SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12309-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

JAMES BORBOR ALLIE Respondent

Before:

Mr G Sydenham (in the chair)
Mr P Jones
Dr P Iyer

Date of Hearing: 6 June 2022

Appearances

Andrew Bullock, counsel in the employ of the Solicitors Regulation Authority Ltd, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent, Mr Allie did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations made against Mr Allie by the Solicitors Regulation Authority Limited ("SRA") were that, while in practice as a Salaried Partner at Spence and Horne ("the Firm"):

1.1 Between 6 February 2017 and 5 May 2017, he improperly:

1.1.1 received £825,181.75 from the estate of client A into his personal bank account; and

1.1.2 withheld the above sum from the firm's client bank account;

and in so doing, he breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011 ("the Principles") and Rules 13.1, 13.3 and 14.1 SRA Accounts Rules 2011 ("the Accounts Rules").

1.2 Between 8 February 2017 and 5 May 2017, he:

1.2.1 failed to pay bequests to beneficiaries named in Client A's Will;

1.2.2 misappropriated or otherwise misused estate assets for his own benefit;

and in so doing, he breached any or all of Principles 2, 4, 6 and 10 of the Principles and failed to achieve Outcome 11.1 of the SRA Code of Conduct ("the Code").

1.3 Between 25 August 2015 and 7 August 2019, he improperly received monies totalling £115,785.46 into his personal bank accounts for at least 25 client matters when this money should have been paid into the firm's office or client bank accounts and in so doing, he breached any or all of Principles 2, 6 and 10 of the Principles and Rules 13.1, 13.3,14.1 and 17.1 of the Accounts Rules.

1.4 Between 10 July 2016 and 28 June 2019, he failed to account to the firm for profit costs and VAT totalling £18,514.99 so that the firm could settle the VAT element of bills that he had issued to clients in breach of any or all of Principles 2 and 6 of the SRA Principles 2011.

Dishonesty

2. In addition, allegations 1.1, 1.2, 1.3 and 1.4 above were advanced on the basis that Mr Allie's conduct was dishonest. Dishonesty was alleged as an aggravating feature of Mr Allie's misconduct but was not an essential ingredient in proving the allegations.

The Tribunal Findings

Findings on Allegation 1.1 – click here
Findings on Allegation 1.2 – click here
Findings on Allegation 1.3 – click here
Findings on Allegation 1.4 – click here

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):

- Rule 12 Statement and Exhibit 24 February 2022
- Applicant's Schedule of Costs dated 30 May 2022

Preliminary Matters

Application to proceed in the Respondent's absence

4. Mr Allie did not attend the hearing and was not represented. Mr Bullock submitted that the proceedings had been served in accordance with the Solicitors (Disciplinary Proceedings) Rules 2019. Mr Allie had been previously represented in the proceedings. On 8 April 2022 his former solicitors confirmed that they had passed the case papers to Mr Allie. Further, on 11 May 2022, Mr Allie emailed the Applicant stating that he was unable to file a witness statement as he did not have access to the files, emails, correspondence, letters or bank accounts. Mr Allie considered that he was "unable to mount a full and through (sic) defence against the allegations and I am unable to take a full and active role in the SDT proceedings to ensure that the proceedings are procedurally fair, governed by fair play and natural justice."

5. Mr Bullock submitted that in response to that email, the Applicant stated that it would not oppose an application to adjourn in order for Mr Allie to examine the files. It was noted that Mr Allie did not respond to the email, nor had he attended to apply for an adjournment of the proceedings. Mr Bullock stated that a review had in any event been conducted which did not reveal any relevant material.

6. Mr Bullock submitted that the Tribunal had a discretion to proceed in Mr Allie's absence and that such discretion should be exercised with care. In the circumstances, it was clear that Mr Allie had opted not to attend the hearing. Accordingly, the Tribunal should proceed in his absence.

The Tribunal's Decision

7. Rule 36 of the Rules provided:

> "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."

8. The Tribunal was satisfied that Mr Allie had been served in accordance with the Rules. The Tribunal had regard to the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB, CA by Rose LJ at paragraph 22(5) which provided:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case …"

9. The Tribunal also paid significant regard to the comments of Leveson P in GMC v Adeogba [2016] EWCA Civ 162, namely that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a Respondent. At [19] he stated:

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

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

11. Having determined that Mr Allie had been properly served and was aware of the hearing, the Tribunal then considered whether to exercise its discretion to proceed in his absence. It was noted that Mr Allie had made no application to adjourn the proceedings, either in writing prior to the hearing or at the hearing itself. There was no evidence to suggest that Mr Allie was unable to participate in the hearing. The Tribunal was satisfied that in this instance Mr Allie had chosen voluntarily to absent himself from the hearing. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. There was nothing to indicate that Mr Allie would attend or engage with the proceedings if the case were adjourned. In the light of these circumstances, it was just to proceed with the case, notwithstanding the Mr Allie's absence.

Factual Background

12. Mr Allie was a solicitor having been admitted to the Roll in March 2010. He was a salaried partner in the Firm. He joined the Firm in August 2007 initially as a senior housing caseworker. He became a trainee solicitor in 2009 and was engaged as an assistant solicitor in 2010. Mr Allie became a salaried partner in 2014. He left the Firm on 26 September 2019 following his dismissal for gross misconduct.

13. Mr Allie last held a practising certificate for the practice year 2018/19 which terminated on 31 October 2019.

14. On 12 August 2019, the sole equity partner of the Firm (Ms S) reported a number of allegations to the SRA including theft, fraud, breaches of the Accounts Rules, and breaches of the Code.

15. An investigation of the Firm's books of account and other documents commenced on 16 October 2019. The Forensic Investigation Report ("FIR") produced as a result of the investigation was dated 28 May 2020. The Forensic Investigation Officer ("FIO") identified concerns in the administration of the estate of client A.

Witnesses

16. None.

Findings of Fact and Law

17. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Allie's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Dishonesty

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

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

19. When considering dishonesty, the Tribunal firstly established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

20. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

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

21. **Allegation 1.1 - Between 6 February 2017 and 5 May 2017, Mr Allie improperly: (1.1.1) received £825,181.75 from the estate of client A into his personal bank account; and (1.1.2) withheld the above sum from the firm's client bank account; and in so doing, he breached any or all of Principles 2, 6 and 10 of the Principles and Rules 13.1, 13.3 and 14.1 Accounts Rules.**

The Applicant's Case

21.1 On 11 March 2015, Client A purportedly signed a Transfer of Registered Title Form ("TR1") in respect of Property 1 which stated that the property was being transferred to Mr Allie. The transfer was not for money or anything that had a monetary value. Client A's Will was executed on 15 March 2016 in the presence of two witnesses one of whom was Mr Allie. Mr Allie was appointed as sole Executor. Financial bequests were made to various charities with the remainder of the estate going to the Residuary Beneficiary, which was also a charity.

21.2 Client A died on 10 June 2016. Mr Allie transferred Property 1 to himself for nil consideration on or around 8 November 2016. He completed and signed the Inheritance Tax account form and schedules ("IHT400"), dated 7 November 2016, as executor of the estate. Mr Allie included his contact details as the person dealing with the estate on the IHT400 form and he also included the firm's details on the form.

21.3 Probate was granted on 12 January 2017. The gross value of the estate amounted to £1,593,482 with the net value of the estate amounting to £1,591,694. Both Mr Allie's and the Firm's details appeared on the grant of probate.

21.4 Mr Allie bought Property 2 with monies from Client A's estate. The majority of beneficiaries did not receive their bequests. The Residuary Beneficiary later instructed B Solicitors to bring a claim against Mr Allie for failing to properly manage and distribute Client A's estate.

21.5 Mr Bullock submitted that there were a number of oddities regarding the Will and the TR1.

21.6 The wording of the Executorship clause

Client A's Will stated:

> "I APPOINT as the Executor, James Allie solicitor at the firm of Spence & Horne Solicitors of 343 Mare Street, London, E8 1HY ('the Firm'). The expression 'the Firm' means not only Spence & Horne Solicitors but any other firm which at my death has succeeded to and carries on its practice including a firm which has been incorporated or has formed a limited liability partnership. The expression 'partner' means the person commonly described as partners in the Firm including salaried partners and, in the case of an incorporated practice or limited liability partnership, the directors, members and beneficial owners of any share of the Firm. Any of my Executors who is a solicitor may charge fees for work done by him or his firm (whether or not the work is of a professional nature) on the same basis as if he were one of my Executors but employed to carry out the work on their behalf."

21.6.1 Mr Bullock submitted that the clause commenced by appointing Mr Allie, identifying him as a solicitor at the Firm, but then appointing Mr Allie in his personal capacity, not because he was a partner at the Firm. There was then a definition of the Firm. This was unnecessary in circumstances where it was Mr Allie personally and not the Firm that was the executor. The term 'partner' was also defined. This, it was submitted, was entirely otiose when the term partner did not appear anywhere else in the Will. Mr Bullock submitted that there were two possible explanations for the oddities in the drafting. It could be that Mr Allie was simply not a good draftsman. A more sinister explanation was that the Will did not, in fact, reflect Client A's testamentary wishes, but had been amended by Mr Allie to enable him to administer the estate of Client A without independent scrutiny by making himself the executor in a personal capacity.

21.7 The TR1

21.7.1 As detailed above, the TR1 was dated 11 March 2015, and was signed a year before Client A executed her Will. Mr Bullock noted that the Will included a provision for the sale of Property 1. It was odd, it was submitted, that neither Client A nor Mr Allie recalled at the time that the Will was prepared, that Client A no longer owned Property 1, having transferred it to Mr Allie the previous year. Mr Bullock questioned the bona fides of the TR1, but made clear that it was not alleged (and therefore was not the Applicant's case) that the TR1 was fraudulent.

21.7.2 Mr Bullock also observed that having given the property to Mr Allie, Client A had done nothing to protect her interest. There was no trust, licence or right of occupation in place to allow her to remain residing in the sole property that she owned (prior to the alleged transfer).

21.7.3 Accordingly, not only had Client A given the property away and forgotten that she did so, she had also failed to take any steps to ensure that she could remain resident there.

21.8 The IHT400

21.8.1 There was no mention in the IHT400 form that Client A had transferred Property 1 to Mr Allie during her lifetime. On the contrary, the IHT400 detailed that Property 1 was owned by Client A, and that it was worth £1,000,000.

21.9 Mr Bullock submitted that for the reasons detailed, the TR1, Will and IHT400 were problematic and inconsistent.

21.10 During the investigation, the FIO identified a number of personal bank accounts in the name of Mr Allie, including 2 accounts at Nationwide (accounts ending 353 and 767) and 2 accounts at HSBC (accounts ending 530 and 447). The account ending 447 was in the name of Mr Allie T/A Spencer & Horne Solicitors. Ms S confirmed that she was not aware of this account and that it was not an account of the Firm.

21.11 A review of the account ending 353, showed the following receipts from Client A:

08/02/17	Client A	£54,637.06
08/02/17	Client A	£15,542.35
08/02/17	Client A	£1.15
09/02/17	Client A	£31,611.491
14/02/17	CHAPS credit from Client A	£2,065.132
14/02/17	CHAPS credit from Client A	£444,618.05
05/05/17	CHAPS credit from Client A	£1,648.60

21.12 The above amounted to £550,123.83.

21.13 There were a number of other receipts between 14 -16 February 2017 totalling £144,220.82.

21.14 B Solicitors also identified 4 additional payments into Mr Allie's bank account ending 353 from Client A's bank accounts totalling £130,837.10.

21.15 The FIO identified payments made by Mr Allie from the monies received from Client A's estate that were used to purchase Property 2 (£586,000) and to pay the Stamp Duty (£19,300), totalling £605,300.

21.16 The FIR identified that the Firm's books of account were not in compliance with the Accounts Rules. Monies in the sum of at least £550,123.83 with respect to the administration of Client A's estate had been improperly withheld from client bank account by Mr Allie and were not shown in the firm's books of account. This created a minimum cash shortage in the sum of £550,123.83. However, bank statements and other information received from financial institutions in respect of Client A's assets, in fact showed that funds totalling at least £825,181.75 were paid out of Client A's accounts into Mr Allie's account ending '353'. The payments from Client A's accounts were made between 6 and 16 February 2017.

21.17 The sums paid out also exceeded the value of Client A's accounts as declared by Mr Allie on the IHT 400 form, as he had declared that Client A's assets (excluding residence) amounted to £593,482.

21.18 In their letter to the Firm dated 16 March 2020, B Solicitors stated that the value of the estate was seriously underestimated when probate was granted. B Solicitors identified payments into Mr Allie's bank account received from Client A's bank accounts, which totalled £103,857.18 for which there was no corresponding payments from any of Client A's accounts included in the IHT400 form. B Solicitors concluded that it appeared to be the case that there were further accounts which formed part of the estate which were not declared in the inheritance tax form.

21.19 K Solicitors, acting for the Firm's insurers, did not consider that there was minimum cash shortage on client account and explained:

> "Spence & Horne's position in respect of any "loss" or "shortfall" to their client account is that Mr Allie's actions in relation to the [Client A] Claim have not caused or created such a "loss" or "shortfall". [Client A's] estate funds were not received into the firm nor were they received into Mr Allie's 'Spencer & Horne' account which he appears to have set up himself (for the avoidance of doubt we do not consider that this is a client account for Spence & Horne). Instead, he appears to have received all estate monies into his personal bank account."

21.20 On 6 November 2019, K Solicitors made an application to the High Court for an Order (amongst other things): (i) preventing Mr Allie from removing, disposing of, dealing with or diminishing the value of any of the assets from Client A's estate; (ii) for Mr Allie to provide information about Client A's bank accounts, investments, rental income; and (iii) how Mr Allie, his family members or other third parties had benefitted financially from the assets of Client A's estate.

21.21 The High Court granted a without notice injunction against Mr Allie preventing him from removing, disposing of, dealing with or diminishing the value of any of the assets of Client A's estates which also included Client A's bank accounts and Properties 1 and 2. The High Court also ordered that he should provide information, in the form of an affidavit, about Client A's investments, rental income, sums removed from the Estate and provide a list of his own assets exceeding £500 in value.

21.22 Mr Allie filed a witness statement with the High Court dated 12 November 2019. The High Court made a further Order on 13 November 2019 in response to K Solicitors' application for a continuation of the injunction.

21.23 In his response to the SRA's Notice dated 28 September 2020, Mr Allie stated:

- He was the executor of Client A's estate.

- He received payments of or around £550,123.83 from Client A's estate into his personal bank accounts and he opened a specific account for this purpose. The account was in his personal name, but the only money paid into the account came from Client A's estate.

- The account did not have a cheque book as it was a savings account. In order to make some payments out, he needed to transfer funds from the account into his personal current account and then transferred the money from his personal current account.

21.24 Mr Bullock submitted that solicitors who held client money were under a duty to exercise proper stewardship in relation to it. This duty was violated if a solicitor failed to observe the rules. The Accounts Rules existed to protect the public and an onerous obligation was placed on solicitors to ensure that the Accounts Rules are observed.

21.25 From the drafting of Clause 1, it could be inferred that when Client A's Will was executed, Client A would have believed that Mr Allie and/or the firm would be appointed as Executors to deal with the estate and that Client A's estate would be a client of the Firm.

21.26 Mr Allie received monies from Client A's estate totalling at least £825,181.75 into his personal bank account, as confirmed by the bank statements. He was the only person who had access to Client A's bank accounts as he was the sole executor of Client A's estate and therefore was the only person who could have authorised the transfers from Client A's bank accounts into his personal bank account. This was money that should have been transferred and held in the Firm's client account until distributed to beneficiaries and not transferred to Mr Allie's personal bank account.

21.27 Whilst Mr Allie stated that he opened a bank account specifically to deal with Client A's estate, the account was not a client account because he was not practising as a recognised sole practitioner. Therefore, it was improper for him to receive this money into his personal bank account. In doing so, Mr Allie had breached Rule 13.3 of the Accounts Rules. Mr Allie was not permitted to hold estate monies outside of client account because none of the provisions in Rules 8, 9, 15, or 16 of the Accounts Rules applied. Thus, his conduct was also in breach of Rule 13.1. The estate monies were client money and in failing to pay £825,181.75 from Client A's estate, which was client money, into client account, Mr Allie breached Rule 14.1 and potentially caused a cash shortage on client account.

21.28 The trust that the public places in solicitors, and in the provision of legal services, depended upon the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. Solicitors were required to discharge their professional duties with integrity, probity and trustworthiness. In improperly receiving client monies into his personal bank account and failing to pay those monies into the firm's client account, thereby potentially causing a cash shortage on client bank account, Mr Allie did not discharge his professional duties with integrity, probity and trustworthiness and has damaged the trust that the public places in him and the provision of legal services in breach of Principle 6. Further, he had placed client funds at risk by placing them into his own account. Accordingly, he had failed to protect client monies and assets in breach of Principle 10.

21.29 Principle 2 required solicitors to act with integrity. Mr Allie had improperly received monies from Client A's estate and failed to pay those monies into the firm's client bank account. A solicitor acting with integrity would not have improperly received client monies into their personal bank account. A solicitor acting with integrity would have paid those monies into the Firm's client bank account. In failing to do so, Mr Allie had breached Principle 2 of the Principles.

Dishonesty

21.30 Mr Bullock submitted that at the time he received monies from Client A's estate into his personal bank account, Mr Allie knew that:

- Client A had appointed him as an Executor of the estate together with the firm, as the Will stipulated that Mr Allie was appointed as a "solicitor at the firm of Spence & Horne Solicitors".

- Client A's Will stipulated that the expression "the firm" meant not only Spence & Horne Solicitors but any other firm which at Client A's death succeeded to and carried on its practice. There is a strong inference from the terms of the Will that Client A believed at the time that the Will was executed that Mr Allie and firm would deal with the matter.

- He had no legitimate basis for receiving monies from Client A's estate into his personal bank account when those monies should have been paid into the firm's client bank account.

- He completed the IHT400 form in which he declared that Client A's assets (excluding residence) amounted to £593,482. However, Mr Allie received at least £825,181.75 into his personal bank account from Client A's estate, which exceeded the value of Client A's accounts as declared by Mr Allie on the form.

21.31 In the circumstances, Mr Allie's conduct was dishonest by the standards of ordinary decent people.

The Tribunal's Findings

21.32 The Tribunal noted that Mr Allie was not a beneficiary under the Will and therefore was not entitled to receive any of the estate's assets. Mr Allie accepted that he had received £550,123.83 from the estate into his own personal account. The bank accounts demonstrated that Mr Allie had in fact, received more monies than admitted by him in his response of 28 September 2020. As the sole executor, Mr Allie was the only person who had access to Client A's accounts.

21.33 Rule 13.1 provided that:

> "If you hold or receive client money, you must keep one or more client accounts (unless all the client money is always dealt with outside any client account in accordance with rule 8, rule 9, rule 15 or rule 16)."

21.34 Rule 13.3 provided that:

> "The client account(s) of:
>
> (a) a sole practitioner must be in the name under which the sole practitioner is recognised by the SRA, whether that is the sole practitioner's own name or the firm name;
>
> (b) a partnership must be in the name under which the partnership is recognised by the SRA;"

21.35 Rule 14.1 provided that:

> "Client money must without delay be paid into a client account, and must be held in a client account, except when the rules provide to the contrary (see rules 8, 9, 15, 16, 17 and 19)."

21.36 The Tribunal considered that had Mr Allie been acting accordance with the Rules, the monies would have been transferred into a client account. Thus, in failing to do so, Mr Allie had breached the Accounts Rules as alleged. It was no remedy for Mr Allie to state that he opened the account for the purpose of receiving the monies. The account was not a client account and therefore the monies in that account were unprotected.

21.37 The Tribunal considered whether the monies had to be paid into the Firm's client account. It was noted that the Firm disputed that Client A's estate was a client of the Firm. It was noted that there was much discussion between the solicitors for the Residuary Beneficiary and the solicitors for the Firm's insurers. The Tribunal did not find it necessary to rehearse those arguments in its Judgment. During the course of his submissions, Mr Bullock conceded that whilst the allegation against Mr Allie was that the withheld from **the Firm's** client account, the mischief complained of was that the monies were not held in **a** client account. (**The Tribunal's emphasis**).

21.38 The Tribunal could not determine, on the evidence, whether the Estate of Client A was in fact a client of the Firm. Accordingly, the Tribunal determined that whilst the monies had been improperly held by Mr Allie as they had been held in an account that was not a client account, the Tribunal did not find that the monies had been improperly withheld from the Firm's account as alleged. Accordingly, the Tribunal found allegation 1.1.2 not proved; there was insufficient evidence to show that the monies should have been in the Firm's client account as opposed to being held in any other firm's client account.

21.39 The Tribunal found that Mr Allie had improperly received monies into his personal account from Client A's estate. Members of the public would not expect a solicitor to improperly receive monies into his account in breach of the Rules that were designed to protect client money and which Mr Allie was bound to comply with. Accordingly, in doing so, the Tribunal found that Mr Allie's conduct had failed to uphold the trust the public placed in him and in the provision of legal services in breach of Principle 6. In improperly, and knowingly receiving monies that he knew he was not entitled to, Mr Allie had acted without integrity in breach of Principle 2.

21.40 That such conduct was dishonest was plain. Mr Allie knew that he was not a beneficiary of the estate and knew that he was not entitled to receive those monies. Further, he knew that the monies were client monies and should have been paid into a client account. Members of the public would consider that it was dishonest for a solicitor to transfer client monies to his personal bank account.

21.41 Accordingly, the Tribunal found allegation 1.1 proved including that Mr Allie's conduct was dishonest, save that it did not find allegation 1.1.2 proved.

21.42 The Tribunal made no findings as regards the legitimacy or otherwise of the TR1. It was not part of the Applicant's case that this document was fraudulent, nor was the legitimacy or otherwise of the document relied upon by the Applicant. It was the Tribunal's role to decide on the allegations faced by any Respondent. Accordingly, the Tribunal did not consider that it was appropriate or in the interests of justice for it to make findings of fact on matters that were not alleged.

22. **Allegation 1.2 – Between 8 February 2017 and 5 May 2017, he failed to pay bequests to beneficiaries named in Client A's Will and misappropriated or otherwise misused estate assets for his own benefit. In doing so, he breached any or all of Principles 2, 4, 6 and 10 of the SRA Principles 2011 and failed to achieve Outcome 11.1 of the Code.**

The Applicant's Case

22.1 Under her Will, Client A left 6 specific bequests totalling £76,000 to 6 charities. The remainder of the estate was bequeathed to the Residuary Beneficiary, who was also a charity.

22.2 The FIO noted that the TR1 had been witnessed by Mr R. Mr R was not a client of the Firm. On a review of Mr Allie's bank statements, it could be seen that Mr Allie had made five payments to Mr R between 13 October 2017 and 15 January 2018, totalling £33,000.

22.3 Mr Allie applied to HM Land Registry to change the register for Property 1 on or around 7 November 2016. The official copy of the registered title as of 18 January 2019 showed that the Proprietorship Register was changed on 8 November 2016. The Proprietorship Register showed Mr Allie as the registered proprietor of Property 1 and the value of the property was stated to be £1,000,000.

22.4 As detailed above, Mr Allie purchased Property 2, using funds he improperly transferred from Client A's estate. Mr Allie then lived in Property 2 without paying any occupation rent. This, it was submitted, was contrary to his fiduciary duties. The terms of Client A's Will did not stipulate that estate monies should be used to purchase another property but rather that financial bequests should be paid to beneficiaries with the remainder of the estate going to the Residuary Beneficiary.

22.5 Of the seven beneficiaries named in Client A's Will, only one confirmed via its legal representative in a letter dated 25 September 2019 that it had received its bequest of £250. The payment was made to Charity 1 by a cheque drawn from Mr Allie's personal bank account ending '767'. A covering letter dated 23 May 2017 bearing Mr Allie's reference, signature, the firm's logo and firm address accompanied the cheque sent to Charity 1.

22.6 Charity 2 confirmed in a letter to the Firm dated 15 October 2019 that it was notified of Client A's death in December 2016 but was not notified of a bequest and did not receive any legacy payment from an estate with Client A's name. Charity 3 confirmed in a letter to the Firm dated 18 September 2019 that it had not been notified of its legacy and that no payment had been made in relation to the legacy. Charity 4

also confirmed in an email to the Firm on 17 September 2019 that the first notification it had of the legacy was the Firm's email of 13 September 2019.

22.7 The Residuary Beneficiary confirmed in an email to the Firm on 17 September 2019 that it had not been paid a legacy or been notified of the legacy. The Residuary Beneficiary first learned of its interest in Client A's estate when it received notification from the Firm on 6 September 2019.

22.8 In High Court proceedings issued by the Residuary Beneficiary, it was stated that Mr Allie had:

> "…failed to properly manage the Estate in a number of ways, including but not limited to: failing to administer and distribute the Estate; incurring unnecessary borrowing and associated charges secured on [Property 1]; and living in a property, namely [Property 2] purchased with funds from the Estate which properly has fallen in value without paying rent so that no income was produced for the Estate from it."

22.9 On 2 December 2019, the High Court ordered (amongst other things) that Mr Allie be removed as executor and trustee of Client A's Will and a substitute personal representative be appointed in place of Mr Allie. All the assets comprised in the estate vested in the substitute personal representative. Mr Allie was also ordered to provide a full inventory of assets within the estate and account of his dealings with the estate by 3 January 2020. However, no inventory or account of his dealings with the estate was filed by him.

22.10 The Residuary Beneficiary made an application for summary judgment on 24 March 2020 in respect of some of the losses to Client A's estate caused by Mr Allie failing to sell Property 1 and buying Property 2 out of Estate Assets.

22.11 On 2 April 2020, the Court ordered, amongst other things, that the substitute personal representative was entitled to the sum of £16,500 held in Mr Allie's bank account ending '767' representing rental income from Property 1, which was an asset of the estate. He was also ordered to make an interim payment in the sum of £295,539.60 to the substitute personal representatives on 16 April 2020 for Charge Losses and £36,741 in respect of the NQP Fees Losses.

22.12 B Solicitors calculated the loss (as at August 2021) to Client A's estate to be £1,396,801.43, excluding the sum recovered under the third-party order (a third-party order having been made in the sum of £14,923.05).

22.13 In his response dated 28 August 2020, Mr Allie stated that Charities 1, 2, 3 and 4 were each paid £250.00. He also repeated this assertion in his response to the Notice. Mr Allie also stated that he had not paid the other beneficiaries their legacies, including the Residuary Beneficiary, as the properties had not been finalised.

22.14 In his response to the Notice received on 28 September 2020, Mr Allie explained that:

- His understanding of the rules was that he had a duty of care to the beneficiaries not to devalue the estate and there was nothing preventing him from increasing the value of the estate.

- He took the honest view that he should endeavour to maximise the value of the estate in order to improve the legacy.

- He thought the best option was to raise more money so that he could distribute a bigger estate and also allow Client A's legacy to continue in the future from rent payments.

- He decided to invest £550k of the estate into Property 2 and moved into the property, as he was supervising building works on the property and he had been evicted from his home address.

- His initial intention was to sell Property 1. However, after having the property valued, he decided it would be better to completely gut the place and convert it into flats.

- He transferred the property into his own name in order to secure a bridging loan, which was necessary to fund the redevelopment.

22.15 As regards Property 1, Mr Allie's position was that:

- He completed and signed the TR1 form at the firm's old office address but could not recall why it was dated 11 March 2015, as the document was completed but left undated.

- Client A instructed him to complete the TR1 form. Mr R was a client who just happened to be in the office and acted as witness.

- He completed and signed form AP1 at the firm's old office.

- There was no restriction in the Will on when the property was to be sold. All withdrawals were used to fund the property conversion and the purchase of Property 2.

- The payment in the sum of £1,500 made to Mr R on 6 October 2016 was for works carried out at Property 1.

- He could not recall what the payment of £54,298.12 to "T" Solicitors related to from his account ending '447'.

- There was never any risk to the estate, as he had the option to sell at any time.

- There were numerous problems with the conversion and he was trying his best to resolve the problems. He did not tell the beneficiaries what he was doing.

22.16 As regards Property 2, Mr Allie's position was that:

- He decided to invest £550k of the estate in Property 2. The purchase price was around £480,000 and he spent another £70,000 on refurbishments.

- He was, coincidentally, being evicted from his home address and decided to move into Property 2 to supervise the builders.

22.17 Mr Bullock submitted that as the Executor of Client A's estate, Mr Allie was under a duty to administer Client A's estate according to law, which would include distributing the estate to the beneficiaries and rendering an account of the administration (S25 Administration of Estates Act 1925). Client A made small bequests to Charities and left the remainder of the estate to the Residuary Beneficiary. Only one beneficiary confirmed that it had received its legacy. The other beneficiaries confirmed that they did not receive their legacies. This led to the Residuary Beneficiary issuing proceedings against Mr Allie and in turn led to his removal as Executor of the estate with Properties 1 and 2 being transferred to the substituted personal representative.

22.18 Whilst Mr Allie stated that he took the honest view that he should endeavour to maximise the value of the estate in order to improve the legacy and that he thought the best option was to raise more money so that he could distribute a bigger estate to allow Client A's legacy to continue in the future from rent payments, this was not what Client A intended according to the terms of the Will.

22.19 The actions Mr Allie took had the opposite effect – they did not maximise the value of the estate. This was not in the best interests of the estate. According to the terms of Client A's Will, Property 1 should have been sold with the proceeds of sale forming part of the residuary estate. The remainder Client A's estate was bequeathed to the Residuary Beneficiary.

22.20 The trust that the public placed in solicitors, and in the provision of legal services, was dependent upon the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. In failing to pay bequests to beneficiaries, misappropriating and misusing estate assets for his own benefit, Mr Allie did not discharge his professional duties with integrity, probity and trustworthiness. He had taken unfair advantage of the beneficiaries who were unaware of their legacies until notified by the firm. Only one beneficiary out of seven had received its legacy. Mr Allie did not administer the estate according to law nor did he render an account of the administration of the estate even when ordered to do by the High Court. His actions damaged the trust that the public placed in him and the provision of legal services in breach of Principle 6 of the Principles. He also failed to achieve Outcome 11.1 of the Code.

22.21 Mr Allie did not exercise proper stewardship in relation to client money and assets as he misappropriated and misused those assets for his own benefit. The failure to protect estate assets, especially by devaluing those assets, was not acting in the estate's best interests in breach of Principle 4 of the Principles. In so doing, Mr Allie failed to protect client money and assets in breach of Principle 10 of the Principles.

22.22 In failing to pay bequests to beneficiaries, Mr Allie failed to act with integrity. He did not adhere to the ethical standards expected in the solicitor's profession, as a solicitor acting with integrity would have informed beneficiaries that they were entitled to legacies under Client A's Will and would have taken steps to ensure that those legacies were paid. Further, a solicitor acting with integrity would not have transferred Property 1 to themselves, obtain bridging finance against that property, purchase another property from estate monies and live in that property rent free. His actions led to Court proceedings and losses to the estate. The Residuary Beneficiary incurred fees which would not have been necessary, had Mr Allie properly administered the estate.

22.23 Further, a solicitor acting with integrity would have followed the terms of their client's Will and ensured that they did not take any action which would cause the estate to be devalued. Mr Allie acted contrary to his client's instructions, misused estate assets for his own benefit and misappropriated those assets. He was not entitled to use estate assets for his own benefit, as he was not a beneficiary. In failing to pay bequests to beneficiaries, misappropriating and misusing estate assets, Mr Allie breached Principles 2 of the Principles.

Dishonesty

22.24 Mr Bullock submitted that Mr Allie had acted dishonestly by the standards of ordinary decent people by failing to pay bequests to beneficiaries named in Client A's Will and misappropriating or otherwise misusing estate assets for his own benefit. As to his knowledge and belief as to the facts, it was submitted that:

22.25 As sole Executor of Client A's estate, he knew that Client A's Will stipulated that Property 1 should be sold and the proceeds of sale should form part of Client A's estate.

22.26 He knew that financial bequests had been made to six charities but only paid one charity its legacy. Whilst Mr Allie had notified Charity 2 of Client A's death, he did not tell it about Client A's bequest and did not notify Charities 3 or 4 to tell them about their respective legacies.

22.27 Even if Mr Allie genuinely believed that he was entitled to transfer Property 1 to himself because Client A had previously signed the TR1 transferring the property to him, he ought to have known that there was no legitimate basis for him taking out a bridging loan against the property or converting the property to flats.

22.28 He knew that he had no legitimate basis for purchasing Property 2 or moving into this property. Mr Allie did this for his own benefit as he had been evicted from his home address. He utilised Property 2 for his own benefit and did not account to the estate by way of any payment of rent.

22.29 Given his state of knowledge, ordinary and decent people would consider his conduct was dishonest.

The Tribunal's Findings

22.30 The Tribunal did not accept that Mr Allie had paid all bequests as suggested. The Tribunal accepted that other than charity 1, none of the other charities were paid their bequests by Mr Allie. Indeed, the Residuary Beneficiary had to issue court proceedings in order to try to obtain what Client A had bequeathed.

22.31 The Tribunal found that in using monies from Client A's estate to purchase Property 2, he had misappropriated estate funds for his own benefit. The Tribunal did not accept that Mr Allie had taken out finance on Property 1 and decided to convert it into flats in order to increase the value of the estate for the beneficiaries. He had not paid the small bequests that were due to 5 out of 6 of the specific bequests, nor had he informed the Residuary Beneficiary of Client A's death or her testamentary wishes. Further, the evidence clearly demonstrated that far from increasing the value of the estate, Mr Allie's conduct had considerably reduced the value of the estate. He had purchased Property 2 with monies that he had improperly taken from Client A's estate and then, when made homeless, had moved into that property.

22.32 The Tribunal did not accept Mr Allie's stance that whilst he was under a duty not to decrease the value of the estate, that there was nothing to prevent him from increasing the value of the estate. The testamentary wishes of Client A had been clearly set out in her Will. He had acted contrary to those wishes for his own personal gain. He had plundered her accounts and used those monies for his own purposes.

22.33 The Tribunal considered that his conduct was in breach of the Principles as alleged. In misappropriating and misusing the assets of Client A's estate, Mr Allie had failed to act in the estate's best interests in breach of Principle 4. It was in no way in the estate's best interests for Mr Allie to use estate funds in furtherance of his own financial gain. In doing so, it was clear that he had failed to protect the estate's monies and assets in breach of Principle 10.

22.34 The Tribunal determined that members of the public would be horrified to know that Mr Allie had misappropriated and misused estate monies for his own benefit, and further, that he had failed to pay specific bequests in order to retain those monies. Such conduct, it was determined, failed to uphold the trust the public would place in Mr Allie and in the provision of legal services in breach of Principle 6.

22.35 The Tribunal determined that a solicitor acting with integrity would not have failed to pay bequests. Nor would he misappropriate estate assets in order to buy himself a property. Further, a solicitor acting with integrity would have ensured that he followed the testamentary wishes of his former client as detailed in any Will. Mr Allie, it was determined, had acted entirely contrary to Client A's wishes. Accordingly, the Tribunal found that Mr Allie had acted without integrity in breach of Principle 2.

22.36 He had taken advantage of the fact that the beneficiaries were unaware of their legacies and as the sole executor, he had sole control of the estate's assets. Accordingly, the Tribunal found that Mr Allie had failed to achieve Outcome 11.1 of the Code which required him not to take unfair advantage of third parties in either his professional or personal capacity.

22.37 As detailed above, the Tribunal found that Mr Allie had deliberately withheld informing the beneficiaries of their legacies so that he could use the estate assets for his own purposes. He had knowingly misused and misappropriated those assets in order to purchase a property and to convert Property 1 into flats. The Tribunal found that ordinary and decent people would consider that it was dishonest for Mr Allie to conduct himself in this way.

22.38 Accordingly, the Tribunal found allegation 1.2 proved, including that Mr Allie's conduct had been dishonest.

23. **Allegation 1.3 – Between 25 August 2015 and 7 August 2019, he improperly received monies totalling £115,785.46 into his personal bank accounts for at least 25 client matters when this money should have been paid into the firm's office or client bank accounts and in so doing, he breached any or all of Principles 2, 6 and 10 of the Principles and Rules 13.1, 13.3, 14.1 and 17.1 of the Accounts Rules.**

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

23.1 The FIO identified 35 receipts into Mr Allie's accounts on 25 client matters totalling £115,785.46. Mr Allie had provided the bank account details into which monies should be paid. Mr Bullock exemplified the matter of Client B:

23.2 Mr Allie had acted for Client B. The Terms of Business letter sent to Client B stated that any monies received on his behalf would be held in the Firm's client account. The oth-er side settled the claim agreeing to pay Client B £3,000 in damages and costs in the sum of £7,830.96. The costs were credited to Mr Allie's personal account. The damages were paid by way of a cheque dated 20 February 2019. Mr Allie deposited the cheque in his personal account. Mr Bullock submitted that there was no evidence that Mr Allie had paid the £3,000 damages to Client B.

23.3 In his response, to the production notice Mr Allie stated admitted that he had received payments totalling approximately £115,785.46 into his personal bank account. He explained:

> "I was a partner. I joined Spence & Horne in August 2007 as a paralegal and then a case worker. I qualified with the firm and spent a couple of years after that post qualification. Then I was offered a position as a salaried partner. It was after this that I started spending money on disbursements and paying for the website from my personal accounts etc. Then we moved from Hackney to new offices. I paid to convert the new building into an office and the lease for the offices was also in my name. As a partner I opened an account at HSBC, in my name but 'trading as Spence and Horne'. I accept that I didn't tell [Ms S] that I had opened this account with HSBC. We didn't have the type of partnership where you talk regularly or keep each other updated. We didn't make small talk. I was always too busy and [Ms S] had health issues. [Ms S] was only working three days per week. The general routine with new clients was that I would get the files opened, pay the disbursements etc and then the firm would refund me.

23.4 Mr Bullock submitted that the Applicant did not take any issue with how Mr Allie and Ms S arranged the liabilities of the partnership as between themselves. Notwithstanding those arrangements, the monies that Mr Allie had received into his personal account were monies that belonged to the Firm and not to him. It was not for Mr Allie to unilaterally claim those monies as expenses. Further, some of the monies received and retained by him were Client monies that should properly have been placed into the Firm's client account.

23.5 Rule 17.1 of the Accounts Rules required that when money is received in full or part settlement of a bill, or other notification of costs, a solicitor must determine the composition of the payment without delay and deal with the money in accordance with Rule 17.1, which included ascertaining whether the payment comprises of office, out of scope or client money so that the sum can either be paid into office or client account.

23.6 Mr Allie admitted that he received payments totalling around £115,785.46 into his personal bank accounts and that he had been using his personal accounts for work purposes for 3 or 4 years. He explained that he opened a specific account trading as "Spence and Horne" however, the trading name on the bank account was in fact "Spencer and Horne". Mr Allie admitted that Ms S did not know about this bank account.

23.7 Even if Mr Allie had paid disbursements from his personal account, this did not explain not justify the payment of monies received for costs and damages to be paid into his personal account in breach of the Accounts Rules. He had provided his personal bank account details to clients and third parties when he should have provided the firm's bank account details so that costs, disbursements and damages could be paid into the firm's accounts. He had received damages relating to Client B into his personal bank account when this money should have been paid into the firm's client bank account. This was in breach of Rules 13.1and 14.1 of the Accounts Rules. Further, the personal bank account was not in a name under which it was recognised by the SRA in breach of Rule 13.3 of the Accounts Rules. Mr Allie also breached Rule 17.1 as he failed to deal with monies received in settlement of bills or costs in accordance with the provisions of that rule.

23.8 None of the personal bank accounts were a "client account" and thus did not have the protections that would have been afforded to a client bank account. Mr Allie did not differentiate between client money and potential office money in the form of costs when he received payments into his personal bank accounts. Client money was therefore at risk in breach of Principle 10 of the Principles.

23.9 In receiving client monies into his personal bank account, failing to pay those monies into the firm's client account, causing a cash shortage to arise and failing to pay damages to his client, Mr Allie had damaged the trust that the public places in him and the provision of legal services in breach of Principle 6 of the Principles.

23.10 A solicitor acting with integrity would not have opened their own bank account, which was almost identical in name to that of the firm, to deal with client matters and not tell the firm's principal that they had done so. A solicitor acting with integrity would have paid client money into the firm's client bank account and ensured that

they complied with the SRA Accounts Rules. A solicitor acting with integrity would also have ensured that their client received their award of damages. In receiving £115,785.46 into his personal bank account, failing to pay client monies into the firm's client bank account, failing to pay damages to his client and causing a further cash shortage to arise on the firm's client account, Mr Allie had breached Principle 2 of the Principles.

Dishonesty

23.11 Mr Bullock submitted that Mr Allie's knowledge was as follows; he acted dishonestly by the standards of ordinary decent people when he received monies totalling £115,785.46 into his personal bank account. As to his knowledge and belief as to the facts:

- He told Client B in the firm's terms of business letter that money received on Client B's behalf would be held in the firm's client account. Instead money received on behalf of Client B was in fact paid into Mr Allie's personal bank account.

- Despite receiving damages into his personal bank account for Client B on 21 May 2019, Mr Allie did not pay any damages to Client B and Client B did not receive damages until the firm settled the sum on 12 February 2021.

- Mr Allie specifically told clients and third parties which bank accounts to pay money into. The accounts were his personal bank accounts. He knew that he was not entitled to receive client or office money into his personal bank accounts.

- Whilst he admitted that he used his personal bank accounts for work purposes and in particular the payment of disbursements, Mr Allie knew that he was not entitled to pay or direct others to pay client money, or damages into his personal bank accounts.

- Mr Allie knew that the payment of client money into his personal bank accounts as opposed to payment of those monies into the firm's client bank account could potentially cause a shortage on the client account.

23.12 Mr Bullock submitted that ordinary decent people would consider that it was dishonest for Mr Allie to receive monies to which the Firm was entitled into his own personal account. Further, such people would consider that it was dishonest for Mr Allie to receive client damages into his own personal account.

<u>The Tribunal's Findings</u>

23.13 Rule 17.1 of the Accounts Rules provided that:

> "When you receive money paid in full or part settlement of your bill (or other notification of costs) you must follow one of the following five options:
>
> (a) determine the composition of the payment without delay, and deal with the money accordingly:

(i) if the sum comprises office money and/or out-of-scope money only, it must be placed in an office account;
(ii) if the sum comprises only client money, the entire sum must be placed in a client account;
(iii) if the sum includes both office money and client money, or client money and out-of-scope money, or client money, out-of-scope money and office money, you must follow rule 18 (receipt of mixed payments); or

(b) ascertain that the payment comprises only office money and/or out-of-scope money, and/or client money in the form of professional disbursements incurred but not yet paid, and deal with the payment as follows:

(i) place the entire sum in an office account at a bank or building society branch (or head office) in England and Wales; and
(ii) by the end of the second working day following receipt, either pay any unpaid professional disbursement, or transfer a sum for its settlement to a client account; or

(c) pay the entire sum into a client account (regardless of its composition), and transfer any office money and/or out-of-scope money out of the client account within 14 days of receipt; …"

23.14 Mr Allie admitted that he had received approximately £115,785.46 into his account on client matters. The FIO identified that those monies comprised of:

- £25,182.35 for costs;
- £365.00 for disbursements;
- £9,000 refund of Counsel monies
- £3,000 damages; and
- £78,238.11 described as "other". It could not be ascertained whether those monies were office and/or client monies.

23.15 The Tribunal noted that Mr Allie referred to expenditure that he was paying on behalf of the Firm from his personal account, including that the lease for the Firm's offices was in his sole name. It also noted that it was Mr Allie's position that he was paying for disbursements that Ms S was not prepared to cover and would then be reimbursed by the Firm. The Tribunal found that this did not justify Mr Allie receiving monies into his personal account on client matters. Mr Allie had provided no evidence that the monies were monies that had been reimbursed due to expenditure. In fact, as Mr Allie admitted, the monies were being paid into an account of which Ms S had no knowledge.

23.16 Further, there was no justification for Mr Allie to receive monies for profit costs, damages and disbursements into his personal account. The Accounts Rules stipulated how these monies should be received and held. Mr Allie ignored those obligations and duties in order to retain those monies. That his conduct was in breach of the Accounts Rules as alleged was plain. He did not have a client account and had failed to hold and/or pay client monies into a client account. The personal account was not

in the name under which the partnership was recognised by the SRA. Further, Mr Allie was not a sole practitioner. Accordingly, the Tribunal found that Mr Allie had breached Rules 13.1, 13.3, 14.1 and 17.1 as alleged.

23.17 Members of the public would expect that solicitors would hold their monies and any other monies in accordance with the Accounts Rules that were devised to protect client monies. In failing to do so, Mr Allie failed to uphold the trust the public placed in him and in the provision of legal services in breach of Principle 6.

23.18 That such conduct was in breach of Principle 2 was evident. He had provided people with the details of his own account rather than that of the Firm so that monies due to the Firm (and to clients) were paid directly to him in flagrant and deliberate breach of the Accounts Rules. The monies held in his personal accounts were not afforded the protection inherent in a client account. Accordingly, those monies were at risk. He had received monies for client damages which he had deposited in the account, and thereafter he failed to account to his client for those damages. The Tribunal determined that solicitors acting with integrity would not divert monies due to the Firm into their own personal accounts, and would have ensured that client monies and firm monies were dealt with in accordance with the Accounts Rules.

23.19 The Tribunal determined that Mr Allie knew that he was not entitled to divert monies that should have been paid to the Firm to his personal account in breach of the Accounts Rules. He also knew that he was not entitled to receive client monies, which should have been paid into the Firm's client account. In the case of Client B, the payment for damages was agreed and paid by cheque. Mr Allie deposited this cheque into his personal account and thereafter did not account to Client B. Such conduct, the Tribunal determined, would be considered to be dishonest by ordinary decent people.

23.20 Accordingly, the Tribunal found allegation 1.3 proved including that Mr Allie's conduct was dishonest.

24. **Allegation 1.4 - Between 10 July 2016 and 28 June 2019, he failed to account to the firm for profit costs and VAT totalling £18,514.99 so that the firm could settle the VAT element of bills that he had issued to clients in breach of any or all of Principles 2 and 6 of the SRA Principles 2011**

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

24.1 The FIO examined 12 bills dated between 15 December 2016 and 27 June 2019. Those bills bore the Firm's logo, postal address, email address, telephone details and VAT number. The bank account details on all the bills were for Mr Allie's personal account. Those bills (including the element charged as VAT) were settled by payment into Mr Allie's personal accounts.

24.2 In his response of 28 September 2020, Mr Allie confirmed that he did not pay VAT from his personal accounts as he was not required to do so. In any event, the liability for paying VAT was that of the Firm.

24.3 Mr Bullock submitted that Mr Allie had issued 12 bills totalling £18,514.99. He had received the VAT element of those bills into his personal account. As the bills were in the Firm's name, clients and others would have considered that VAT was properly chargeable and payable to HMRC.

24.4 In conducting himself as he did, Mr Allie had failed to maintain the trust the public placed in him and in the provision of legal services. He had failed to account to the Firm for profit costs and VAT received, and had instead kept the monies in his personal account. Such conduct, it was submitted, was in breach of Principle 6. Such conduct also amounted to a breach of Principle 2. A solicitor acting with integrity would not have used his personal account to receive profit costs and VAT. Nor would a solicitor of integrity issues bills in the Firm's name, without the Firm's knowledge, providing his own personal account details for payment. Further, a solicitor acting with integrity would not issue a bill claiming VAT, and then retain those monies without accounting to either the Firm or HMRC. Accordingly, such conduct was in breach of Principle 2.

Dishonesty

24.5 Mr Bullock submitted that at the time that Mr Allie issued bills and received payments from clients:

- He knew that the bills contained an element for profit costs and VAT.
- He knew that by including the firm's VAT number on the bills and including a VAT element in the bills that clients would believe that VAT was payable on the services provided and that he/the firm would account to HMRC for VAT.
- He knew that Ms S would not have been aware of the bills, as clients were provided with his personal bank account details so that payments could be made into his accounts rather than the firm's bank accounts.
- He did not account to the firm for profit costs or VAT, nor did he account directly to HMRC for VAT.
- He knew that Ms S and the firm could not settle VAT if they were not aware that bills had been issued or that he had received payment from clients for profit costs and VAT.

24.6 Such conduct, it was submitted, would be considered to be dishonest by ordinary decent people.

<u>The Tribunal's Findings</u>

24.7 The Tribunal noted that Mr Allie did not dispute that he had issued the bills, nor was it disputed that the monies had been paid to him. The Tribunal noted that it was Mr Allie's case that he was not under any personal duty to pay VAT, and that such liability lay with the Firm. The Tribunal considered that such a statement whilst accurate was disingenuous in circumstances where the Firm was unaware of any liability for VAT as it was unaware that Mr Allie was issuing bills and claiming VAT.

The Firm could not be expected to know that it was liable for VAT payments charged in its name, when Mr Allie had not informed the Firm of the bills and payments were being received by him without the Firm's knowledge.

24.8 The Tribunal found that such conduct failed to maintain the trust the public placed in Mr Allie and in the provision of legal services. Members of the public would not expect a solicitor to issue a bill using all of his firm's details but add his personal account details as the account into which payment should be made. Further, members of the public would not expect a solicitor to do so without the knowledge of the Firm. Further, members of the public would not expect a solicitor, having received payments for VAT to fail to account to the firm so that any VAT due to HMRC could be paid. Accordingly, the Tribunal found that Mr Allie's conduct was in breach of Principle 6 as alleged. That such conduct was in breach of Principle 2 was plain. Solicitors acting with integrity did not amend bills so that monies would be paid directly to them. Nor did solicitors acting with integrity issue bills that had a VAT element that the solicitor then retained. Accordingly, the Tribunal found that Mr Allie's conduct lacked integrity in breach of Principle 2.

24.9 The Tribunal agreed that Mr Allie's state of knowledge was as submitted by Mr Bullock. Mr Allie knew that the Firm was unaware that he was issuing bills in the Firm's name, claiming VAT and retaining those monies. He knew that the bank details on the bills were for his personal account and not the Firm's account. He also knew that the Firm could not settle the VAT on bills that it did not know existed. The Tribunal found that ordinary and decent people would consider that it was dishonest for Mr Allie to conduct himself in the way that he did.

24.10 Accordingly, the Tribunal found allegation 1.4 proved, including that Mr Allie's conduct had been dishonest.

Previous Disciplinary Matters

25. None.

Sanction

26. The Tribunal had regard to the Guidance Note on Sanctions (9th Edition – December 2021). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

27. The Tribunal found Mr Allie to be wholly culpable for his misconduct. He had been motivated by his own financial gain. His actions were clearly planned. He had acted in fragrant breach of the trust placed in him by his elderly client to ensure that he administered her estate in accordance with her wishes. He had retained monies that were intended to be charitable legacies and used them for his own purposes, including the purchase of a property. He was in direct control and solely responsible for his misconduct. He was an experienced solicitor and respected member of the community. He had caused significant and irreparable harm to the beneficiaries by significantly decreasing the value of the estate.

28. Mr Allie's conduct was aggravated by his proven dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

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

29. The harm caused was readily foreseeable and was caused entirely by Mr Allie's misconduct. His misconduct was further aggravated by its deliberate, calculated and repeated nature. He consistently took money from the estate that he knew he was not entitled to. He had drafted bills so that clients and others thought that they were paying the Firm, whereas the bank details provided were for his personal bank account. The Firm was not aware that he was receiving monies in its name, nor was it aware that he was charging VAT in its name and thereafter retaining the VAT payments. Such conduct had continued over a period of 3 – 4 years. Mr Allie knew that his conduct was in material breach of his duties as a solicitor to both protect the public and to protect the reputation of the profession.

30. The Tribunal did not find that there were any mitigating features of Mr Allie's conduct.

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

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

32. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring Mr Allie in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike Mr Allie off the Roll of Solicitors.

Costs

33. Mr Bullock applied for costs in the sum of £25,102.40. This figure had been reduced from £25,882.40 to take account of the shortened hearing time.

34. The Tribunal considered that the costs applied for were reasonable and proportionate taking into account the issues to be determined and the complexity of the investigation. Accordingly, the Tribunal ordered that Mr Allie pay costs in the sum claimed.

Statement of Full Order

35. The Tribunal Ordered that the Respondent, JAMES BORBOR ALLIE, 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 £25,102.40.

Dated this 29th day of June 2022
On behalf of the Tribunal

G Sydenham
Chair