SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No.12396-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

CHRISTOPHER FREDERICK ORFORD HUTCHINS First Respondent

SPENCER PAUL MCGUIRE Second Respondent

Before:

Ms A Horne (in the Chair)
Mr M N Millin
Mr A Lyon

Date of Hearing:
24-27 April 2023

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 First Respondent represented himself.

Geoffrey Williams KC of Farrar's Building, Temple, London EC4Y 7BD, instructed by Nick Trevette, solicitor of Murdochs Solicitors, 45 High Street, Wanstead ,London, E11 2AA, for the Second Respondent.

JUDGMENT

Allegations

1. The allegations made against Mr Hutchins by the Solicitors Regulation Authority Limited ("SRA") were that:

1.1 Between 20 March 2013 and 4 August 2019 whilst acting as the Trustee of the Albert Harris Will Trust ('the Trust'), he preferred the interests of South London Cleaning No 1 Ltd ('SLC'), a company in which his wife had a 50 per cent shareholding, over the interests of the Trust and the residuary beneficiary of the Trust by causing or permitting payments to be made to SLC for services rendered:

- which he knew to be excessive; and/or
- without disclosing his wife's interest in SLC to the residuary beneficiary of the Trust.

He thereby breached and/or failed to achieve:

1.1.1 Principle 2 SRA Principles 2011 ("the Principles"); and/or

1.1.2 Principle 6 of the Principles; and/or

1.1.3 Outcome O(11.1) SRA Code of Conduct 2011("the Code").

1.2. Between November 2012 and July 2019, whilst acting in that same capacity, he claimed payments from the Trust totalling £36,652.50 in respect of professional charges which were excessive for the services which he had provided to the Trust. He thereby breached and/or failed to achieve:

1.2.1 Principle 2 of the Principles; and/or

1.2.2 Principle 6 of the Principles; and/or

1.2.3 Outcome O(11.1) of the Code.

1.3. In addition, allegations 1.1 and 1.2 above were advanced on the basis that the conduct of Mr Hutchins was reckless or, in the alternative, manifestly incompetent. Recklessness and manifest incompetence were alleged as aggravating features of the misconduct of Mr Hutchins, but were not essential ingredients in proving the allegation.

2 The allegations against Mr McGuire made by the SRA were that, while in practice at Anthony Gold Solicitors ("the Firm"):

2.1 Between 20 March 2013 and 4 August 2019 whilst acting as the Trustee of the Albert Harris Will Trust ('the Trust'), he preferred the interests of South London Cleaning No 1 Ltd ('SLC'), a company in which his wife had a 50 per cent shareholding, over the interests of the Trust and the residuary beneficiary of the Trust by causing or permitting payments to be made to SLC for services rendered:

- which he knew to be excessive; and/or
- without disclosing his wife's interest in SLC to the residuary beneficiary of the Trust.

He thereby breached and/or failed to achieve:

2.1.1 Principle 2 of the Principles; and/or

2.1.2 Principle 6 of the Principles; and/or

2.1.3 Outcome O(11.1) of the Code.

2.2 Between November 2012 and July 2019, whilst acting in that same capacity, he authorised payments to the First Respondent from the Trust which he knew, or ought to have known were excessive for the services which the First Respondent had provided to the Trust. He thereby breached and/or failed to achieve:

2.2.1 Principle 2 SRA of the Principles; and/or

2.2.2 Principle 6 SRA of the Principles; and/or

2.2.3 Outcome O(11.1) SRA of the Code.

2.3 In addition, allegations 2.1 and 2.2 above were advanced on the basis that the conduct of Mr McGuire was reckless or, in the alternative, manifestly incompetent. Recklessness and manifest incompetence were alleged as aggravating features of the misconduct of Mr McGuire but were not essential ingredients in proving the allegation.

Executive Summary

3. The Tribunal found that Mr Hutchins had preferred the interests of SLC over those of the Trust and the RSPCA. He had caused or allowed payments to SLC that were excessive. Further, he had failed to disclose to the RSPCA his wife's interest in SLC. In doing so, he had breached the Principles and Outcome as alleged. Further, his conduct was reckless.

4. The Tribunal also found that Mr Hutchins had claimed payments from the Trust which were excessive. Such conduct was aggravated by Mr Hutchins's recklessness.

5. The Tribunal's findings in relation to Mr Hutchins can be found here:

- Allegation 1.1& 1.3
- Allegation 1.2& 1.3

6. The Tribunal found that Mr McGuire had preferred the interests of SLC over those of the Trust and the RSPCA. He had caused or allowed payments to be made to SLC whilst failing to disclose his wife's interest in SLC to the RSPCA. The Tribunal did not find that Mr McGuire knew that the charges were excessive, nor did it find that he had acted without integrity in breach of Principle 2, or that he had taken unfair

advantage of others and thus failed to achieve Outcome 11.1. The Tribunal found that his misconduct amounted to a breach of Principle 6.

7. The Tribunal dismissed the allegation that Mr McGuire had authorised excessive payments to Mr Hutchins.

8. The Tribunal's findings in relation to Mr McGuire can be found here:

- Allegation 2.1 & 2.3
- Allegation 2.2

Sanction

9. The Tribunal ordered that Mr Hutchins be suspended from practise for 2 years and that Mr McGuire pay a fine in the sum of £15,000. The Tribunal's sanctions and its reasoning on sanction can be found here:

- Sanction

Documents

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

- Rule 12 Statement and Exhibit ECW1 dated 26 October 2022
- First Respondent's Answer and Exhibits dated 23 February 2023
- Second Respondent's Answer dated 11 January 2023
- Applicant's Schedule of Costs dated 18 April 2023

Preliminary Matters

11. Application to redact the report of Mr Adcock

11.1 Mr Williams KC submitted that there were aspects of the report that were inadmissible as they contained hearsay evidence, most of which was anonymous. Mr Bullock confirmed that he supported the application for the passages identified by Mr Williams KC to be redacted. Mr Bullock explained that the Applicant relied on Mr Adcock as an expert witness. The identified passages were not the expression of Mr Adcock's expert opinion, but the opinions of others in their field of expertise. Those passages could not be relied upon as the expert opinion of Mr Adcock.

11.2 The Tribunal considered the passages and agreed with the position as stated by the parties. Accordingly, the Tribunal granted the application and directed that the identified passages be redacted from the report.

12. Submission of No Case to Answer

The Second Respondent's application

12.1 Mr Williams KC referred the Tribunal to the decision in Lord Lane CJ (as he then was) in R v Galbraith [1981] 2 ALL ER 1060, which detailed the test to be applied to submissions of no case to answer:

> "How then should the judge approach a submission of 'no case'? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the Crown's evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. (b) Where however the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

12.2 Mr Williams KC reminded the Tribunal that the test was whether the Tribunal could *properly* find the matters proved, and not *possibly* so find. The allegations should be construed strictly. If there was any ambiguity in the allegations, that should be resolved in Mr McGuire's favour.

12.3 The Applicant alleged, at allegation 2.1, that Mr McGuire preferred the interests of SLC over those of the Trust. In order for that allegation to be proved, the Applicant was required to show that there was a conscious decision by Mr McGuire to prefer the interest of SLC. In opening, Mr Bullock had submitted that no mens rea was alleged, as it did not need to be. Mr Williams KC submitted that this was fatal to the allegation. It was not alleged that as a result of Mr McGuire's conduct a preference arose. That was not the way the allegation was worded.

12.4 It was the Applicant's case that the payments made to SLC were excessive. SLC were paid approximately £37,000 over a period of 6½ years. This equated to approximately £5,600 per year. Mr Williams KC examined the payments previously made to Mr Cresswell. He had been paid more than SLC. Those payments, notwithstanding that they were higher, had not been criticised by the Applicant as being excessive. Mr Rogers' payments, when averaged across a year, also equated to a similar amount, and that amount was, again, not criticised by the Applicant as being excessive.

12.5 It was clear that the payments made to SLC by Mr McGuire on behalf of the Trust were reasonable. The Applicant was aware that SLC was paid less than others employed to do the same work, but had chosen not to pursue any allegations in relation to the higher payments made. Accordingly, the Applicant could be taken to have no issue with those higher payments.

12.6 Further, the Applicant had to provide evidence of what reasonable charges would, in fact, have been. No evidence had been adduced as to what would have been a reasonable charge. Mr Williams KC noted that the FIO had been tasked with obtaining quotes for the work. 7 letters had been sent out. Of those, 2 were ignored, 4 did not provide a quote and 1 provided a quote for doing the work, but that work would not comply with the terms of the Trust.

12.7 As to the quotes that the Applicant relied upon, a number of those did not fall within the allegation period. The only one that did fall within the allegation period was the one received from Guardian Angels. However, that company had only cleaned the vault on one occasion. Whilst Guardian Angels had quoted £125 per visit, it had in fact invoiced the Trust for £175.

12.8 Mr Williams KC submitted that the Applicant had failed to evidence what a proper charge would be. Without evidence of the reasonable cost, it was not open to the Tribunal to find that the charges made by SLC were excessive.

12.9 Mr Williams KC submitted that there was no evidence that Mr McGuire had preferred the interests of SLC over those of the Trust and the RSPCA, nor was there any evidence that the charges paid to SLC were excessive. Accordingly, allegation 2.1 should be dismissed.

12.10 The Applicant, it was submitted, had failed to produce any evidence showing that Mr McGuire had authorised the payments to Mr Hutchins. In her evidence, Ms Taylor agreed that she had not asked Mr McGuire during their interview whether he authorised the payments to Mr Hutchins. Further, she had seen no evidence that he had done so during her investigation.

12.11 As to Mr Hutchins' charges, he was not practising as a solicitor at the time. Further, the payments made to him, pursuant to his complying with his duty as a trustee, were lower than was charged when he was a partner at Lister Woods. The Applicant, it was submitted, had failed to provide any evidence of what it would be reasonable for a trustee to charge. Accordingly, given that there was no evidence that Mr McGuire authorised the payments, nor was there any evidence of what a reasonable charge would be, allegation 2.2 should be dismissed.

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

12.12 Mr Bullock resisted the application. The question for the Tribunal to determine was whether, taking the Applicant's case at its highest, the evidence before the Tribunal was such that the Tribunal could not find the allegations proved. Mr Bullock agreed that in considering the application, the allegations should be construed strictly.

12.13 Mr Bullock did not accept that for there to be a preference of the interests of one entity over another, there had to be a conscious decision. The preference was the result of the conduct. The issue of consciousness was relevant to considerations of culpability. Mr Bullock submitted that even if it were the case that payments were made by Mr McGuire to SLC following a deception being practised upon him, it would still have resulted in a preference. The Tribunal, in those circumstances, would be entitled to find the matter not proved as there would be no culpability.

12.14 Mr Bullock submitted that, as Mr McGuire caused or permitted the payments to SLC in circumstances where his connection to SLC was not disclosed, it could not be said that there was no evidence upon which the Tribunal could properly find allegation 2.1 proved.

12.15 Mr Bullock did not accept the proposition that as the Applicant had not criticised higher payments made for cleaning the vault, it viewed those payments as reasonable. In fact, it was to both Respondents' benefit that the Applicant had chosen to frame its case within the timeframe it had. Further, it was for the regulator to take a view on the evidence, and determine which allegations to bring in the public interest. The fact that the regulator did not specifically allege misconduct in relation to any given circumstance or conduct, did not infer that such conduct was not susceptible of criticism.

12.16 The criticism of there being no expert evidence as to the cost of cleaning the vault was accepted by Mr Bullock. However, such criticism was not fatal to the Applicant's case in circumstances where the Tribunal had ample documentary evidence from qualified stonemasons over an extended period of time pointing to the fact that the going rate was consistently £150 per visit.

12.17 It was Mr Williams KC's contention that the Tribunal could not rely on the stonemasons' quotes; because those who quoted £150 either did not do the job properly, or did not do it at all. The assertion that that was so came from Mr Williams KC's client. The proceedings had only reached the end of the prosecution case; to take account of such evidence, Mr McGuire would need to give that evidence. The Tribunal, it was submitted, would be proceeding on a false premise to dismiss allegation 2.1 on the basis that, although the quotes were available for consideration, they were not a reasonable comparator.

12.18 Further, the Tribunal should approach the issue with a degree of common sense. The Tribunal has seen photographs of the vault and could assess for itself the work that would be involved in cleaning it. The Tribunal was entitled to take that into account when looking at the issue of whether the charges were excessive. The Tribunal should also take account of Mr Hutchins' admission that the charges were, in fact, excessive.

12.19 With regard to allegation 2.2, Mr Bullock submitted that, were the Tribunal to be operating under the criminal standard of proof, Mr Williams KC's point as regards there being no evidence of Mr McGuire authorising the payments, would be stronger. However, the Tribunal operated the civil standard of proof. Ms Taylor had confirmed in her evidence that Mr McGuire was both a trustee and the fee earner with conduct of the Trust's matter at the Firm. In circumstances where Mr McGuire was the fee earner, and there was no evidence that anyone else at the Firm had authorised the payments, the Tribunal was entitled to take into account the inherent probability that Mr McGuire had indeed authorised the payments as alleged.

12.20 Mr Bullock submitted that the evidence that Mr Hutchins' payments for visiting the vault were excessive was compelling; Mr Hutchins had accepted that the charges he made were at the top of the range he charged for all types of work he undertook. He was charging the Trust the hourly rate that he usually reserved to complex legal work.

12.21 As to the fact that Mr Hutchins was not acting as a solicitor at the time, Mr Bullock submitted that Mr Hutchins was only a trustee by virtue of his status as a solicitor. Mr Bullock submitted that the Tribunal could properly find, at this stage, that there was sufficient evidence to establish that Mr McGuire knew or ought to have known that the charges he authorised were excessive.

12.22 Accordingly, the submission of no case to answer should fail.

The Tribunal's Decision

12.23 Allegation 2.1 – The Tribunal firstly considered whether Mr McGuire needed to have made a conscious decision in order for it to find that he had preferred the interests of SLC over those of the Trust and the RSPCA. The Tribunal found that on the wording of the allegation, construing it strictly, Mr McGuire did not need to make a conscious decision. It was sufficient, on the wording of the allegation, that Mr McGuire's conduct resulted in there being a preference. The preference was the state of affairs arising from Mr McGuire's actions. Accordingly, the Tribunal did not accept Mr Williams KC's submissions on the point. The Tribunal determined that, at this stage, it could properly find that Mr McGuire had by his actions preferred the interests of SLC by not informing the residuary beneficiary of his wife's interest in the company to which payments were being made from the Trust of which he was a trustee.

12.24 The Tribunal found that it could take into account the quotes received from stonemasons in determining the reasonableness of SLC's charges. Those quotes were at least £100 cheaper than the per visit charges levied by SLC. Further, Mr McGuire (who had requested the quotes) knew what those quotes were and knew that they were quotes from stonemasons. He also knew that his wife and Mrs Hutchins were not qualified stonemasons, and were charging more than those that were more qualified. The Tribunal determined that the issue of whether Mr McGuire was able get a stonemason to actually do the work for £150 per visit was to be determined once the Tribunal had heard from Mr McGuire in evidence (should he choose to give oral evidence). The Tribunal determined that, at this stage, the Applicant had adduced sufficient evidence such that the Tribunal, properly directed, could find that the charges were excessive and that Mr McGuire knew that to be the case by virtue of the information before him.

12.25 Accordingly, the Tribunal found that there was a case for Mr McGuire to answer in relation to allegation 2.1.

12.26 Allegation 2.2 –The Tribunal noted that whilst Mr McGuire was not asked directly in his interview whether he authorised the payments to Mr Hutchins (as opposed to the payments to SLC), when the relevant invoices were discussed he did not deny that he was the person that authorised those payments. Further, Mr McGuire had made it clear in his interview that he was the sole fee earner with conduct of the Trust's matter.

12.27 The Tribunal also noted that there were numerous emails during 2012-2014 from Mr Hutchins to Mr McGuire either sending Mr McGuire his invoice for payment, or chasing Mr McGuire for payment of his invoices, when these had not been settled promptly. There was, therefore, clear evidence pointing to the fact that Mr McGuire had been the person responsible for approving payment of, and therefore authorising,

Mr Hutchins' invoices. In addition, the invoices sent by Mr Hutchins did not identify who they were from, or the account or person that the amounts claimed should be paid to. Accordingly, the Tribunal considered that it was inherently improbable that anyone other than Mr McGuire had authorised payment of the invoices, as only the person with conduct of the file would have had sufficient knowledge to determine that the invoice was for a service properly chargeable to the Trust. Accordingly, the Tribunal determined that, at this stage, the Applicant had adduced sufficient evidence such that the Tribunal, properly directed, could find that Mr McGuire had authorised the payments.

12.28 As to the alleged excessive nature of the payments, the Tribunal did not consider that it required expert evidence as to the reasonableness of Mr Hutchins' charges. On his own evidence, Mr Hutchins accepted that the charges were excessive. In his response to his notice of referral to the Tribunal, Mr Hutchins explained that:
"My hourly rate has increased several times since I established the firm which I now run. My rate for private work is, currently £300 per hour and has been, since 2016. As most of the work I carry out is low grade work through a freelance site, I charge a lesser rate for that type of work. If asked to deal with more complicated work, I charge the higher fee. I believe that the last time I charged at this rate was about 18 months ago, for the sale of a medical practice…"

12.29 The Tribunal determined that the fact that Mr Hutchins was not acting as a solicitor when the charges were levied did not denude the Tribunal of its ability to assess whether the charges he made were excessive. Mr Williams KC had submitted that Lister Woods (Mr Hutchins' former firm) had been charging more for Mr Hutchins visits, and thus as Mr Hutchins had charged less in his personal capacity, his charges could not be regarded as excessive. Accordingly, Mr McGuire neither knew, nor ought to have known, that Mr Hutchins charges were excessive. The assertion that Lister Woods' charges were greater derived from adding up the payments shown in the Trust's accounts to have been made to that firm over time, and averaging out the cost per year, and therefore the cost per visit. However, the Tribunal had seen no evidence of what the payments made to Lister Woods related to, or the period of time each such payment covered. Indeed, the Tribunal had not seen any invoices from Lister Woods. It was possible, even likely, that Lister Woods were also charging the Trust for work other than Mr Hutchins' inspection visits to the grave. In the circumstances, the Tribunal could make no finding, in the absence of further evidence, as to the relevance of the payments made to Lister Woods as a comparator to the charges levied by Mr Hutchins.

12.30 Given that Mr Hutchins was charging the same rate for visiting the vault to check that it was clean and tidy (a task which required no legal or other expertise) as he was charging for "more complicated work", such as advising on the sale of a medical practice, the Tribunal found that the Applicant had adduced sufficient evidence such that the Tribunal, properly directed, could find that those charges were excessive. Further, as Mr McGuire was aware that Mr Hutchins' charges had increased without explanation, the Tribunal determined that the Applicant had adduced sufficient evidence such that the Tribunal, properly directed, could find that Mr McGuire knew or ought to have known that the Mr Hutchins charges were excessive.

12.31 Accordingly, the Tribunal found that there was a case for Mr McGuire to answer in relation to allegation 2.2.

12.32 The submission of No Case to Answer was thus dismissed as regards allegations 2.1 and 2.2.

Factual Background

13. Mr Hutchins was a solicitor having been admitted to the Roll in October 1976. He practised as a partner at Lister and Wood Solicitors from January 1997 until it became an LLP under the name Lister McGuire LLP in 2005. Mr Hutchins was a member of Lister McGuire LLP from January 2005 until June 2008, when that firm closed down. He had not held a practising certificate since October 2008.

14. Mr McGuire was a solicitor having been admitted to the Roll in October 1996. He was employed as a solicitor at Lister and Wood Solicitors from January 1997. He became a partner at Lister and Wood Solicitors in January 1998, and so remained until that firm became an LLP. He was then a member of Lister McGuire LLP from January 2005 until June 2008, when the firm closed down.

15. At the time relevant to the allegations, Mr McGuire practised as a consultant solicitor at Anthony Gold Solicitors ("the Firm") from January 2012. Mr McGuire was a partner at the Firm from January 2017 until February 2020. He held a current unconditional practising certificate.

16. The conduct in this matter came to the attention of the SRA on 7 October 2019 when the Firm made a report to the SRA about the conduct of both Mr Hutchins and Mr McGuire ("the Respondents" when referred to jointly) in relation to their roles as trustees of the Albert Harris Trust ("the Trust").

Witnesses

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

- Sarah Taylor – Forensic Investigation Officer in the employ of the Applicant

- Mark Adcock –Expert in real estate law and practice, the administration of estates and professional practice.

- Spencer McGuire – Second Respondent

18. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

19. 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 the Respondents' rights to a fair

trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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".

Recklessness

21. The test applied by the Tribunal was that set out in R v G [2003] UKHL 50, where Lord Bingham adopted the following definition:

> "A person acts recklessly…with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur and it is, in the circumstances known to him, unreasonable to take that risk."

22. This was adopted in the context of regulatory proceedings in Brett v SRA [2014] EWHC 2974 (Admin).

23. **Allegation 1.1 - Between 20 March 2013 and 4 August 2019 whilst acting as the Trustee of the Trust, Mr Hutchins preferred the interests of South London Cleaning No 1 Ltd ('SLC'), a company in which his wife had a 50 per cent shareholding, over the interests of the Trust and the residuary beneficiary of the Trust by causing or permitting payments to be made to SLC for services rendered: which he knew to be excessive; and/or without disclosing his wife's interest in SLC to the residuary beneficiary of the Trust. He thereby breached and/or failed to achieve: Principles 2 and/or 6 of the Principles; and or Outcome O(11.1) the Code. Such conduct was alleged to be reckless or, in the alternative, manifestly incompetent (Allegation 1.3).**

Allegation 2.1 – Between 20 March 2013 and 4 August 2019 whilst acting as the Trustee of the Trust, Mr McGuire preferred the interests of South London Cleaning No 1 Ltd ('SLC'), a company in which his wife had a 50 per cent shareholding, over the interests of the Trust and the residuary beneficiary of the Trust by causing or permitting payments to be made to SLC for services rendered: which he knew to be excessive; and/or without disclosing his wife's interest in SLC to the residuary beneficiary of the Trust. He thereby breached and/or failed to achieve: Principles 2 and/or 6 of the Principles; and or Outcome O(11.1) the Code. Such conduct was alleged to be reckless or, in the alternative, manifestly incompetent (Allegation 2.3).

The Applicant's Case

23.1 The Trust was created by the Will of Mr Albert Harris, dated 14 March 1992 ("the Will"). The Will was drafted by Mr Hutchins.

23.2 Mr Harris died on 11 July 1997. The Will appointed Mr Hutchins and Mr Wood (who was also a solicitor) as Executors and Trustees. Mr McGuire became a Trustee on 4 November 2009 when Mr Wood retired. However, Mr Hutchins continued as a Trustee when he ceased practising as a solicitor in October 2008 and moved to France in 2010.

23.3 Prior to becoming a Trustee, Mr McGuire was the fee earner on the Trust's client matter at the Firm, and acted as legal adviser to the Trust.

23.4 The Respondents were appointed as professional trustees through their legal practice as solicitors. Mr Hutchins was instructed by Mr Harris, as his solicitor, to draft the Will which created the Trust appointing him and another solicitor as Trustees. Mr Bullock submitted that it was to be inferred from this that Mr Harris wanted to appoint solicitors to act as professional trustees. Mr McGuire provided legal advice to the Trust, in his capacity as a solicitor, before replacing another solicitor as professional trustee. The Respondents' conduct in managing the Trust was therefore directly related to their legal practices as solicitors.

23.5 The Will provided:

> "4. My trustees shall hold my residuary estate upon trust to apply the income thereof for the maintenance of the vault numbered [vault number and location detailed] ["the Vault"]…for the period of eighty years from the date of my death…at the end of the said period of eighty years to pay my residuary estate to the Royal Society for the Prevention of Cruelty to Animals.
>
> 5. My trustees shall have power to charge and be paid all usual professional and other charges for any business transacted or work done by them or their firm in connection with the administration and distribution of my estate or of the trusts of my will whether or not any person could have done the same personally provided that they accept the trusts hereof and comply with the following conditions (and for the avoidance of all doubt my Trustees shall be entitled to submit and be paid individual invoices provided that at the time they are submitted my Trustees shall certify in writing that these conditions have been complied with up to the date upon which the each individual Invoice is delivered).
>
> (a) to employ a stonemason or firm of stonemasons or other suitably qualified individual or firm to visit the said vault at least once in every two weeks to clean the said vault and tidy the area around it…
>
> (b) to visit the vault at least once in every two months to ensure that the works carried out pursuant to sub-clause (a) above have been carried out in a good and workmanlike manner…"

23.6 Given the nature of the Trust, there was little external oversight of the Respondents' management of Trust funds. The settlor was deceased and reliant on the Respondents to claim an appropriate rate of professional charges. The residuary beneficiary had limited involvement in the running of the Trust, and was also not able to fully scrutinise or object to the professional charges.

23.7 Mr Bullock submitted that, as Trustees, the Respondents owed a duty of honesty, integrity, loyalty and good faith to the beneficiaries of the Trust. Trustees must at all times act exclusively in the best interests of the trust and be actively involved in any decisions.

23.8 The Applicant had obtained the expert opinion of Mark Hedley Adcock, who was experienced in Trusts and acting as a professional trustee. In summary, Mr Adcock's report made it clear that the Respondents were entitled to recover their professional charges for work necessary to meet their obligations under the Trust, conditional upon the trustees (in this case, the Respondents) performing the services outlined in paragraphs 5(a) and 5(b) of the Will (set out above). Any professional charges should be fair and reasonable, not excessive, and not relate to work that they could lawfully or reasonably delegate in order to save costs.

23.9 On 7 April 2020, the SRA commenced a forensic investigation into the Firm. The Forensic Investigation Officer ("the FIO"), produced a forensic investigation report dated 20 October 2020. The following concerns were raised about the conduct of the Respondents in executing their duties as trustees of the Trust.

<u>Cleaning of the Vault from January 2001 to November 2012</u>

23.10 From 19 January 2001, the Trust accounts show payments being made to Mr Cresswell for cleaning the Vault. The payments were for services procured to comply with the conditions in paragraph 5(a) of the Will. A sample of the invoices submitted for payment prior to 2012 showed that:

- the invoices were submitted in the name of "Dennisons";
- the description of the payment was "carrying out cleaning and maintenance" of the Vault; and
- payment was requested by way of a cheque made payable to Mr Cresswell.

23.11 Between 8 August 2008 and 12 November 2012, 29 payments totalling £13,600.00 were made collectively to Mr Hutchins and his wife, Mrs Hutchins. A sample of the invoices submitted showed that:

- the description of the payment was "Cleaning Vault";
- the invoices continued to be submitted under the name "Dennisons";
- the invoices contained an address which was the home address or Mr Cresswell; and

- payment was requested either by way of BACS transfer to Mrs M Hutchins or cheque made payable to Mrs M Hutchins.

23.12 Mr Cresswell informed the FIO by telephone that he had not cleaned the Vault since 2009, when he had been told that the cleaning was to be done "in house".

23.13 In June 2012, the Respondents obtained a quote from Mr Rogers, a qualified stonemason, for the work of maintaining the Vault. Mr Rogers confirmed he would charge £150.00 per visit to clean the Vault, or £300.00 per month.

23.14 In interviews with the Respondents:

- Mr Hutchins stated that, from his recollection, Mrs Hutchins had never cleaned the Vault alone, but always attended with Mr Cresswell. They usually went together on a Saturday or Sunday.

- Mr Hutchins was not aware of how much of the funds transferred to Mrs Hutchins she received, although he knew of the arrangement. He advised he was not aware of the specific details of the payments between Mrs Hutchins and Mr Cresswell, except that he knew Mrs Hutchins received some payment and Mr Cresswell was being paid cash.

- Mr Hutchins did not provide any evidence to demonstrate the amount Mrs Hutchins had paid Mr Cresswell, because he said this was something he was not involved with.

- Mr McGuire had authorised all of the payments in question. He explained that his understanding at the time was that Mrs Hutchins and Mr Cresswell had a professional relationship, and Mrs Hutchins was in business with, or was an employee of, Mr Cresswell.

<u>Cleaning of the Vault from August 2013 – August 2019</u>

23.15 In its initial report to the SRA, the Firm reported that its accounts department discovered at the end of September 2019 that payments were being made to a company called South London Cleaning No1 Limited ("SLC") from the client account relating to the Trust. At the time those payments were being made, Mr McGuire's wife, Mrs McGuire, was the Director and a 50% shareholder of SLC, and the other shareholder was Mrs Hutchins.

23.16 SLC had been registered at Companies House on 20 March 2013. Mrs McGuire was listed as a Director and Shareholder. Mrs Hutchins was listed as Director from 20 March 2013 to 19 May 2013, and was currently listed as a Shareholder.

23.17 Between 13 August 2013 and 20 August 2019, 46 payments totalling £37,000.00 were made to SLC from the Trust's funds. All but one of those payments were made to a bank account in the name of SLC. A sample of invoices from SLC showed that it charged £250.00 per visit to the Vault, or £500.00 per month. The description of the payments was recorded as "Grave Clearing" or "Cleaning Vault".

23.18 In interviews with the Respondents, it was established that:

- Mr Hutchins set up SLC for the purposes of providing services to the Trust, so that the Respondents could meet their obligations under the condition in paragraph 5(a) of the Will. SLC did not provide services to any other entities. Neither Mrs Hutchins or Mrs McGuire had any expertise in stonemasonry or cleaning services.

- Mr McGuire stated that the Vault was cleaned with "hot water, elbow grease" and household cleaning products. Mr Hutchins advised that a mop and bucket were used to clean the Vault.

- Mrs McGuire undertook the cleaning of the Vault every other month, and Mrs Hutchins undertook the cleaning of the Vault on the alternative month. Mrs Hutchins would travel from France twice a month to do her turn. No evidence of the necessary trips from France had been provided.

- Mr Hutchins prepared the SLC invoices that were submitted to the Firm for payment. Mr McGuire authorised all the payments from Trust funds by the Firm for the cleaning of the Vault.

- Mrs McGuire and Mrs Hutchins each received half of the payments made to SLC (approximately £18,750.00). Both Respondents accepted that they indirectly benefitted from these payments into their households, as the spouses of the recipients.

- When asked about whether he had considered the possibility of a conflict of interest between his interests and the interests of the Trust, Mr Hutchins replied: "that's a leading question and I'm not going to answer it".

- When Mr McGuire was asked if he had identified a conflict of interest in respect of his wife's connection to SLC, he replied:

> "I didn't, no. That's something that, as pointed out to me by Anthony Gold, is an oversight. Well, it might not be the right description of the word but yeah, it's something that should have been considered."

23.19 In Mr Hutchins's representations in response to the SRA's notice recommending that his conduct be referred to the SDT, he wrote:

> "The question of conflict of interest arises and I can truly say that it did not cross my mind. With hindsight, it is obvious but, at the time, it did not cross my mind. I felt, and still feel, that I acted, at all times, with the best interests of the trust in mind. We could not get help in cleaning the grave, we were able to secure it. When we were able to employ [Mr Rogers], at a cheaper rate, we did so."

23.20 Mr Bullock submitted that there was no evidence that the Respondents informed the residuary beneficiary, the RSPCA, of either the arrangement with SLC or between Mr Creswell/Dennisons and Mrs Hutchins. In particular, neither Respondent informed the RSPCA that they were indirectly benefitting from the Trust's funds via those arrangements. Section 6.7.5 of Mr Adcock's report made it clear that they were under

a duty to do so, given the close relationship between the Respondents and Mrs McGuire/Mrs Hutchins.

23.21 In December 2019, Guardian Angels, a company specialising in "grave maintenance and funeral products", agreed to take on responsibility for cleaning the Vault at a rate of £125.00 per visit to the Vault, or £250.00 per month.

23.22 While acting as trustees to the Trust, between 20 March 2013 and19 August 2019 the Respondents indirectly benefitted from the payment of Trust funds to SLC, a company jointly owned by their wives.

23.23 As the husbands of the owners of SLC, both Mr Hutchins and Mr McGuire indirectly benefitted from the payments to their wives, as members of their families and households. Despite benefitting from Trust funds in a manner not explicitly authorised by the Trust, the Respondents did not take any or adequate steps to inform the RSPCA, as the residuary beneficiary of the Trust, of this arrangement.

23.24 The best evidence available as to the market rate for the services which SLC was providing indicates a charge of approximately £150.00 per visit (the rate Mr Rogers quoted in June 2012). Furthermore, Mr Rogers had expertise in cleaning and maintaining monuments such as the Vault, and had no apparent connection to the Respondents or the Trust. His charges therefore provide the best evidence of the market rate for cleaning the Vault at the relevant time. This position was supported by the fact that Guardian Angels quoted similar charges for the same services in 2019.

23.25 Mr Bullock submitted that, by the Respondents' own admission, the services provided by SLC were not skilled, and involved cleaning using everyday household cleaning products and appliances. However, SLC charged and were paid approximately 60% more than the amount Mr Rogers had quoted for the same services, despite SLC having no expertise or experience in the work. The Respondents paid SLC's charges for services provided to the Trust for several years, despite knowing that SLC's charges were considerably higher than charges quoted by others for the same services, and were therefore excessive.

23.26 Mr Bullock submitted that, by behaving as they did, Mr Hutchins and Mr McGuire had failed to act with integrity. A Solicitor acting with integrity would avoid benefitting personally from their position as a trustee, outside of their legitimate professional charges, and would inform beneficiaries who were impacted if they personally benefitted from decisions they made as a professional trustee. They would not prefer the interests of a company in which their spouse had a financial interest to those of a trust of which they were a trustee; nor would they make excessive payments for services. The Respondents therefore breached Principle 2 of the Principles.

23.27 Their conduct also amounted to a breach of the requirement to behave in a way which maintained the trust placed by the public in them and in the provision of legal services. They secretly preferred the interests of SLC, a company in which their spouses had a financial interest, and made payments for services to that company which they knew to be excessive. Public confidence in solicitors and in the provision of legal services was likely to be undermined by conduct where solicitors used their positions of trust for

their own personal benefit. Mr Hutchins and Mr McGuire therefore breached Principle 6 of the Principles.

23.28 Outcome O(11.1) of the Code required that: "you do not take unfair advantage of third parties in either your professional or personal capacity".

23.29 Mr Bullock submitted that the Respondents used their position as trustees of the Trust to make excessive payments to SLC, a company in which their spouses had a financial interest. They each derived a personal financial benefit from the payments. As a consequence of their conduct, the Trust funds available to be applied towards the purpose of the Trust or to be passed to the residuary beneficiary were reduced. Therefore, they used their positions of trust as trustees to gain a personal financial benefit from Trust funds to the detriment of the residuary beneficiary, an interested third party.

23.30 They did not disclose their personal financial interests in the payments to SLC to the residuary beneficiary as an interested third party. Without this information, the residuary beneficiary did not have a full picture of how the Trust was being managed. The residuary beneficiary was therefore not able to protect its interests by assessing whether the Trust's funds were being used appropriately, as it did not have all the relevant information. The Respondents took advantage of the residuary beneficiary's lack of knowledge to continue to benefit financially from excessive payments to SLC without being challenged.

23.31 Given the above, the Respondents unfairly took advantage of the residuary beneficiary by deriving a personal financial benefit from excessive payments to SLC from Trust funds, to the detriment of the residuary beneficiary, particularly without its knowledge. They therefore failed to achieve Outcome 11.1 of the Code.

Recklessness

23.32 Mr Bullock submitted that the Respondents knew that the price being charged by SLC for cleaning the Vault was around 60 per cent higher than those quoted by others for the same work. They knew that SLC was wholly owned by their spouses. Therefore, the Respondents were aware that they would directly or indirectly benefit from the increase in charges for cleaning the Vault to the detriment of the Trust, which paid the increased charges.

23.33 It must have been obvious to the Respondents that there was a risk that, given this conflict of interest, they would potentially be in breach of trust by engaging SLC. The Respondents took no steps to satisfy themselves of the position by, for example, seeking advice from Chancery Counsel, or obtaining the approval of the residuary beneficiary to the arrangement. It was unreasonable for the Respondents to risk being in breach of trust in these circumstances. Therefore, the First Respondent's conduct in taking such a risk was reckless.

Manifest Incompetence

23.34 In the alternative, by their own admission, the Respondents did not consider the issue of conflict of interest. Mr Hutchins stated that the issue of conflict of interest "did not

cross [his] mind" despite it being "obvious". Mr McGuire also confirmed that he did not identify a conflict of interest during the period when the payments were being made to SLC.

23.35 The risk that the Respondents would be in breach of trust in these circumstances, due to the conflict of interest, would be obvious to any competent solicitor. By failing to appreciate the risks of the obvious conflict of interest in this matter, the actions of the Respondents in preferring the interests of SLC over the beneficiary of the Trust, by making the payments to SLC, went beyond mere professional negligence into manifest incompetence.

The First Respondent's Case

23.36 Mr Hutchins admitted allegation 1.1, including that his conduct had either been reckless or in the alternative, manifestly incompetent.

The Second Respondent's Case

23.37 Mr McGuire accepted that he had not informed the RSPCA of his wife's interest in SLC, and that in failing to do so, he had breached Principle 6. He denied that he had preferred the interests of SLC over the interests of the Trust or the RSPCA. Mr McGuire also denied that he knew that the payments to SLC were excessive, or that his conduct was in breach of Principle 2 and failed to achieve Outcome 11.1 of the Code.

23.38 Mr McGuire explained that in January 1999 he visited the vault for the first time. It was clear that it had not been cleaned for some time. Quotes were sought from two stonemasons to repair and upgrade the monument and to provide regular maintenance. One such company stated that they did not provide ongoing maintenance so the other, Manor Memorials, was engaged on 2 February 1999. The quote received from them was for £3,100.00 to undertake the repair works, which were estimated to be completed by April 1999, and then £150 per month for the ongoing cleaning/maintenance.

23.39 The repair works were not in fact completed until April 2000, a delay of a year. The final bill was also more than the original estimate, being £3,371.00, and Manor Memorials then failed to undertake the ongoing cleaning/maintenance.

23.40 Another company was engaged in November 2000 to provide the ongoing maintenance but was soon unable to fulfil or continue its obligations.

23.41 Thereafter Mr Hutchins engaged Dennisons (a contractor local to where he lived) which was run by Mr Cresswell. Mr Hutchins had confirmed that his wife worked with Alan Cresswell. Dennisons started work in January 2001, and continued to undertake the regular cleaning work until the end of 2012.

23.42 In addition to Dennisons' cleaning of the grave, any necessary repairs would generally be undertaken by Mr Rogers, a qualified stonemason, which repairs included replacing the angel in 2004 and replacing scrolls and renewing lettering in 2005.

23.43 Originally payments were made to A Cresswell (Jan 01 - Aug 08) but were then made to M Hutchins (Mar 09 - Oct 11) and then to C Hutchins, which payments were shown on the accounts as to "Dennisons via C Hutchins" (Jul - Nov 12).

23.44 In 2009, Mr McGuire replaced Mr Wood as a trustee. In terms of the dynamics of running the Trust, Mr Hutchins, in an email dated 1 June 2012, stated that he "was the lead Trustee" and that Mr McGuire's role was to ensure that there was enough cash to cover the required expenditure.

23.45 Mr McGuire explained that in 2010 he approached more than 10 stonemasons to see if they could undertake the bi-monthly cleaning/maintenance. Those that replied said that they did not undertake such work and/or that every 2 weeks was excessive. The cemetery was also approached, but would only offer a cleaning visit that would take place on an ad hoc basis within a 4 to 6 week cycle, for £158 per visit. One other quote was obtained from Memorial Group Services, which Mr McGuire interpreted as being £3,000 for some initial repair works, plus an unspecified amount for the cleaning thereafter. Mr McGuire explained that he understood that the cleaning element was in addition to, rather than included in, the price quoted for the initial repair works.

23.46 Another attempt to engage a stonemason was made at the end of 2011/2012. Mr Rogers, who had undertaken specific repairs/maintenance whilst Dennisons dealt with the cleaning, was engaged to do the fortnightly cleaning and the fee negotiated was to be £150 per visit. He was paid for these cleaning visits in advance, but he proved unreliable, and so Dennisons resumed the cleaning service until being replaced in 2013 by SLC. This was a company set up by Mr Hutchins in the names of Mrs Hutchins and Mrs McGuire. They undertook the ongoing cleaning at a cost of £6,000 per year.

23.47 Mr McGuire explained that, prior to SLC undertaking the cleaning work, the fee being paid to Dennisons was £350 per visit. SLC charged £250 per visit. In evidence Mr McGuire stated that, in the circumstances, he did not consider that the fee being paid to SLC was excessive. The RSPCA were not informed of the fact that the cleaning was being undertaken by the trustees' wives as it was simply overlooked. There had been no conscious decision by Mr McGuire to conceal the position from the RSPCA.

23.48 Mr Williams KC submitted that for Mr McGuire to prefer the interests of SLC, there needed to be a positive decision on his part to do so. Allegation 2.1 was drafted in such a way that it could not be construed as the preference being a result of his conduct. It had been Mr McGuire's evidence that preferring the interests of SLC did not cross his mind. The Applicant had not provided any evidence to the contrary.

23.49 Allegation 2.1 was, in effect, an allegation that he had "ripped off" the Trust and the RSPCA by virtue of his wife (and Mr Hutchins' wife) charging too much for the cleaning work at the expense of the RSPCA. This matter did not fall into that category.

23.50 Mr Williams KC reminded the Tribunal of the amounts historically paid by the Trust for the cleaning works, and noted that SLC charged less than some others. Mr Williams KC noted that there was no criticism from the Applicant of the higher payments made. It was clear, from Mr McGuire's evidence, that those who had provided lower quotes either did not do the work, or were unable (or unwilling) to comply with the terms of the Trust.

23.51 The Tribunal, it was submitted, might consider that the fee paid to SLC was expensive, but that was not the allegation. For the allegation to be proved, the Tribunal would need to find both that the payments were excessive and that Mr McGuire knew that the payments were excessive. The Applicant, it was submitted, had sought to obtain evidence that the charges were unreasonable but had failed to do so. Consequently, the Applicant had failed to prove that Mr McGuire knew that SLC's charges were excessive.

23.52 Mr McGuire had quite properly conceded that he had failed to disclose his wife's interest in SLC to the RSPCA. However, that concession was not, of itself, sufficient to prove the allegation.

23.53 Given the lack of evidence, allegation 2.1 should be dismissed.

The Tribunal's Findings

The First Respondent

23.54 The Tribunal found allegation 1.1 proved on the facts and the evidence. The Tribunal found Mr Hutchins' admissions to have been properly made.

Recklessness

23.55 Mr Hutchins had admitted that he knew that SLC's charges were excessive and that he had failed to disclose his wife's interest in SLC to the RSPCA. Mr Hutchins was thus aware that he would benefit (as the spouse of Mrs Hutchins) from the excessive payments made from Trust funds to SLC. The Tribunal found that Mr Hutchins was aware that there was a risk that, in conducting himself in that way, he would be in breach of his duty as a trustee. It was not possible for a former solicitor of Mr Hutchins' experience not to be aware that benefiting financially from trust funds, to the detriment of the trust of which he was a trustee, could amount to a breach of his duty as a trustee. Taking such a risk, it was determined, was unreasonable in the circumstances. Accordingly, the Tribunal found that in conducting himself as he did, Mr Hutchins' conduct had been reckless. The Tribunal found that his admission had thus been properly made. Given its findings, and the fact that manifest incompetence was alleged in the alternative to recklessness, the Tribunal did not consider whether Mr Hutchins' conduct had been manifestly incompetent.

23.56 Accordingly, the Tribunal found allegation 1.1 proved, including that Mr Hutchins' conduct was reckless.

The Second Respondent

23.57 As detailed above, the Tribunal did not accept Mr Williams KC's submission that, in order for Mr McGuire to have preferred the interests of SLC over those of the Trust or the RSPCA, Mr McGuire needed to have made a conscious decision to do so. As a result of his conduct, the interests of SLC were, in fact, preferred over those of the Trust and the RSPCA.

23.58 Having determined that Mr McGuire had preferred the interests of SLC as alleged, the Tribunal then considered whether SLC's charges were excessive and whether Mr McGuire knew that.

23.59 The Tribunal noted that Mr McGuire had received a number of quotes from qualified stonemasons to carry out the regular cleaning of the Vault for approximately £150 per visit. Whilst the price that had been paid to Dennisons/Mr Cresswell for this work was £350 per visit, the Tribunal found that the agreement with Mr Cresswell was not an arm's length transaction; Mr Cresswell was known to Mr Hutchins and employed Mrs Hutchins to do the work. Indeed, for a significant period of time payment in respect of the Dennisons invoices was made direct to Mrs Hutchins, rather than Mr Cresswell. Mrs Hutchins was therefore benefiting from the payments made to Mr Cresswell for the work. Given that the Dennisons contract was not an arm's length contract, it could not be used as a comparator to assess the reasonableness of the SLC charges.

23.60 The Tribunal did not accept the submission that the Applicant had failed to show that the payments to SLC were excessive. The quotes provided by qualified stonemasons evidenced that a cost of £150 was reasonable for the work. SLC, who were not qualified stonemasons, and not specialist or commercial cleaners, had charged 60% more than the comparable quotes. Such a price, the Tribunal found, was excessive in the circumstances. The Tribunal did not accept the contention advanced by Mr Williams KC that, because the Applicant had not alleged misconduct in relation to the amount paid to Dennisons (which was higher than that paid to SLC), SLC's charges could not be regarded as excessive.

23.61 The Tribunal found that, in all the circumstances, the price paid to SLC was excessive. The Tribunal then considered whether Mr McGuire knew that the charges were excessive. The Tribunal accepted Mr McGuire's evidence that, in circumstances where SLC were being paid less than Dennisons, he did not consider the payment to be excessive. The allegation that he faced was that he <u>knew</u> that the payments were excessive, not that he <u>ought to have known</u>. Whilst Mr McGuire clearly ought to have known that the payments to SLC for cleaning the Vault were excessive, because he was aware of all of the matters which made the amount paid to Dennisons an inappropriate comparator, as set out at paragraph 23.59 above, the Applicant had provided no evidence to show that Mr McGuire did know them to be excessive. Accordingly, the allegation that Mr McGuire knew the payments to be excessive was dismissed.

23.62 The Tribunal found, indeed it was accepted, that Mr McGuire had failed to disclose his wife's interest in SLC to the RSPCA. Such conduct, the Tribunal found (and as had been admitted) failed to uphold the trust the public placed in solicitors and in the provision of legal services in breach of Principle 6.

23.63 As detailed, the Tribunal had found that Mr McGuire had, as a result of his conduct, preferred the interests of SLC and had failed to disclose his wife's interest in SLC to the RSPCA. The Tribunal accepted Mr McGuire's evidence that this was a culpable oversight on his part. It was noted that Mr McGuire had not attempted to conceal his wife's interest. The documentation in relation to SLC was contained on the Firm's server. Mr McGuire stated that if he had been seeking to conceal that information, he would not have left it on the server. Further, Mr McGuire stated that the Trust accounts

were sent to the RSPCA. Those accounts named both Mr & Mrs Hutchins as receiving payments.

23.64 The Tribunal did not accept that payments to 'M Hutchins' or 'C Hutchins' would necessarily alert the RSPCA to the fact that these payments were being made to Mr and/or Mrs Hutchins or that 'C Hutchins' was, in fact, a Trustee. The Tribunal also noted that Mr McGuire had not taken issue with Mr Hutchins use of opaque language when referring to SLC in correspondence passing between them, and had on occasion used such oblique references himself.

23.65 In order to prove that Mr McGuire's conduct lacked integrity, the Applicant was required to prove that his conduct had failed to adhere to the ethical standards of the profession. The Tribunal noted that in Wingate, Jackson LJ stated that: "Obviously, neither courts nor professional tribunals must set unrealistically high standards … the duty of integrity does not require professional people to be paragons of virtue." The Tribunal found that Mr McGuire's failure to inform the RSPCA of his wife's interest was an oversight. Whilst that oversight was culpable, the Tribunal did not find it sufficient to amount to a lack of integrity. Accordingly, the Tribunal dismissed that allegation that Mr McGuire's conduct lacked integrity in breach of Principle 2.

23.66 Nor was the Tribunal persuaded that the failure to notify the RSPCA of his wife's interest in SLC amounted to Mr McGuire taking unfair advantage of third parties. Accordingly, the Tribunal dismissed the allegation that Mr McGuire's conduct failed to achieve Outcome 11.1 as alleged.

Recklessness

23.67 For the reasons detailed above, the Tribunal accepted that Mr McGuire's failure to inform the RSPCA of his wife's interest in SLC was an oversight on his part. Accordingly, the Tribunal did not find that Mr McGuire had perceived the risk that he was acting in breach of his duties as a trustee, and then unreasonably taken that risk; Mr McGuire did not give it any thought. Accordingly, having failed to perceive the risk, Mr McGuire's conduct could not be reckless. The Tribunal thus dismissed the allegation that his conduct was reckless.

Manifest incompetence

23.68 The Tribunal considered the Judgment of Sir John Thomas in SRA v Iqbal [2012] EWHC 3251 (Admin):

> "It seems to me that trustworthiness also extends to those standards which the public are entitled to expect of a solicitor, including competence. If a solicitor exhibits manifest incompetence, as, in my judgement the Appellant did, then it is impossible to see how the public can have confidence in a person who has exhibited such incompetence. It is difficult to see how a profession such as the medical profession would countenance retaining someone as a doctor would had showed himself to be incompetent. It sees to me that the same must be true of the solicitors' profession. If in a course of conduct a person manifests incompetence, as in my judgement, the Appellant did, then he is not fit to be a solicitor. The only appropriate remedy is to remove him from the Roll. It must

be recalled that being a solicitor is not a right, but a privilege. The public is not only entitled to solicitors who behave with honesty and integrity, but solicitors in whom they can impose trust by reason of competence."

23.69 Whilst the Tribunal had found that Mr McGuire's failure to disclose his wife's interest in SLC was culpable, it did not consider that it amounted to incompetence that was so significant, that he was not fit to be a solicitor. Accordingly, the Tribunal did not find that Mr McGuire's misconduct was aggravated by being manifestly incompetent.

23.70 The Tribunal found allegation 2.1 proved to the extent that Mr McGuire had preferred the interests of SLC over those of the Trust and the RSPCA by causing or permitting payments to be made to SLC for services rendered, without disclosing his wife's interest to the RSPCA or the Trust. All other elements of allegation 2.1 were dismissed. Allegation 2.3 was dismissed.

24. **Allegation 1.2 - Between November 2012 and July 2019, whilst acting in that same capacity, Mr Hutchins claimed payments from the Trust totalling £36,652.50 in respect of professional charges which were excessive for the services which he had provided to the Trust. He thereby breached and/or failed to achieve: Principle 2 and/or Principle 6 of the Principles; and/or Outcome O(11.1) of the Code. Such conduct was alleged to be reckless or, in the alternative, manifestly incompetent (Allegation 1.3).**

Allegation 2.2 - Between November 2012 and July 2019, whilst acting in that same capacity, Mr McGuire authorised payments to Mr Hutchins from the Trust which he knew, or ought to have known were excessive for the services which Mr Hutchins had provided to the Trust. He thereby breached and/or failed to achieve: Principle 2 and/or Principle 6 of the Principles; and/or Outcome O(11.1) of the Code. Such conduct was alleged to be reckless or, in the alternative, manifestly incompetent (Allegation 2.3).

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

24.1 As outlined in paragraph 5(b) of the Will, it was a condition of the Will that a trustee was to visit the Vault at least once in every two months to ensure the cleaning/maintenance of the Vault was being carried out. Mr Hutchins was responsible for this task.

24.2 Between November 2012 and July 2019, Mr Hutchins received 46 payments from the Trust funds totalling £36,652.50 for his professional charges in respect of visiting the Vault to check that the cleaning and any necessary repairs had been undertaken. Mr McGuire authorised those payments.

24.3 Mr Hutchins resided in France at the time the payments were made to him for his inspection visits. He stated that he travelled back to the UK on each occasion that he inspected the Vault.

24.4 A sample of the invoices Mr Hutchins submitted for his professional charges for visiting the Vault gave an address in Warwickshire. As mentioned above, Mr Hutchins resided in France at the time. Mr Hutchins stated that he used his mother's address on the invoices.

24.5 Mr Hutchins claimed three hours of time for each visit to the Vault. He originally charged £200.00 per hour, and subsequently increased this rate to £250.00 per hour in 2014 and £300.00 per hour in 2016.

24.6 At the time the professional charges were incurred, the HM Courts and Tribunal Service's guideline hourly rate for a solicitor with Mr Hutchins's experience in the London E13 postcode was £229.00 to £267.00 per hour.

24.7 In Mr Hutchins's representations in response to the SRA's notice recommending that his conduct be referred to the SDT, he wrote:

> "My hourly rate has increased several times since I established the firm which I now run. My rate for private work is, currently £300 per hour and has been, since 2016. As most of the work I carry out is low grade work through a freelance site, I charge a lesser rate for that type of work. If asked to deal with more complicated work, I charge the higher fee. I believe that the last time I charged at this rate was about 18 months ago, for the sale of a medical practice."

24.8 Mr Adcock's expert opinion, as set out in his report, was that the charges of trustees should be reasonable and, where practical, a less costly arrangement should be made. In particular, work could and should be delegated to other individuals when this would reduce costs. Mr Bullock submitted that Mr Hutchins's professional charges for visiting the Vault were excessive because:

- Mr Hutchins resided in France at the time, and therefore needed to travel back to the UK to visit the Vault. Mr McGuire resided in the UK, approximately 45 minutes away from the Vault. If the service of visiting the Vault had been sourced more locally, this would have reduced the amount of time which would be charged for travel.

- The task did not involve legal work, and therefore did not need to be done by a person with legal expertise, particularly someone with the experience of Mr Hutchins. It merely involved checking that the Vault was in a reasonable state, and could have been conducted by a reliable individual who would not charge such a high professional rate for their time.

24.9 Therefore, it was submitted, the task of visiting the Vault should have been delegated to a suitable local person who would not have charged such high professional rates. Thus, the charges relating to inspecting the Vault were excessive.

24.10 Mr Bullock submitted that, while Mr Hutchins was no longer practicing as a solicitor when claiming the payments referred to above, his professional charges were inextricably linked to his status as a solicitor. He had been instructed to draft the Will which created the Trust in his capacity as a solicitor, and was appointed as a Trustee because of his status as a solicitor. The Will did not appoint Mr Hutchins by name, but

the partners in his firm, or any successor firm. Mr Hutchins was therefore only able to claim payment for his inspection visits because of his status as a former solicitor and professional trustee.

24.11 The payments claimed by Mr Hutchins for professional charges for his work in inspecting the Vault were excessive. Mr Hutchins had stated that the rate used for these inspection visits was the higher rate that he used for more complex work, including such matters as advising on the sale of a medical practice. That rate was more than the HM Courts and Tribunal Service's guideline hourly rate for a solicitor with Mr Hutchins' experience. Further, the task of inspecting the Vault was not complex work and required no legal expertise. Therefore, his use of the higher "complex work" rate was not appropriate in the circumstances.

24.12 Mr Hutchins travelled from France to inspect the Vault and charged for 3 hours of time per visit. This included travelling time within the UK. Mr McGuire lived approximately 45 minutes from the Vault, and therefore would only have needed to charge for around 1.5 to 2 hours of time for the same work. In any event, the task required no legal expertise, and could have been appropriately delegated to a non-qualified individual, based locally to the Vault, who would have charged a significantly lower hourly rate for their services. The task of inspecting the Vault could, and the Applicant submitted should, have been delegated to either Mr McGuire or another reliable individual who lived locally.

24.13 In light of the above, the payments claimed by Mr Hutchins for professional charges were excessive.

24.14 Mr Bullock submitted that a solicitor acting with integrity would not claim payments for professional charges which were excessive. They would take care to ensure that any renumeration received for work connected to their practice as a solicitor was fair. Mr Hutchins therefore breached Principle 2 of the Principles.

24.15 His conduct also amounted to a breach of the requirement to behave in a way which maintained the trust placed by the public in him and in the provision of legal services. Mr Hutchins claimed payments for professional charges which were excessive. Public confidence in solicitors and in the provision of legal services was likely to be undermined by a solicitor seeking excessive professional charges for his services, particularly in circumstances such as these where there was little oversight of the professional charges claimed. Accordingly, Mr Hutchins breached Principle 6 of the Principles.

24.16 Additionally, by using his position as trustee for his own personal gain, by claiming payment for excessive professional charges to which he was not entitled, Mr Hutchins took unfair advantage of the residuary beneficiary. He therefore failed to achieve Outcome 11.1 of the Code.

24.17 With regard to Mr McGuire, he was aware when authorising the payments to Mr Hutchins for services he provided to the Trust:

- of the hourly rate and number of hours Mr Hutchins used to calculate his professional charges for the services he provided to the Trust.

- where he and Mr Hutchins lived, and their respective proximity to the Vault.

- of the nature of the services provided, in that they were not complex and involved no legal skill.

- of the potential option to delegate the services Mr Hutchins was providing in visiting the Vault.

24.18 Mr Bullock submitted that given the above, Mr McGuire knew or ought to have known that the payments he authorised to Mr Hutchins for visiting the Vault were excessive.

24.19 Such conduct by Mr McGuire lacked integrity. A solicitor acting with integrity would not knowingly authorise payments for professional charges which were excessive. They would take care to ensure that any payments authorised from money belonging to a client were appropriate, in particular when such payments are to a fellow trustee. Mr McGuire therefore breached Principle 2 of the Principles.

24.20 Such conduct also amounted to a breach of the requirement to behave in a way which maintained the trust placed by the public in them and in the provision of legal services. Mr McGuire authorised payments for professional charges which were excessive. Public confidence in solicitors and in the provision of legal services was likely to be undermined by a solicitor authorising the excessive professional charges of a fellow trustee, particularly in circumstances such as these where there was little oversight of the professional charges claimed. Mr McGuire therefore breached Principle 6 of the Principles.

24.21 Additionally, by using his position as trustee to authorise payments to Mr Hutchins which he knew were excessive and so unfairly benefited his co-trustee, Mr McGuire took unfair advantage of the residuary beneficiary. He therefore failed to achieve Outcome 11.1 of the Code.

Recklessness

24.22 Mr Hutchins knew the hourly rates he charged the Trust for his professional services and the amount of time he claimed. He knew that Mr McGuire could also inspect the Vault under the terms of the Trust, and that Mr McGuire lived 45 minutes from the Vault. He must have also realised that it may be possible to delegate the task of inspecting the Vault to another individual who was based locally to the Vault and who would charge a significantly lower hourly rate for their services.

24.23 Given his knowledge of how his professional charges had been calculated, Mr Hutchins ought to have been alert to the real risk that his professional charges were excessive. In disregard of that risk, Mr Hutchins claimed professional charges at his highest hourly rate and for 3 hours. It was unreasonable for him to take that risk in the circumstances. By doing so, his conduct was reckless.

24.24 Mr McGuire knew all the relevant information about Mr Hutchins' professional charges for the services he provided to the Trust in inspecting the Vault. He knew the hourly rate and time claimed by Mr Hutchins, the nature of the services provided, and the travel distances involved. He also must have known that the rate charged from 2016 was

significantly higher than the standard hourly rate for the area in which Mr Hutchins was providing the services. He should also have appreciated that the services provided could more appropriately be delegated to a less experienced, and so cheaper, fee earner. Given this, there was an obvious risk that by authorising the payments to Mr Hutchins, Mr McGuire was authorising payments which were excessive for the services that Mr Hutchins provided. Mr Bullock submitted that it was unreasonable for Mr McGuire to take this risk in the circumstances, and his conduct in authorising the payments was therefore reckless.

Manifest Incompetence

24.25 In the alternative, the risk that the professional charges being claimed by Mr Hutchins were potentially excessive would be obvious to any competent solicitor, and any competent solicitor would recognise that this risked placing the trustees in breach of trust. By failing to recognise that the professional charges were likely to be considered excessive and/or the obvious risks associated with this, the Respondents' conduct went beyond mere professional negligence into manifest incompetence.

The First Respondent's Case

24.26 Mr Hutchins admitted allegation 1.2, including that his conduct had either been reckless or in the alternative, manifestly incompetent.

The Second Respondent's Case

24.27 Mr McGuire denied allegation 2.2.

24.28 Mr McGuire explained that the terms of the Trust required the trustees to visit the Vault at least once every 2 months. For the majority of the time, Mr Hutchins attended once every two months. On occasion, Mr Hutchins had visited more often, but this was caused by the contractors having failed to attend, or having failed to conduct the required work to an acceptable standard, requiring Mr Hutchins to check on whether the work had subsequently been undertaken to an acceptable standard.

24.29 Mr McGuire asserted that, as the terms of the Trust required a Trustee to carry out the inspection visits, they could not be delegated to a junior member of staff. Further, while he lived 45 minutes from the Vault, he would have charged his attendance at his normal hourly rate (as his employer would have required). His hourly rate at the time was higher than that charged by Mr Hutchins, and so would have resulted in a higher overall charge to the Trust. Further, the 45 minute estimate was for travel on a Sunday when there was little traffic. For Mr McGuire to have attended during normal working hours, his travel time would have been significantly longer.

24.30 Mr Williams KC noted that, notwithstanding his submission that there was no evidence that Mr McGuire had authorised the payments made to Mr Hutchins, Mr Bullock had not asked Mr McGuire during his cross-examination whether he had authorised those payments. In those circumstances, the suggestion that it was inherently probable that Mr McGuire had done so was insufficient for the Tribunal to find, as a matter of fact, that this was the case in the absence of any evidence.

24.31 As to the assertion that Mr McGuire could have delegated the task of visiting the Vault to a junior, the terms of the Trust were clear; a trustee was required to carry out the inspection visits. In the circumstances, Mr McGuire could not be criticised for following the terms of the Trust and the testator's wishes. Further, as Mr McGuire stated in evidence, the charge to the Trust would have been higher had Mr McGuire visited instead of Mr Hutchins.

24.32 Mr Williams KC repeated the submissions made in support of his submission of no case to answer as regards whether Mr Hutchins' charges were, in fact, excessive.

24.33 Mr Williams KC submitted that the Applicant had failed to evidence that Mr McGuire had committed misconduct as alleged. Accordingly, allegation 2.2 should be dismissed.

The Tribunal's Findings

The First Respondent

24.34 The Tribunal found allegation 1.2 proved on the facts and the evidence. The Tribunal found Mr Hutchins' admissions to have been properly made.

Recklessness

24.35 Mr Hutchins had admitted that he knew that his charges were excessive. Indeed, he had stated that the rate he charged was that which applied to complex work. He knew that this was not complex work. The Tribunal determined that, given he was aware that his charges were excessive, Mr Hutchins must have been aware that to charge at the rate he did risked the Trust paying more than was necessary or appropriate for the services he provided. The Tribunal found that it was unreasonable for Mr Hutchins to have taken such a known risk. The Tribunal therefore found that in conducting himself as he did, Mr Hutchins had been reckless. Having determined that the conduct was reckless, the Tribunal did not consider whether Mr Hutchins conduct also amounted to manifest incompetence, that being alleged in the alternative.

24.36 Accordingly, the Tribunal found allegation 1.2 proved, including that Mr Hutchins' conduct was aggravated by recklessness.

The Second Respondent

24.37 The Tribunal firstly considered whether the Applicant had proved, to the relevant standard, that Mr McGuire had authorised the payments made to Mr Hutchins. The Applicant, it was determined, was on notice that authorisation was an issue. This was clear from the questions put to Ms Taylor by Mr Williams KC, and was made plainer in the submissions made by Mr Williams KC in his half time application regarding the lack of evidence adduced by the Applicant.

24.38 Notwithstanding that this issue was clearly flagged, and notwithstanding that there were documents within the bundle which pointed to such authorisation by Mr McGuire, Mr Bullock did not ask Mr McGuire whether he had authorised the payments.

24.39 The Tribunal considered that, in all the circumstances, Mr Bullock's failure to ask Mr McGuire whether he had authorised the payments, or to take him to any documents on which the Applicant relied to evidence this, was fatal to allegation 2.2. It was trite law that matters in dispute should be put to a witness in cross-examination; this had not happened.

24.40 The Tribunal thus determined the Applicant had failed to prove, to the requisite standard, that Mr McGuire had, in fact, authorised the payments. Accordingly, the Tribunal found allegation 2.2 not proved and dismissed that allegation.

Previous Disciplinary Matters

25. Both Respondents had appeared before the Tribunal in March 2010 (Case No 10233-2009). The allegations they faced were that:

> "(a) contrary to Rule 7 of the of the Solicitors Accounts Rules 1998 ("the 1998 Rules") they failed to remedy breaches promptly upon discovery.
>
> (b) they withdrew and/or transferred monies from client account other than as permitted by Rule 22 of the 1998 Rules.
>
> (c) they acted contrary to Rules 1(a), (c) and (d) of the Solicitors Practice Rules 1990 and/or Rule 7 of the 1998 Rules in that, they utilised monies raised from the sale of their head office to repay bank loans and to reduce the office account overdraft, in preference to their financial liabilities and responsibilities to clients, and in circumstances when such funds could and should have been used to rectify and/or reduce the shortage on client account.
>
> (d) they failed to comply with a direction of an Adjudication Panel dated 14th December 2005."

26. Both Respondents admitted those allegations. Mr Hutchins was ordered to pay a fine in the sum of £20,000 and costs in the sum of 40% of £15,000.

27. Mr McGuire was ordered to pay a fine in the sum of £15,000 and costs in the sum of 30% of £15,000.

Mitigation

<u>The First Respondent</u>

28. Mr Hutchins submitted that the Tribunal did not know him. He had been portrayed as a Svengali like character who had tried to push Mr McGuire into an unacceptable position. This was not the case; as Mr McGuire stated in his evidence, they were equal partners and Mr McGuire would have "pushed back" on any matters where he did not agree with Mr Hutchins.

29. Mr Hutchins submitted that whilst he considered himself to be a dominant character, he was not dishonest or devious. Mr Hutchins stated that he was not rich in money and did not have vast savings. He lived a modest life, but wanted for very little.

30. It had been suggested by Mr Bullock that Mr Hutchins had claimed for 2 hours travel and 1 hour attendance when visiting the vault. This was incorrect. Mr Hutchins clarified that the majority of his claim related to travel time; the inspection of the vault took no more than 5 minutes. Notwithstanding that he had travelled from France to undertake the inspections, Mr Hutchins only claimed for the travel time from South Croydon. His actual travelling time for each inspection visit was approximately 7 hours. He did not charge for this as he considered that it would not be fair for him to charge the Trust for travel from France. Mr Hutchins submitted that if he was trying to manipulate the payments for his own benefit, he would have charged for the whole of the time he spent travelling. Mr Hutchins confirmed that whilst he charged more than he should have, he could have charged more than he did.

31. As to the suggestion that he had sacked Mr Rogers so that he could re-employ Dennisons, this was not accepted. Mr Hutchins explained that he had sacked Mr Rogers as his workmanship was lacking. Mr Rogers had been paid upfront but had not done the necessary work.

32. Both he and Mr McGuire had approached the RSPCA in the hope of divesting themselves of the Trust, but the RSPCA were not interested.

33. Mr Hutchins explained that when he received the email dated 15 October 2020 from the Firm, he took the criticisms made of his conduct to be complete evidence of breaches on his part. He did not have the resources to instruct Counsel to check the assertions that he had acted in breach of trust. From his perspective he considered that the best course of action was to throw himself on the mercy of the Tribunal.

34. As regards his admission to breaching Principle 2, he asked the Tribunal to take account of the fact that he was usually a man of integrity, and this was a rare lapse.

35. With regard to his previous appearance before the Tribunal in 2010, and the findings of misconduct against him, Mr Hutchins submitted that these were the result of fraud by a partner in that firm. He and the other partners had reported the matter to the SRA and to the police. He had then done all that he could to save that firm, but to no avail.

36. Mr Hutchins submitted that there was no sanction that the Tribunal could impose that would be worse than that which he imposed on himself. He had been stupid, careless and reckless. He was 72 years old and would not be able to remedy his conduct. He apologised to the RSPCA, the Tribunal and the SRA. Mr Hutchins submitted that the appropriate sanction would be to remove him from practise.

<u>The Second Respondent</u>

37. Mr Williams KC submitted that Mr McGuire had been a solicitor for 20 years. He was employed as a solicitor working solely in conveyancing. He was conscientious, fair and had a firm grasp of detail. He never intended to be a trustee again.

38. The Tribunal had found the allegation that Mr McGuire knew that the payments made to SLC were excessive, not proved. Mr McGuire was an honest solicitor and a man of integrity. He accepted that in hindsight he should have contacted cleaning companies and obtained quotes from them for the cleaning of the vault before approving the charges raised by SLC.

39. Mr McGuire had fully co-operated with the SRA, both during the investigation and throughout the proceedings before the Tribunal. The RSPCA had been provided with the full facts by the provision of the Trust's accounts. The RSPCA had no issue with the payments made to SLC, and had made no report to the SRA. Whilst this did not diminish Mr McGuire's duties, it was a matter that the Tribunal should take into account when considering reputational damage and harm.

40. Mr Williams KC noted that there was no suggestion that the wives were not permitted to do the work; indeed, this had been confirmed by Mr Adcock in his oral evidence. There had been 22 attempts (including the attempts made by the SRA) to put evidence before the Tribunal of what would be a reasonable charge for the cleaning work, but there had been no such evidence obtained. Mr McGuire was of the view that, in all the circumstances, the charges made by SLC were reasonable.

41. Mr McGuire had never breached the terms of the Trust. He remained a trustee as Anthony Gold had thus far not replaced him. This was presumably a reflection of how unusual this Trust was, and the difficulty that any potential trustee would have in fulfilling its terms.

42. Mr McGuire, it was submitted, had not been motivated by personal gain. He had been fully contrite and had not shirked from any of the facts. It would have been easy for Mr McGuire to attack Mr Hutchins; it had been to Mr McGuire's credit that he had not done so. Mr McGuire had accepted responsibility for his own conduct, and had not sought to blame anyone else.

43. Mr McGuire understood his regulatory obligations and did not present a risk of future harm to the public or the reputation of the profession.

44. With regard to the previous matter before the Tribunal in 2010, the conduct complained of had taken place almost 20 years ago. A partner in the firm had stolen a significant amount of money from the firm's client account. That partner had been struck off by the Tribunal in separate proceedings. Mr McGuire's misconduct had arisen from the fraud perpetuated on the firm.

45. Mr Williams KC submitted that, given the Tribunal's findings, the Tribunal's sanction should go no further than a financial penalty.

Sanction

46. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – June 2022). 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.

The First Respondent

47. The Tribunal found that Mr Hutchins was motivated by his desire to make money for both himself and his wife from his position as a trustee of the Trust. His actions were planned. He had acted in breach of the trust placed in him as a trustee to always act in the best interests of the Trust. He had described himself as the "lead trustee", notwithstanding that there could be no lead trustee. He had extensive experience as a solicitor, and had direct control of the circumstances giving rise to his misconduct. He had caused harm to the RSPCA as, by knowingly charging excessive amounts both for his own professional fees and for the work done by his wife in cleaning the Vault, he had improperly diminished the funds within the Trust. Such conduct also caused harm to the reputation of the profession, as members of the public would be concerned to know that the solicitor who had drafted the Trust document had gone on to abuse his position as a trustee for personal gain.

48. Mr Hutchins' misconduct was aggravated by the abuse of his position of power and authority. His misconduct was deliberate and had continued over a period of time. He had sought, in his documentary evidence to blame Mr McGuire, on the basis that Mr McGuire had failed to provide him with proper advice as to his responsibilities as a trustee. The Tribunal did not accept that assertion. Mr Hutchins was far more experienced than Mr McGuire both in terms of his experience as a solicitor generally, and his experience in probate and trust law. Moreover, there was very little evidence of Mr Hutchins ever asking for advice on any of the matters in respect of which his conduct was criticised. He had attempted to conceal his misconduct by sending deliberately opaque invoices which did not identify who they were from, did not give an accurate address and, whilst they claimed for time spent, did not particularise how the claimed time had been spent. Moreover, he had tried to conceal his wife's involvement in SLC by corresponding with Mr McGuire in terms that suggested it was not a connected company The Tribunal found that Mr Hutchins knew that his conduct was in material breach of his obligation to protect the public and the reputation of the profession. His misconduct was further aggravated by his previous appearance before the Tribunal.

49. In mitigation, Mr Hutchins had shown some insight into his misconduct during the course of the proceedings. He had made full admissions to all of the allegations made.

50. The Tribunal found that the seriousness of the misconduct was such that sanctions of No Order, a Reprimand and a Fine were disproportionate to the misconduct. Mr Hutchins had submitted that he considered that an appropriate sanction would be for his temporary or permanent removal from the Roll. The Tribunal determined that there was a need to protect the public and the reputation of the profession from future harm by Mr Hutchins, but that neither of those required Mr Hutchins to be permanently removed from practice. The Tribunal determined that the appropriate and proportionate sanction was to suspend Mr Hutchins from practice for a period of 2 years.

The Second Respondent

51. The Tribunal did not find that Mr McGuire had been motivated to commit misconduct. His misconduct had arisen as a result of his culpable error in failing to disclose his wife's interest in SLC to the RSPCA. That error meant that he had breached the trust placed in him as a Trustee. He had failed to properly review his position as a Trustee

when he allowed his wife to earn monies from the Trust without disclosing that fact to the RSPCA. Whilst Mr McGuire was an experienced solicitor at the time, he was not as experienced in trust law as Mr Hutchins. He had caused harm to the RSPCA as he had deprived the RSPCA of the opportunity to object in principle to the payments being made to SLC. The Tribunal found that whilst, the harm had not been intended, it was foreseeable. His misconduct was aggravated by the unintentional abuse of his position of power and authority. His misconduct was not deliberate, but it had continued over a period of time, during which he had failed to reconsider his position. His misconduct was further aggravated by his previous appearance before the Tribunal. In both matters, Mr McGuire had failed to pay proper regard to financial affairs.

52. In mitigation, Mr McGuire had co-operated fully with the Applicant both during the investigation and the proceedings. He had made appropriate admissions at an early stage. The Tribunal considered that the misconduct was too serious for sanctions such as No Order or a Reprimand to be appropriate. The Tribunal did not consider that his misconduct was so serious that he should be removed from practice. It was determined that the appropriate and proportionate sanction was a financial penalty. When taking into account the seriousness of the misconduct, the harm caused and the aggravating and mitigating factors, the Tribunal assessed Mr McGuire's misconduct as more serious such that it fell at the top end of the Tribunal's Indicative Fine Band level 3. The Tribunal determined that a fine in the sum of £15,000 was proportionate and adequately reflected the seriousness of his misconduct.

Costs

53. Mr Bullock made an application for costs in the sum of £32,353.10. This sum took into account the reduced hearing time, the matter originally being listed for 5 days. It was submitted that costs should be apportioned between Mr Hutchins and Mr McGuire on the basis of their respective culpability. Mr Bullock noted that, had it not been for Mr Hutchins, Mr McGuire would not have appeared at the Tribunal. It was therefore appropriate for Mr Hutchins to bear the greater part of the costs.

54. As regards the matters that were found not proved against Mr McGuire, the case had been properly brought. Indeed, not only had the case been certified by the Tribunal, but the submission of no case to answer had been unsuccessful.

55. Mr Hutchins submitted that he had made full admissions, and had never resiled from them. He had done all that he could to keep costs in the matter to a minimum. He left it to the Tribunal to determine whether he should pay costs for the hearing in circumstances where he had made full admissions at the outset.

56. Mr Williams KC agreed with the Applicant that costs should be apportioned between the Respondents, with Mr Hutchins being liable for the greater share. The Tribunal should take into account the matters that had been found not proved against Mr McGuire when assessing his liability for costs. With regard to the Applicant's Costs Schedule, Mr Williams KC submitted that Ms Whewell's hourly rate was too high, given that it was the same as that charged for Mr Bullock when Ms Whewell was infinitely less experienced. Further, she had spent too much time in the preparation of the case, such that there should be a reduction in the number of hours claimed for. The costs claimed for Mr Adcock should not be charged; his evidence did not assist the

Tribunal in circumstances where the points of law he made had been agreed by the parties from the outset.

57. In reply, Mr Bullock submitted that, as regards Mr Hutchins, his representations at the investigation stage were a full and lengthy denial of all allegations. Further, whilst he had accepted on day one of the substantive hearing that his conduct had been reckless, his previous admission on recklessness had been equivocal, as he had left the matter to the Tribunal to decide. This required a full investigation of the evidence. Accordingly, Mr Hutchins should not receive any discount in costs for early admissions.

58. As regards the hourly rate charged by Ms Whewell, this was a reasoned figure that represented the costs to the SRA of employment of those in its legal team. The SRA charged the same rate for all its staff, as the rate was a per capita rate and was not based on seniority. Accordingly, there should be no adjustment to the rate charged.

59. The Tribunal did not consider that the hourly rate claimed for Ms Whewell should be judged as inappropriate by reference to that claimed for Mr Bullock, given that the rate was the same for all grades of staff. However, it considered that the time spent by Ms Whewell was excessive. Accordingly, it reduced the costs to reflect a reasonable amount of time for preparation. The Tribunal considered that costs in the total sum of £30,000 reflected an adequate amount for the reasonable preparation and presentation of the case. The Tribunal found that Mr Hutchins was more culpable than Mr McGuire. It apportioned the costs 75% to Mr Hutchins and 25% to Mr McGuire to reflect their respective culpability.

60. The Tribunal then considered the means of the First Respondent. The Tribunal was mindful of the findings in Barnes v SRA [2022] EWHC 677 (Admin) in which it was held that no Order for costs should be made where it was unlikely, on any reasonable assessment of a Respondent's current or future means, that he would ever be able to satisfy the Order. The Tribunal noted that Mr Hutchins had limited means. He asserted that he had no equity in his property as it was held in trust for his adult children. He had however produced his latest UK tax return, which showed that he continued to receive income from his businesses and pensions. Having determined that the appropriate Order for costs as against Mr Hutchins was £22,500, the Tribunal reduced those costs by 50% to take account of his limited means.

61. The Tribunal did not consider that it was appropriate, in the circumstances of this case, to reduce the costs for which it had found Mr McGuire should be responsible notwithstanding that he had succeeded in part on the allegations. The Tribunal determined that the appropriate order for costs for Mr McGuire was £7,500. The Tribunal then considered Mr McGuire's means (taking into account the fine that was to be imposed). The Tribunal noted that Mr McGuire had more than sufficient equity in his property to satisfy the proposed Order for costs and the fine. In the circumstances, the Tribunal determined that it was not appropriate to reduce the costs Order on account of Mr McGuire's means.

Statement of Full Order

62. The Tribunal Ordered that the Respondent, CHRISTOPHER FREDERICK ORFORD HUTCHINS, solicitor, be suspended from practice as a solicitor for the period of 2 years to commence on the **27th day of April 2023** and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,250.00.

63. The Tribunal Ordered that the Respondent, SPENCER PAUL MCGUIRE, solicitor, do pay a fine of £15,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,500.00.

Dated this 24th day of May 2023
On behalf of the Tribunal

A Horne
Chair