, the subject of the allegations, operated with its transfers, loans and payments out. The Respondent did not dispute that he caused payments of sums held on client account in relation to four estates A, B, C and D; that he caused or authorised inter-ledger transfers in relation to those estates and also Estate J or that he made loans from sums held on the client account in relation to client account ledgers of Estates A, B, C and D. As the Applicant alleged, the scheme necessitated the movement and withdrawal of client funds, without the knowledge or consent of executors or beneficiaries and the practice of creating "loans" to beneficiaries without their knowledge or consent. The Respondent accepted that it was important to have authorities from executors and beneficiaries and he asserted that there were numerous authorities but none had been found during the investigation with respect to the transactions which were the subject of the allegations and the Tribunal had the benefit of witness statements attesting to the lack of knowledge or consent. The Respondent also asserted that he was entitled to act as he did, if a Will contained a STEP clause and/or power for him to act as a trustee. The Tribunal considered that the Respondent knew as an experienced solicitor that exercising a legitimate power of investment/loan required a whole panoply of procedures including proper evidence of a loan and security for it. All were absent here and the Respondent knew that. Most important the Respondent also knew that the system he operated could, and in the cases before the Tribunal, did, result in shortages sometimes of considerable amounts of money on estate accounts which he then replaced with funds from other estates or private lenders. He knew that he was removing money from one client without permission, to pay another when that client became more vocal in demanding their legacy be paid. He knew that he ran a system that left him unable to pay beneficiaries in a timely way. The case of the payment to MB which MB thought was a payment from his mother's estate but which was in fact a loan from an unrelated estate was a clear example of how the Respondent operated the system. The Tribunal determined that the way the Respondent operated the loan scheme was dishonest by the objective standards of ordinary decent people. They would regard it as dishonest for a solicitor to juggle with client money as the Respondent did, particularly where there was no benefit to the estates involved. It might be that the Respondent did not set out to be dishonest but his knowing that he was dishonest was not necessary for the test in Ivey to be met. (However insulated and/or isolated he was from the wider legal world, the Tribunal did not accept that the Respondent could have been as ignorant of the well-publicised

regulatory provisions as he claimed). A charitable interpretation would be that he drifted into dishonesty because he was not very efficient in undertaking probate work but what mattered was that he had crossed the line. Dishonesty was therefore found proved to the required standard on the evidence in respect of allegations 1.1, 1.2, and 1.3.

Allegation 1.4

27.17 The Tribunal had regard to the evidence, the submissions for the Applicant and the annotations made by the Respondent on the Rule 12 Statement and correspondence with Capsticks. The Respondent did not dispute that on 12 January 2018 he utilised funds from a client account ledger by way of a loan in the sum of £83,748.39 in order to settle a personal tax bill, and then instead of repaying the loan from his own funds when it was necessary for those estate funds to be utilised, used funds from an unrelated client ledger to repay the loan. This was using the system to pay a personal bill. The Respondent knew that this could not in any way be described as an investment; it was the use of client money for the discharge of a personal debt to the benefit of the Respondent. The fact that he recorded what he did was no defence. The Tribunal determined that by the standards of ordinary decent people this would be considered dishonest. The Tribunal therefore found dishonesty proved in relation to allegation 1.4 to the required standard on the evidence.

Allegation 1.5.3

27.18 The Tribunal had regard to the evidence, the submissions for the Applicant and the annotations made by the Respondent on the Rule 12 Statement and correspondence with Capsticks. The Tribunal found that when acting for the sole executor and beneficiary of Estate J, MB, the Respondent advised him that probate had been granted when the Respondent knew that probate had not been granted or indeed applied for. He therefore knew that he was making an untrue statement. The Tribunal determined that in making the statement the Respondent was doing so to avoid acknowledging that he had delayed in progression of the administration and that no application had in fact been made. The Tribunal determined that by the standards of ordinary decent people this was a clear case of dishonesty. Dishonesty was therefore found proved on the evidence to the required standard in respect of allegation 1.5.3. (A finding of dishonesty inevitably indicated that there had also been lack of integrity.)

Allegation 1.5.4

27.19 The Tribunal had regard to the evidence, the submissions for the Applicant and the annotations made by the Respondent on the Rule 12 Statement and correspondence with Capsticks. When acting on the matter of Estate K, the Respondent was chased for payment of a legacy by Charity Beneficiary A on two occasions 24 May 2018 and 2 August 2018. On both occasions he made a statement about when the beneficiary could expect to receive payment. Neither materialised. The Tribunal found that the Respondent made untrue statements, misleading a beneficiary about when money would be paid. The Tribunal determined that by the standards of ordinary decent people this was another clear case of dishonesty. Dishonesty was therefore found proved on the evidence to the required standard in respect of allegation 1.5.4. (A finding of dishonesty inevitably indicated that there had also been lack of integrity.)

Allegation 1.6

27.20 The Tribunal had regard to the evidence, the submissions for the Applicant and the annotations made by the Respondent on the Rule 12 Statement and correspondence with Capsticks. The Tribunal considered both aspects of this allegation and the Respondent's state of knowledge and belief. The Respondent operated all the loan transactions and therefore knew that as set out in the Rule 12 Statement, in brokering or causing loans to be entered into he was utilising client funds (which had been placed with him to hold securely or for the purposes of administering estates and making proper payments) as available funds to make unrelated loans to third parties when they were not available for that purpose. The Tribunal also noted that the Respondent was not complying with the required formalities for example in respect of the loans totalling £149,000 which the Respondent made to ND, the Respondent knew that he did so without the consent and authority of all of the parties involved. The Tribunal noted that on a number of occasions the Respondent brokered loans between clients and client ledgers in order to cover shortfalls on client accounts so that monies could be paid out without the shortfall being discovered. The Tribunal also found that in these activities there was a financial benefit to the Respondent and/or his firm. Furthermore, as an experienced solicitor the Respondent knew about the importance of having regard to the potential for conflict of interest between clients and the need for the exercise of care in respect of it. In spite of having this knowledge the Respondent acted without regard to conflict of interest between clients real or potential; he was often faced with being unable to pay out beneficiaries because he had loaned their money elsewhere. An essential part of the loan system was the provision of a banking facility. The Respondent did not initially accept that the financial transactions he effected constituted banking but he was fully aware of the nature of the transactions. The Tribunal determined that in respect of all aspects of allegation 1.6 by the standards of ordinary decent people what the Respondent did was dishonest. The Tribunal therefore found dishonesty proved on the evidence to the required standard in respect of allegation 1.6.

Allegation 1.7

27.21 The Tribunal had regard to the evidence, the submissions for the Applicant and to the annotations made by the Respondent on the Rule 12 Statement and correspondence with Capsticks. This allegation was linked by Miss Culleton in her opening to allegation 1.5; Estate K and Charitable Beneficiary A was referenced in both allegations The Tribunal determined that the Respondent knew that he was failing to pay the beneficiaries detailed in allegation 1.7 on time. He knew that he was unable to pay them because he had utilised their money for loans. The delay in payment was a direct and inevitable consequence of the way the Respondent operated the loan system which the Tribunal had found to be dishonest. The Tribunal determined that by the standards of ordinary decent people the Respondent's delay in making payment or not paying at all was dishonest. Dishonesty was therefore found proved on the evidence to the required standard in respect of allegation 1.7.

Previous Disciplinary Matters before the Tribunal

28. None.

Mitigation

29. The Respondent had sent a sealed envelope to Capsticks which he had endorsed as to be handed to the Chairman "ONLY AFTER I have been found guilty of the charges against me". As the hearing was being conducted in a virtual courtroom the Chairman authorised Miss Culleton to open the packet in the sight of the Tribunal and to have its contents scanned and uploaded to CaseLines.

30. In his Statement in Mitigation the Respondent referred the Tribunal to the interview transcript, a letter to the FIO dated 14 August 2019 proposing how he might close the loan system and his intervention response. His points in mitigation included the following. The Respondent felt the Applicant had fundamentally misunderstood the loan system as:

> "some highly organised and time consuming significant fee earning Department at the core of Blights business.
>
> It was not any such thing.
>
> Though provision of loans mortgages was something we did - and which I personally controlled and supervised it was purely ancillary to our own normal core "high street" activities. It was a specialism, of which I was proud, but it was not anything that consumed large amounts of fee earning time or energy."

The Respondent maintained that other firms operated similar systems, drawing parallels with financial aspects of divorce and family work. The firm did not itself make loans. He had arranged secured loans from private lenders to solicitors. He drew parallels between the loan business and other niche work, licensing. The system was being run down with a view to the Respondent's retirement. He had never had to pay a negligence claim, nor did he have any censure from the Law Society or the Applicant. The Respondent stated that his regulatory and conduct record was very good. The Respondent attributed the complaint from the beneficiary which led to the investigation to his not having properly diarised the complaint and so failing to act upon it with due diligence and speed. He pointed out that his auditors had not criticised the loan system. He had a full Law Society audit in 2003 including of the loan system. He had had no complaints from any of those who made statements. The Respondent stated that delay in payment to beneficiaries had not been intentional.

31. The Respondent said he conducted the loan system in compliance with the "regulatory regime from 1957 – 2012". He regretted that he did not realise Rule 14.5 had the effect of outlawing what the firm had been doing for decades. He continued:

> "Regret means regret, but not something I feel I can apologise about, I had no idea or any reason to have had any idea that Rule 14.5 changed what I was authorised to do...I did not even ponder the question of whether Rule 14.5 affected our work."

And:

> "I took on this specialism in 1987 and have now paid a very heavy price for not realising that it all (apparently) became ultra vires in 2012."

The Respondent criticised at some length what he regarded as the vagueness of Rule 14.5. He said he was someone whose peers had some regard for his firm's niche special subject. The Respondent stated that the Applicant had not asserted there was any loss or malfeasance in respect of the loans. As to the benefit to the firm from the loan system, the Respondent submitted that there was no secret profit because lender and borrower consented to the arrangement fee.

32. The Respondent also submitted that he had "run up a white flag" and his letter to the Applicant of 14 August 2019 was his response after the first interview. He felt it represented a proportionate and sensible way in which to bring the loan system to a close. He could not call the loans in because they were not his but the property of his clients; "not part of a system where I was the owner and controller."

33. As to his financial position, the Respondent stated amongst other things:

> "I am now entirely impecunious, work in a driving job that is far from secure - beyond that in the present climate I have no other or better employment prospects. I am single, do not have a partner or relationship so must and am dealing with this on my own in a bedsit. To the extent I am in the wrong at 63 it has resulted in a "fine" of over half a million pounds (my IVA losses) and an income based upon hours worked that is equivalent to the minimum wage. Accordingly, I have suffered massive capital and income loss."

34. The Respondent described health problems he had suffered recently. He added:

> "I would hope therefore, that even though you have found I breached Rule 14.5 and that the [Applicant] may have construed my actions as lacking probity that I face no further sanction. I would ask my Practising Certificate be surrendered and not removed."
>
> "If you fine me I have no mean of paying - the IVA voted for by the [Applicant] makes it clear that I have nothing at the end of this. A fine will only reduce what my other creditors will receive.
>
> My regret that these matters have arisen is sincere but I cannot apologise for the Loan System as I carried it on in good faith believing it to be compliant. It actually helped lenders and borrowers wonderfully well for about 100 years."

Sanction

35. The Tribunal had regard to its Guidance Note on Sanctions and to the mitigation offered in writing by the Respondent. The Tribunal noted that the Respondent had said in correspondence that he did not wish to renew his Practising Certificate nor did he seek to challenge being struck off on the basis that it was pointless losing such limited funds as he had on representation. In his mitigation the Respondent asked that he be allowed to surrender his practising certificate. The Tribunal noted that much of the mitigation statement, as the Respondent indicated himself, went to a defence of the allegations,

which save for dishonesty he had admitted and which had already been determined before the mitigation was unsealed. The Respondent had allegations of dishonesty found proved against him and also allegations of failing to act with integrity as well as breaches of other Principles. The allegations were all related to the loan system which he had operated at the firm extending to untrue statements he had made to beneficiaries when funds were not available to pay them their legacies on time. In terms of culpability, his motivation was not totally clear although he had derived some personal benefit from the loan system through the firm. His actions were planned as he operated the system for many years. The Tribunal considered that the Respondent had committed a gross breach of trust in misusing funds from the estates of deceased clients. The testators would certainly have been horrified by his dealings with their money and its being diverted from the purposes they intended. The Respondent had direct control and responsibility for what had occurred; he was a sole practitioner. He was also a very experienced solicitor. His level of culpability was very high. In terms of harm, the impact on the public and the reputation of the profession was also high. The Respondent had kept beneficiaries, both individuals and charities, out of their bequests and risked estate money in unsecured and improperly documented loans. It was a major aggravating factor that dishonesty had been alleged and proved. The misconduct had continued over a long period of time; the allegations focused on a three year period. The Respondent should have been able to foresee the harm he caused. As to mitigating factors, the Respondent reduced the shortages to some extent when the FIO drew them to his attention. The Tribunal noted that the Respondent did not show genuine insight into the misconduct. He said that he accepted that he had breached rules once they were pointed out to him but in his 30 page statement of mitigation he continued to maintain that it was the rules, particularly Rule 14.5, rather than his conduct which were at fault. He made early admissions save in respect of the allegations of dishonesty which he was at liberty to contest. The Tribunal considered that any lesser sanction than strike off would not be appropriate in such a serious matter save if there were exceptional circumstances and none were raised.

Costs

36. Miss Culleton applied for costs in the sum of £48,973 including £7,573 for the Applicant's investigation costs as set out on the Costs Schedule to 10 September 2020. Capsticks had worked to a fixed fee agreed with the Applicant in the sum of £34,500. Capsticks' work totalled 262.7 hours to 10 September 2020 which Miss Culleton submitted equated to a notional hourly rate of £131 and which was entirely fair and reasonable. A further 30 hours had been spent since 10 September 2020 in preparation for this hearing. The time estimate of 18 hours for the hearing included the attendance of both Miss Culleton and Miss Gadsby of Capsticks but Miss Culleton acknowledged that the hearing had taken significantly less time than estimated. The Tribunal considered that it had been entirely proper for the Applicant to bring the application but considered the amount claimed to be rather high; Capsticks had chosen to send two fee earners although no cross examination of witnesses had been required. The Respondent had effectively admitted all the allegations save for dishonesty from an early stage in the proceedings. The Tribunal recognised that the Respondent had not filed an Answer which complicated matters somewhat. However he had indicated all along that he would not attend the hearing which should have reduced the time required for preparation. As Capsticks acknowledged, the fixed fee arrangement was a matter between them and the Applicant. The hearing had been shorter than anticipated; lasting

less than two full days. The Tribunal considered the costs of the investigation to be reasonable but it would reduce the fee claimed for Capsticks to £28,000 plus VAT. The Respondent had not filed a personal financial statement but there were documents relating to his IVA. The Respondent commented on the costs schedule:

> "To Capsticks - I have no ready money, and am trying to arrange an lVA for the general benefit of my numerous Creditors, I have referred this costs schedule to my IVA firm …"

In his mitigation statement, the Respondent stated that his pension was to have come from a property that was now being sold. He also referred to the costs of the intervention which were in excess of £400,000 and a loss which he had sustained by investing in the loan scheme himself. The Tribunal did not consider that it would be appropriate to reduce the costs order on account of the Respondent's means as it was aware the Applicant would take the Respondent's financial position into account in dealing with the order. Costs would be awarded in the amount of £39,173.

Statement of Full Order

37. The Tribunal Ordered that the Respondent, NICHOLAS PETER WILLIAM SKINNARD, 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 £39,173.00.

Dated this 2nd day of November 2020
On behalf of the Tribunal

P. Booth
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
03 NOV 2020

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12090-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NICHOLAS PETER WILLIAM SKINNARD Respondent

Before:

Mr P Booth (in the chair)
Mrs J Martineau
Mrs L Barnett

Date of virtual hearing 17 and 18 September 2020

APPENDIX

Relevant Rules and Regulations

SRA Principles 2011

Principle 2 You must act with integrity

Principle 4 You must act in the best interests of each client;

Principle 5 You must provide a proper standard of service to your clients

Principle 6 You must behave in a way that maintains the trust the public places in you and in the provision of legal services

Principle 10 You must protect client money and assets

SRA Accounts Rules 2011

Rule 1.2 (Rule 1.2(c))

You must comply with the Principles set out in the Handbook, and the outcomes in Chapter 7 of the SRA Code of Conduct in relation to the effective financial management of the firm, and in particular must:

(a) keep other people's money separate from money belonging to you or your firm;
(b) keep other people's money safely in a bank or building society account identifiable as a client account (except when the rules specifically provide otherwise);
(c) use each client's money for that client's matters only;
(d) use money held as trustee of a trust for the purposes of that trust only;
(e) establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules;
(f) keep proper accounting records to show accurately the position with regard to the money held for each client and trust;
(g) account for interest on other people's money in accordance with the rules;
(h) co-operate with the SRA in checking compliance with the rules; and
(i) deliver annual accountant's reports as required by the rules.

Rule 14.5

You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities.

Rule 20.1

Client money may only be withdrawn from a client account when it is:

(a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held);

(b) properly required for a payment in the execution of a particular trust, including the purchase of an investment (other than money) in accordance with the trustee's powers;
(c) properly required for payment of a disbursement on behalf of the client or trust;
(d) properly required in full or partial reimbursement of money spent by you on behalf of the client or trust;
(e) transferred to another client account;
(f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing;
(g) transferred to an account other than a client account (such as an account outside England and Wales), or retained in cash, by a trustee in the proper performance of his or her duties;
(h) a refund to you of an advance no longer required to fund a payment on behalf of a client or trust (see rule 14.2(b));
(i) money which has been paid into the account in breach of the rules (for example, money paid into the wrong separate designated client account) - see rule 20.5 below;
(j) money not covered by (a) to (i) above, where you comply with the conditions set out in rule 20.2; or
(k) money not covered by (a) to (i) above, withdrawn from the account on the written authorisation of the SRA. The SRA may impose a condition that you pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received.

Rule 27.1

A paper transfer of money held in a general client account from the ledger of one client to the ledger of another client may only be made if:

(a) it would have been permissible to withdraw that sum from the account under rule 20.1;

and

(b) it would have been permissible to pay that sum into the account under rule 14;
(but there is no requirement in the case of a paper transfer for a written authority under rule 21.1).

Rule 27.2

No sum in respect of a private loan from one client to another can be paid out of funds held for the lender either:

(a) by a payment from one client account to another;
(b) by a paper transfer from the ledger of the lender to that of the borrower; or
(c) to the borrower directly, except with the prior written authority of both clients.

Rule 27.3

If a private loan is to be made by (or to) joint clients, the consent of each client must be obtained.

SRA Code of Conduct 2011

O (3.4) You do not act if there is an own interest conflict or a significant risk of an own interest conflict;

O (3.5) You do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 and 3.7 apply;