

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11779-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JOANNE POWER

Respondent

Before:

Mr R. Nicholas (in the chair)

Mrs C. Evans

Mrs N. Chavda

Date of Hearing: 24 -25 September 2018

Appearances

Nimi Bruce barrister of Capsticks Solicitors LLP of 1 St George's Road, London, SW19 4DR, for the Applicant

The Respondent did not attend and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement originally dated 29 January 2018 and amended on 23 April 2018. The allegations were that while in practice as a Sole Principal at Diamonds Legal LLP (“the Firm”):
 - 1.1 On various dates between March 2011 and August 2017 failed to provide adequate or accurate information to clients about likely overall costs at the outset of matters or throughout the conduct of them where required, and thereby breached all or any of Principles 2, 5 and 6 of the SRA Principles 2011 (“the Principles”) and failed to achieve Outcome 1.13 of the SRA Code of Conduct 2011 (“SCC”).
 - 1.2 On various dates between March 2011 and August 2017 failed to provide adequate or accurate information to clients about the basis of calculation of costs where required and thereby breached all or any of Principles 2, 5 and 6 of the Principles and failed to achieve Outcome 1.13 of the SCC.
 - 1.3 On various dates between March 2011 and August 2017 transferred sums from the Firm’s Client Account to Office Account in respect of her fees otherwise than in accordance with Rules 17.2 and/or 20.1 of the SRA Accounts Rules 2011 (“SAR”), in that:
 - 1.3.1 sums transferred were not properly required in payment of the Respondent’s fees; and/or
 - 1.3.2 a bill of costs or other written notification of the costs incurred had not been given or sent where required;and in doing so breached Principles 2, 5 and 6 of the Principles.
 - 1.4 On various dates between March 2011 and August 2017 made transfers from Client Account to Office Account of sums which were in excess of those which might properly be charged for the work undertaken, which did not reflect the work actually undertaken, and which were not fair and reasonable, and thereby breached all or any of Principles 2 and 6 of the Principles.
 - 1.5 On various dates between 2013 and 2016, provided misleading information to beneficiaries as to the reasons for delay in distributing the proceeds of an estate and thereby breached all or any of Principles 2 and 6 of the Principles.
 - 1.6 On unknown dates between July 2015 and August 2017 occupied, for her personal use and without the knowledge or consent of her client, premises acquired for investment purposes on behalf of an estate client, and thereby breached all or any of Principles 2, 4, 6 and 10 of the Principles.
2. It was the Applicant’s case that the Respondent acted dishonestly in respect of the matters set out at paragraph 1 above or any of them. Dishonesty was not an

essential ingredient to the allegations at 1 above and it was open to the Tribunal to find those allegations proved with or without a finding of dishonesty.

Documents

3. The Tribunal considered all the documents in the case which included:

Applicant

- Amended Rule 5(2) Statement dated 23 August 2018 with exhibit “DWRP1”
- Witness Statement of Mr Gabriel Grant dated 18 September 2017
- Witness Statement of Mr Sean Grehan, Forensic Investigation Officer (“FIO”) dated 21 August 2018 and Forensic Investigation Report (“FIR”) dated 7 July 2017
- Witness Statement of Ms NF dated 25 September 2017
- Witness Statement of Ms EB dated 31 May 2017
- Undated letter from Mrs MP to the Applicant in respect of Client M’s estate.
- The Applicant’s Reply to the Respondent’s Answer dated 28 March 2018.
- The Applicant’s Schedule of Costs dated 29 January 2018 and 17 September 2018.

Respondent

- Respondent’s Answer to the Rule 5 Statement dated 19 March 2018
- Respondent’s Letter to the Applicant dated 20 September 2018
- Report of Dr Woolfson dated 17 July 2018

Preliminary Matters – Application to Proceed in the absence of the Respondent

The Applicant’s Submissions

4. On 20 September 2018 the Respondent contacted the Applicant and said that she did not feel able to attend the hearing. The Applicant applied to proceed in the absence of the Respondent. According to Ms Bruce the Respondent was aware of the hearing and had quite clearly voluntarily absented herself. The Respondent had not sought an adjournment and it was in the public interest for the hearing to proceed. The allegations were very serious.

The Respondent’s Position

5. In her letter to the Applicant dated 20 September 2018 the Respondent said that she did not feel able to attend the hearing and enclosed the report of Dr Woolfson. The Respondent did not seek an adjournment and anticipated that she would be struck-off.

The Tribunal’s Decision

6. The Tribunal was satisfied that the Respondent had been served with notice of the hearing. Under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 (“the SDPR”) the Tribunal had the power, if satisfied service had been effected, to hear and determine the application in the Respondent’s absence.

7. The Tribunal considered the factors set out in R v Jones [2002] UKHL 5 in respect of what should be considered when deciding whether or not to exercise the discretion to proceed in the absence of the Respondent. The Tribunal also considered the case of General Medical Council v Adeogba [2016] EWCA Civ 162 which applied the case of Jones in a regulatory context.
8. The Tribunal decided that it should exercise its power under Rule 16(2) to hear and determine the application in the Respondent's absence. The Tribunal concluded that the Respondent had voluntarily absented herself from the hearing and was unlikely to attend a future hearing if the matter were to be adjourned. In all the circumstances, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence.

Factual Background

9. The Respondent was admitted to the Roll on 16 September 2002. She was at all material times up to 14 August 2017 a Recognised Sole Practitioner at the Firm, and the Firm's Compliance Officer for Finance and Administration ("COFA") and Compliance Officer for Legal Practice ("COLP").
10. The Respondent's Practising Certificate was suspended when on 14 August 2017 an Adjudication Panel of the SRA determined that the SRA should intervene into the practices of the Respondent and the Firm ("the Intervention"). The Firm was, until the Intervention, a recognised body with a registered office in Buckhurst Hill, Essex.
11. The Applicant undertook an investigation into the Respondent and the Firm commencing in February 2017, during the course of which the Respondent was interviewed. The investigation was triggered by a qualified Accountants Report. Concerns had also been raised with the Applicant as to the Respondent's conduct of a probate file, which was examined during the course of the investigation. During the course of its investigation, the SRA identified concerns about the conduct of other probate files.
12. On 13 June 2017 the Respondent was interviewed by the SRA. On 14 June 2017 the Respondent was asked to respond to queries raised by the FIO regarding Client M.

Witnesses

13. The FIO gave brief oral evidence. He told the Tribunal that the SRA had received information about the Respondent's practice which had resulted in an investigation. The FIO had been accompanied on his visit by a new forensic investigation officer. The FIO had given the client ledger to the new FIO to review and that FIO had identified that something was not right.
14. In terms of the early morning visit when the FIO had found the Respondent at the property the fact that the legacy payments had not been made before the property was purchased with the residuary of the estate caught the FIO's attention. This was not what he would have expected to see. The FIO wondered if the property was being rented out privately and the monies not being paid to the estate. He decided to visit.

He had not intended to arrive so early but the traffic was light. He was parked opposite the property when the Respondent knocked on his car window. He had not recognised when she had come out the property with her dogs. He was waiting in the car until it was a more reasonable hour to knock on the door of the property. The FIO could not say whether or not the value of the property had increased.

15. Mr Grant's witness statement dated 18 September 2017 was before the Tribunal. There was mention of an unrelated matter in paragraph 12 of that witness statement. The Tribunal put the contents of that paragraph from its mind as it was not relevant to the allegations before it. Mr Grant was willing to attend the Tribunal and give evidence and to be cross-examined on his evidence.
16. Ms NF's witness statement dated 25 September 2017 was before the Tribunal. The Tribunal was mindful that there was a conflict of evidence between the Respondent's evidence and Ms NF's evidence. At the time the statement was made Ms NF was the joint tenant of the property. Ms NF was willing to attend the Tribunal and give evidence and to be cross-examined on her evidence.
17. There was a witness statement of Ms EB dated 31 May 2017 before the Tribunal. This contained a statement of truth and Ms EB had said in the statement that she was willing to attend the Tribunal to give evidence. The Tribunal gave all three witness statements weight in terms of their evidential value.
18. There was evidence before the Tribunal from Mrs MP (the mother of two beneficiaries of the estate to withhold information from other beneficiaries about entitlements to receipt of funds from the estate). This was not in the form of a witness statement. There was a factual dispute between Ms MP and the Respondent. On the Applicant's case the Tribunal could take Ms MP's evidence into account but it would not have the same weight as a witness statement or evidence under oath. The Tribunal accorded this undated letter very limited weight.
19. 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

20. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
21. Prior to Ms Bruce closing her case the Tribunal pointed out to her that Allegations 1.1, 1.2, 1.3 and 1.4 referred to a date prior to the coming into force of the Principles and SCC. Ms Bruce acknowledged that in the absence of the Respondent the fairest

way for the Tribunal to proceed was to disregard matters and evidence before 6 October 2011.

The Applicant's Case: The underlying facts relating to the allegations

22. *Client M Matter*

- 22.1 The FIR provided details of the conduct of a probate matter by the Respondent, concerning the estate of Client M. The only indication that costs information was provided to the estate was a handwritten, undated costs estimate in which the Respondent anticipated costs, in dealing with the estate, of £200,000 over a 10-year period. The FIR identified numerous concerns arising from the Respondent's handling of the estate of Client M. Client M had died in November 2013.
- 22.2 In respect of overbilling the FIR relied on the conclusions of a specialist costs lawyer instructed by the Applicant who concluded, on reviewing the Firm's files relating to the matter, that the Respondent had overbilled the estate. The costs lawyer, Ms Corbin, concluded that work with an approximate value of £30,092 had been undertaken, but that approximately £250,560.63 was transferred from client account to office account in respect of bills raised in the matter between March 2011 and January 2017.
- 22.3 A report considered by the Applicant's Adjudication Panel recited the Respondent's responses to the concerns raised with her by the FIO. The Respondent's solicitors subsequently provided a summary (in their letter to the Applicant dated 3 August 2017) of the work undertaken, purportedly in support of the amounts transferred by the Respondent from client account to office account. Details were not provided, however, of the number of hours spent and so the basis upon which the bullet-point summary of services purportedly provided supports the amounts transferred.
- 22.4 The FIR identified that transfers were made from the Firm's client account to office account, purportedly in respect of costs incurred in the handling of Client M's estate, which were then used to discharge the Firm's liabilities, and at times when the Firm would not otherwise have been able to discharge those liabilities. The transfers did not appear to show any direct link with either sums billed to the estate, or to work undertaken. In some instances the transfers appeared to have enabled the payment out by the Firm of office expenses. Save for a period in August 2014 the Firm's office account had been up to the limit of the overdraft of £45,000. On occasions the Firm's office account balance had exceeded the overdraft limit. An example of one such transfer that enabled office expenses to be paid was on 7 January 2015 when there was a client to office transfer of £20,000. This enabled a payment to HMRC in the sum of £14,843.60 to be made from the office account.
- 22.5 The Respondent's solicitors, in their letter dated 3 August 2017, acknowledged failings by the Respondent: "We do not, and cannot seek to defend the unfortunate financial records in this matter which of course make for embarrassing reading for our client". They acknowledge that the Respondent "has had to put right...her ...application of the Solicitors Accounts Rules". The Respondent's position was that she would raise a bill and then transfer the monies as and when required.

- 22.6 The FIR recorded, and the Respondent has accepted, that she purchased a residential property in Loughton, approximately three miles from her office, using the assets of, and for the purported benefit of, the estate of Client M. The Respondent further accepts that following the purchase of the property she then occupied it; albeit that she says that she only did so occasionally. The Respondent's occupation of the property came to light after she was observed by the FIO leaving the property, with her dogs, early one morning. The Respondent further admitted leaving her dogs at the property while she was at work.
- 22.7 The Applicant obtained evidence from the tenant of the property, Ms NF, to the effect that the Respondent had stated that she had occupied the property prior to Ms NF's tenancy commencing (a position at odds with the Respondent's claim to have occupied the property only occasionally, and for the purposes of discharging her professional obligation to the estate).
- 22.8 Notwithstanding that the property was purportedly purchased for the benefit of the estate and as an investment, the Respondent paid personally, rather than out of the estate, for some of the running costs of the property. The Respondent did not take steps to rent out the property and did not pay rent to the estate for her use of the property.
- 22.9 The Respondent suggested that occasional occupation of the premises was a necessary function of the provision of services to the estate, and that the Respondent could not meet her obligation to the estate other than by means of occasional overnight occupation of the property. The Applicant stated that this was a wholly unsustainable position and expressly rejected any suggestion that a solicitor's professional obligations to an estate which owned residential property could only be met by occupying, or ensuring the occupation of, vacant premises, particularly in circumstances in which such premises had been acquired at the instigation of the Respondent and purportedly as an investment for her client.
- 22.10 The FIR recited instances of the Respondent delaying in notifying beneficiaries of Client M's estate and delaying in making payments; in one instance, because of a personal disapproval of the conduct of beneficiaries.
- 22.11 The FIR also identified evidence obtained by the Applicant from beneficiaries to the effect that:
- they were provided with misleading information by the Respondent as to the timing of receipts of payments from the estate, including, in respect of one beneficiary, having been told by the Respondent that payments could not be made at a point at which assets had been realised, probate had been granted and monies were held by the Respondent on the Firm's client account;
 - Beneficiaries received one substantial payment, of over £95,000, 33 months after the grant of probate; and
 - The Respondent asked the mother of beneficiaries of the estate to withhold information from other beneficiaries about entitlements to receipt of funds from the estate.

- 22.12 The Respondent's solicitors acknowledged in their letter dated 3 August 2017 that beneficiaries "should have received their legacies much sooner" and that delays in payment "were caused by a slightly 'matriarchal' view of when the (beneficiaries) should best be given their money – rather than simply giving effect to the wording of the Will." The Respondent admitted, when interviewed by the SRA, that she had deliberately withheld payments, for several reasons which included "I wasn't very happy with them".
- 22.13 The FIR identified payments from client account to office account in excess of sums held on client account, giving rise to a shortfall, between 1 November 2015 and 10 March 2016, of £159,867.04. The FIR further identified that the Firm's Accountants' Reports for two successive years (2014-15 and 2015-16) had identified client account shortages.
23. Client CD and Client VD matter
- 23.1 The Applicant obtained documents from files held relating to instructions to deal with the estates of two deceased relatives, Client CD and Client VD. Client CD died on 6 March 2011 and Client VD died on 5 July 2011. The papers obtained from the Firm by the Applicant indicated that a file was opened in respect of the estate of Client CD on 5 April 2011. A copy of the Grant of Probate and the Oath for Administrators, recorded the net value of Client CD's estate was £147,269. The Grant of Probate in respect of Client VD, who was Client CD's father, was dated 28 July 2014 and recorded that the net value of the estate was £597,181.
- 23.2 The documents identified by the Applicant included a copy of the Firm's terms of business apparently provided to the surviving beneficiary of the estates of Clients CD and VD and documents indicating that the beneficiary was experiencing financial hardship. No record was identified of a costs estimate being provided in respect of the work on the estates of Client CD and Client VD.
- 23.3 The Applicant identified, from the files, copies of bills to a total value of £200,285 plus VAT in respect of the estates of Client CD and Client VD. However, the ledger held by the Firm in respect of the probate of Client CD indicated that fees were billed of £423,439 (recorded as either "CSTS" or later as "Bill issued"), recorded in thirteen entries. The ledger also recorded that sums were transferred at different times and in different sums to those recorded as having been billed. The ledger recorded transfers (either "TFR CSTS" or later "Transfer Client to Office") in the total sum of £508,126.80, across fifty three transfers. Those transfers appeared to have been recorded against the file of an estate with a stated value of £147,289. The aggregate stated value of both estates was £744,450, of which the amount apparently billed just on the Client CD ledger represented 57% and the amount apparently transferred represented 68%.
- 23.4 The Firm's time recording documents obtained by the SRA in respect of the probate of CD showed time having been spent of over 187 hours (although this appeared to include some duplication). The recorded transfers, when compared to the time recording, would indicate an apparent recovery rate of over £2,700 per hour recorded.

24. Client B Matter

- 24.1 Gabriel Grant, a Solicitor at another firm of solicitors was instructed to act on the administration of an estate which had formerly been handled by the Respondent following the Intervention. Client B died on 27 November 2017. The Respondent had obtained a Grant of Probate and the executors believed that approximately £120,000 of client money had been collected in by the Firm. The papers received by Mr Grant included terms of business issued by the Respondent which stated that “in probate matters, as payment of this firm’s bills cannot be met with a payment on account in accordance with our Terms of Business, we charge a cap of up to 8% of the gross assets of the Estate in terms of our fees”.
- 24.2 The Firm’s Client account receipts showed payments into the client account of estate assets of over £120,000 in early August 2017. The Firm’s records also showed that a bill was raised in the sum of £85,000 plus VAT on 4 July 2017 and transfers from Client Account to Office Account of over £100,000 between 4 July 2017 and 9 August 2017. The executors of Client B’s estate had not received a bill from the Respondent prior to the transfers referred to above (or at all), despite having requested them. Nor had they received details of costs despite requesting them verbally on numerous occasions. There was a handwritten note of a meeting on 30 June 2017 which recorded “I have asked before for your costs so far but have not received them.”
- 24.3 Mr Grant considered the bill of £85,000 to be unjustified by reference to the work apparently undertaken. He stated that the Firm’s own records indicate time having been spent of 149 hours 48 minutes at an hourly rate of £260 and a total recorded value of £38,896.00 plus VAT. However, the time recording included an entry for sixty eight hours of work on 9 August 2017. By the time of the Intervention, the transfers had been made from Client Account to Office Account which gave rise to concerns that sums had been misappropriated and would not be recoverable.

The Respondent’s Case: The underlying facts relating to the allegations

25. The Respondent’s interview account provided to the SRA was her best recollection of events at that time, although she had not had access to the Client M estate file for some time. The file was then returned to her by the SRA and following this she provided further documents answering the additional queries raised by the SRA on 27 June and 28 June 2017. The Respondent also authorised the representations made by her then solicitors on 3 August 2017.
26. **Allegation 1.1: On various dates between March 2011 and August 2017 failed to provide adequate or accurate information to clients about likely overall costs at the outset of matters or throughout the conduct of them where required, and thereby breached all or any of Principles 2, 5 and 6 of the Principles and failed to achieve Outcome 1.13 of the SCC.**

The Applicant’s Case

- 26.1 The Applicant submitted that in respect of each of the three probate matters particularised above, the Respondent did not provide adequate or accurate costs

information to clients. In the Client M matter, a handwritten record existed of anticipated costs of £200,000 over a ten year period, with no information as to the basis on which such sums were calculated. In the Client CD and Client VD matter no costs information was recorded as having been provided, notwithstanding that the Respondent subsequently made substantial transfers. In the Client B matter no record existed of costs information having been provided at all. In respect of the Client CD and VD and Client B matters, it could be inferred from the absence of any record of client costs information that no such information was provided.

- 26.2 Outcome 1.13 required the Respondent to provide the best possible information to clients, both at the time of engagement and when appropriate as the matters progressed, about the likely overall cost of their matter. She failed to do so and thereby breached Outcome 1.13. She also failed to provide a good standard of service through such a failure, given the substantial value of each instruction and the proportion of the estate which, in the case of the Client M matter, the Respondent anticipated would be absorbed by costs. In doing so she breached Principle 5 of the Principles.
- 26.3 The public would expect solicitors, particularly on high value estate administrations and where substantial cost were anticipated and, purportedly, incurred, to provide appropriate costs information, and in failing to do so the Respondent failed to behave in a way which maintained public trust and so breached Principle 6 of the Principles.
- 26.4 The Respondent's actions amounted to a failure to act with integrity in breach of Principle 2, in accordance with the test accepted in Newell-Austin v SRA [2017] EWHC 411 as applying in the context of solicitors disciplinary proceedings i.e. that the person had failed to act with moral soundness, rectitude and steady adherence to an ethical code, applying a purely objective test. The Respondent's conduct amounted to a failure of steady adherence to an ethical code in that:
- She accepted instructions on matters in which she was aware that she would be in a position of responsibility while collecting in and holding substantial sums of money on behalf of clients:
 - She was aware that she would seek to recover her costs from the sums held on behalf of clients;
 - She gave clients inadequate (in the case of Client M) or no (in the case of Clients B, CD and VD) information about her likely costs;
 - She provided no information to any clients as to the level of costs which she would actually seek to recover from the sums held on behalf of clients; and
 - She took transfers from clients having provided no information about those costs.
- 26.5 In its Reply to the Respondent's Answer the Applicant submitted that the Respondent's admissions to breaches of Principles 5 and 6 and Outcome 1.13 of the SCC amounted to admissions of conduct which fell short of the ethical standards of the profession, and so amounted to a failure to act with integrity applying the test set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 36.

The Respondent's Case

26.6 In her Answer dated 19 March 2018 the Respondent accepted that on various dates between March 2011 and August 2017 she failed to provide adequate or accurate information to clients about the likely overall costs at the outset of matters or throughout the conduct of them where required, and thereby breached Principles 5 and 6 of the Principles and failed to achieve Outcome 1.13 of the SCC. She did not accept that this conduct constituted a breach of Principle 2. Her failures were not designed to hide the anticipated costs from the client, or to mislead the client as to those costs.

The Tribunal's Findings

26.7 The Respondent admitted that on various dates between March 2011 and August 2017 she failed to provide adequate information to clients about the likely overall costs at the outset of matters or throughout the conduct of them where required. The Tribunal only considered the allegation from 6 October 2011 until August 2017.

26.8 Client CD

26.8.1 The commencement of the CD matter was April 2011 and at that stage a letter setting out the Firm's terms of business was sent to Client CD's mother. Whilst it was far from clear that the Respondent had provided adequate information to the clients about the overall costs of this matter the Tribunal could not be sure that she had not in relation to Client CD because of the existence of the April 2011 letter. The Tribunal did not find the allegation proved in respect of CD for this reason.

26.9 Client VD

26.9.1 Although Client VD passed away before the 6 October 2011 the Grant of Probate was not obtained until July 2014. There was no evidence as to when the file was opened and there was no letter sent setting out the Firm's terms of business. The Tribunal was sure that the Respondent had failed to provide adequate or accurate information to clients about likely overall costs at the outset of matters or throughout the conduct of them where required. The Tribunal reached this finding in light of the Respondent's own admission and the lack of documentary evidence to the contrary.

26.10 Client M

26.10.1 There was no evidence that the Respondent had ever provided adequate or accurate information about the likely costs in respect of the Client M matter. There was the handwritten file note which was undated and set out that the Respondent anticipated costs, in dealing with the estate, of £200,000 over a 10-year period. The note lacked detail and had seemingly not been sent to anybody, albeit the Respondent was the executor of the estate.

26.11 Client B

- 26.11.1 Mr Grant's witness statement clearly set out the fact that costs information had been requested and had not been provided. The Tribunal found that the Respondent had failed to provide adequate or accurate information to clients about likely overall costs at the outset of matters or throughout the conduct of them where required.
- 26.12 Having found the factual basis of the allegations proved in respect of Clients M, B and VD the Tribunal then considered whether this amounted to a breach of all or any of Principles 2, 5 and 6 or a failure to achieve Outcome 1.13 of the SCC.
- 26.13 Principle 5 required the Respondent to provide a proper standard of service to her clients. The Respondent admitted the breach of Principle 5 and the Tribunal considered the admission properly made. The failure to provide adequate or accurate information as to costs was clearly a failure to provide a proper standard of service.
- 26.14 Principle 6 required the Respondent to behave in a way that maintained the trust that the public placed in her and in the provision of legal services. The Respondent admitted the breach of Principle 6 and the Tribunal considered the admission properly made. A solicitor who failed to provide a proper standard of service to their clients inevitably failed to behave in a way that maintained the trust that the public placed in her and in the provision of legal services.
- 26.15 Outcome 1.13 required the Respondent to provide the best possible information to clients both at the time of engagement and when appropriate as the matters progressed about the likely overall cost of their matter. The Respondent admitted the failure to achieve Outcome 1.13 and the Tribunal considered the admission properly made. In light of the factual findings the Respondent had clearly failed to provide this information.
- 26.16 The Respondent denied that she had breached Principle 2 and maintained that she had not lacked integrity. The Tribunal applied the test set out in *Wingate and Evans*. The Tribunal concluded that the Respondent fell short of the ethical standards of the profession, and that amounted to a failure to act with integrity. The Respondent had been acting in probate matters and on the Client M matter was the executor. She admitted that she had failed to provide adequate or accurate information to clients as to the likely overall costs at the outset of the matter or throughout the conduct of them when required. A solicitor acting with integrity would have ensured that they provided this information, especially when it was requested which it had been on the Client B matter.
- 26.17 Allegation 1.1 was proved beyond reasonable doubt in respect of Clients B, M and VD and in relation to the breaches of Principles 2, 5 and 6 and the failure to achieve Outcome 1.13.
27. **Allegation 1.2: On various dates between March 2011 and August 2017 failed to provide adequate or accurate information to clients about the basis of calculation of costs where required and thereby breached all or any of**

Principles 2, 5 and 6 of the Principles and failed to achieve Outcome 1.13 of the SCC.

The Applicant's Case

- 27.1 In respect of each of the three probate matters particularised above, the Respondent made transfers of substantial sums from client account to office account in purported satisfaction of bills raised, having in fact provided no bills or other information to clients before making such transfers.
- 27.2 Outcome 1.13 required the Respondent to provide the best possible information to client as the matters progressed, about the likely overall cost of their matter. She failed to do so and thereby breached Outcome 1.13. She also failed to provide a good standard of service through such a failure, given the substantial value of the bills raised, and in doing so she breached Principle 5. The public would expect solicitors, particularly on high value estate administrations and where substantial cost were anticipated and, purportedly, incurred, to provide appropriate costs information before taking sums out of client funds in satisfaction of their costs, and in failing to do so the Respondent failed to behave in a way which maintained public trust and so breached Principle 6.
- 27.3 The Respondent failed to act with integrity in that she took substantial sums from client monies without giving clients prior notification of her intention to do so. Providing such notification was an essential precondition to compliance with an ethical code in circumstances in which clients would have no other means of establishing (and if appropriate scrutinising or challenging) the level of sums being appropriated, and amounted to an assumption of total control and, where sums were transferred, ownership of client monies.

The Respondent's Case

- 27.4 In her Answer the Respondent accepted that on various dates between March 2011 and August 2017 she failed to provide adequate or accurate information to clients about the basis of calculation of costs where required and therefore breached Principles 5 and 6 of the Principles and failed to achieve Outcome 1.13 of the SCC. She did not accept that this conduct constituted a breach of Principle 2. Her failures here were not designed to hide the anticipated costs from the client, or to mislead the client as to those costs.

The Tribunal's Findings

27.5 Client CD

- 27.5.1 The commencement of the CD matter was April 2011 and at that stage a letter setting out the Firm's terms of business was sent to Client CD's mother. Whilst it was far from clear that the Respondent had provided adequate information to the client about the basis of calculation of costs of this matter the Tribunal could not be sure that she had not in relation to Client CD because of the existence of the April 2011 letter. There was one bill in respect of the probate matter for CD and VD. The narrative on the bill

which was in the sum of £152,600 plus VAT was sparse and without the existence of the letter would certainly have been insufficient to state that the Respondent had provided adequate information as to the calculation of costs. However in light of the letter the Tribunal could not be sure beyond reasonable doubt and the Tribunal did not find the allegation proved in respect of CD for this reason.

27.6 Client VD

27.6.1 Although Client VD passed away before the 6 October 2011 the Grant of Probate was not obtained until July 2014. There was no evidence as to when the file was opened and there was no letter sent setting out the Firm's terms of business. The Tribunal was sure that the Respondent had failed to provide adequate information to the client about the basis of calculation of costs where required. The Tribunal reached this finding in light of the Respondent's own admission, the lack of narrative on the bill dated 16 October 2012 relating to the estates of CD and VD and the lack of any other documentary evidence to the contrary.

27.7 Client M

27.7.1 The only evidence of the basis for the calculation of costs was the inadequate handwritten note. This was clearly not adequate or accurate information.

27.8 Client B

27.8.1 Mr Grant's witness statement clearly set out the fact that costs information had been requested and had not been provided. The Tribunal found that the Respondent had failed to provide adequate or accurate information to clients about the basis of calculation of costs when required.

27.9 Having found the factual basis of the allegations proved in respect of Clients M, B and VD the Tribunal then considered whether this amounted to a breach of all or any of Principles 2, 5 and 6 or a failure to achieve Outcome 1.13 of the SCC.

27.10 Principle 5 required the Respondent to provide a proper standard of service to her clients. The Respondent admitted the breach of Principle 5 and the Tribunal considered the admission properly made. The failure to provide adequate or accurate information as to the basis of calculation of costs when required was clearly a failure to provide a proper standard of service.

27.11 Principle 6 required the Respondent to behave in a way that maintained the trust that the public placed in her and in the provision of legal services. The Respondent admitted the breach of Principle 6 and the Tribunal considered the admission properly made. A solicitor who failed to provide a proper standard of service to their clients inevitably failed to behave in a way that maintained the trust that the public placed in her and in the provision of legal services.

- 27.12 Outcome 1.13 required the Respondent to provide the best possible information to clients both at the time of engagement and when appropriate as the matters progressed about the likely overall cost of their matter. The Respondent admitted the failure to achieve Outcome 1.13 and the Tribunal considered the admission properly made. In light of the factual findings the Respondent had clearly failed to provide information as to the basis of calculation of costs when required
- 27.13 The Respondent denied that she had breached Principle 2 and maintained that she had not lacked integrity. The Tribunal applied the test set out in Wingate and Evans. The Tribunal concluded that the Respondent fell short of the ethical standards of the profession, and that amounted to a failure to act with integrity. The Respondent had been acting in probate matters and on the Client M matter was the executor. She admitted that she had failed to provide adequate or accurate information to clients as to the basis of calculation of costs when required. A solicitor acting with integrity would have ensured that they provided this information, especially when it was requested which it had been on the Client B matter.
- 27.14 Allegation 1.2 was proved beyond reasonable doubt in respect of clients B, M and VD and in relation to the breaches of Principles 2, 5 and 6 and the failure to achieve Outcome 1.13.
28. **Allegation 1.3: On various dates between March 2011 and August 2017 transferred sums from the Firm's Client Account to Office Account in respect of her fees otherwise than in accordance with Rules 17.2 and/or 20.1 of the SAR in that:**
- 1.3.1 sums transferred were not properly required in payment of the Respondent's fees; and/or**
- 1.3.2 a bill of costs or other written notification of the costs incurred had not been given or sent where required;**
- and in doing so breached Principles 2, 5 and 6 of the Principles.**

The Applicant's Case

- 28.1 The Respondent transferred sums from Client Account to Office Account on each of the particularised matters without first sending a bill to clients (or, in the case of Clients CD and VD, even raising a bill) and so failed to comply with the preconditions for such transfers to be made as set out in Rules 17.2 and/or 20.1 of the SAR, namely that a bill of costs must first be given or sent to the client.
- 28.2 The Respondent admitted breaches of the SAR and Principles 5 and 6. The Respondent admitted that she made transfers of sums from her client account to her office account which "sometimes reflected substantial elements of non-legal work". She did not explain on what basis, or under what retainer or other arrangement, such sums were properly chargeable, as "non-legal work" or at all. It was the Applicant's case that the matters admitted by the Respondent in her Answer, insofar as it related to Allegation 1.3, including the transfer of substantial sums from client account to office account, to which the Respondent was not entitled, and without providing any

notification to the paying parties where required, amount to admissions of conduct which fell short of the ethical standards of the profession, and so amounted to a failure to act with integrity applying the test set out in Wingate and Evans.

The Respondent's Case

- 28.3 In her Answer the Respondent accepted that on various dates between March 2011 and August 2017 she transferred sums from the Firm's client account to office account in respect of her fees otherwise than in accordance with Rules 17.2 and/or 20.1 of the Solicitors Accounts Rules 2011, in that:
- Sums transferred sometimes reflected substantial elements of non-legal work that she had done, and hence those sums were not properly charged as part of her legal fees;
 - Sums transferred sometimes included an element of uplift to her hourly rates when she now accepted that her applying such an uplift was not appropriate; and
 - A bill of costs or other written notification of the costs incurred was not always given or sent when required.
- 28.4 The Respondent accepted that this conduct constituted a breach of Principles 5 and 6 of the Principles. She did not accept that this conduct constituted a breach of Principle 2. The Respondent made mistakes as to which activities she should charge legal fees for, and also mistakes as to when an uplift of fees was appropriate. However, these were honest mistakes and not due to any failing of her integrity. The Respondent took a very personal and 'hands-on' approach to the execution of various duties in administering an estate. In hindsight, she observed that this led her to blur the lines between what was properly as chargeable legal work and what was not.

The Tribunal's Findings

- 28.5 The Tribunal considered the allegation as amended to "On various dated between 6 October 2011 and August 2017". The Tribunal disregarded any evidence relating to the period between March and 5 October 2011.
- 28.6 In respect of Clients B, M, CD and VD the overwhelming evidence was that the Respondent had transferred sums that were not properly required in payment of her fees and a bill of costs or other written notification of the costs incurred had not been given or sent where required.
- 28.7 Rule 17.2 of the SAR states "If you properly require payment of your fees from money held for a client or trust in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred to the client or the paying party."
- 28.8 Rule 20.1 of the SAR sets out the circumstances in which client money can be transferred from a client account. This included when money was properly required for a payment to or on behalf of a client.

- 28.9 The Respondent accepted that she had not complied with Rule 17.2 or Rule 20.1 of the SAR and admitted that she had breached Principles 5 and 6. A solicitor who was providing a proper standard of service to their clients would comply with the SAR. Equally a solicitor who did not comply with the SAR could not be said to have behaved in a way that maintained the trust that the public placed in them and in the provision of legal services. The public would expect a solicitor to comply with SAR. The Tribunal considered the Respondent's admissions properly made and found that she had breached Principles 5 and 6.
- 28.10 The Respondent was the COLP and COFA and it was her Firm. Client money is sacrosanct and the Respondent must have known that. The payments bore no relation to the bills. A solicitor of integrity would ensure that they only transferred the sums due in respect of their bills and that the transfers were made in accordance with the SAR. The Respondent had failed to do either of these things and the Tribunal found that she had lacked integrity and therefore had breached Principle 2.
- 28.11 The Tribunal found allegation 1.3 proved in full, beyond reasonable doubt.
29. **Allegation 1.4: On various dates between March 2011 and August 2017 made transfers from Client Account to Office Account of sums which were in excess of those which might properly be charged for the work undertaken, which did not reflect the work actually undertaken, and which were not fair and reasonable, and thereby breached all or any of Principles 2 and 6 of the Principles.**

The Applicant's Case

- 29.1 In respect of each of the client matters particularised above, the Respondent made transfers from sums held on behalf of clients which were substantially in excess of the sums to which she was entitled by reference to the work undertaken.
- 29.2 In the Client M matter, an independent costs lawyer concluded that the work evidenced from the file and time actually recorded supported billing at a level of approximately £30,092 had been undertaken, in contrast to the £250,000 taken. The pattern of work undertaken did not correspond to the transfers made.
- 29.3 In each of the Client B and Client CD and VD matters, Mr Grant and the SRA identified further transfers from client account to office account which were disproportionate to and not supported by the work actually undertaken or time recorded.
- 29.4 Making such transfers amounts to a clear breach of the obligation to act in the best interests of clients and so breached Principle 4. The public would expect solicitors, placed in a position of sole responsibility in respect of client monies, to display a high level of transparency and accountability in respect of such sums; the Respondent's conduct in misappropriating such sums, and making transfers where they were not reported or justified, would seriously undermine public confidence in the profession.

- 29.5 The Applicant's case was that such conduct amounts to the clearest possible failure to act with integrity. Steady adherence to an ethical code would involve the scrupulous management of sums to which the Respondent was entrusted, and require that sums were taken in respect of costs only where they were fully justified and clients had been notified in advance. The misappropriation of such funds without notification or justification amounted to a serious breach of Principle 2.
- 29.6 The Respondent admitted a breach of Principle 6 in respect of Allegation 1.4. She admitted that she made transfers of sums from her client account to her office account which were in excess of the amounts properly chargeable for legal work. Again, she did not explain on what other basis sums might properly be chargeable, and under what retainer. It was the Applicant's case that the matters admitted by the Respondent in her Answer, insofar as it related to Allegations 1.4, including an admission to transferring sums for work not properly chargeable as legal work, and applying an uplift to such work which was "not appropriate", amounted to admissions of conduct which fell short of the ethical standards of the profession, and so amounted to a failure to act with integrity applying the test set out in Wingate and Evans.

The Respondent's Case

- 29.7 In her Answer the Respondent said that on various dates between March 2011 and August 2017, she made transfers from client account to office account of sums which were in excess of those which might have properly be charged for work undertaken, which did not reflect legal work actually undertaken, and which were not fair and reasonable. She accept this allegation in the context of:
- Sums transferred sometimes reflected substantial elements of non-legal work that she had done, and hence those sums were not properly charged as part of her legal fees: and
 - Sums transferred sometimes included an element of uplift to her hourly rates when she now accepted that her applying such an uplift was not appropriate.
- 29.8 The Respondent now accepted that, on various dates, her fees charged included a substantial element of non-legal work which should not properly be charged for, and also that she sometimes applied an uplift to her hourly rates when such an uplift was not appropriate.
- 29.9 She accepted that this conduct constituted a breach of Principle 6. She did not accept that it constituted a breach of Principle 2. The Respondent made mistakes as to which activities she should properly charge legal fees for, and also mistakes as to when an uplift of fees was appropriate. However, these were honest mistakes and not due to any failing of her integrity. She took a personal and 'hands-on' approach to the execution of various duties in administering an estate. In hindsight, she observed that this led her to blur the lines between what was properly chargeable as legal work, and what was not.

The Tribunal's Findings

- 29.10 The Tribunal considered the allegation as amended to “On various dated between 6 October 2011 and August 2017”. The Tribunal disregarded any evidence relating to the period between March and 5 October 2011.
- 29.11 The evidence before the Tribunal showed that the Respondent had made transfers from Client Account to Office Account of sums which were in excess of those which might properly be charged for the work undertaken , which did not reflect the work actually undertaken and which were not fair and reasonable. The Respondent admitted that her fees included a substantial element of non-legal work and an uplift which was not appropriate. She accepted that she had breached Principle 6 but did not accept that she lacked integrity.
- 29.12 In transferring the sums she had the Respondent had not behaved in a way that maintained the trust that the public placed in her and in the provision of legal services. The public would not expect a solicitor to transfer sums in this way.
- 29.13 The Tribunal considered the Respondent’s admissions properly made and found that she had breached Principle 6.
- 29.14 The Respondent was the COLP and COFA and it was her Firm. A solicitor of integrity would ensure that they only transferred sums that might properly be charged for the work undertaken and which reflected the work actually undertaken and that were fair and reasonable. The Respondent, by her own admission, had failed to ensure that she did this and the Tribunal found that she had lacked integrity and therefore had breached Principle 2.
- 29.15 The Tribunal found allegation 1.4 proved in full, beyond reasonable doubt.
30. **Allegation 1.5: On various dates between 2013 and 2016, provided misleading information to beneficiaries as to the reasons for delay in distributing the proceeds of an estate and thereby breached all or any of Principles 2 and 6 of the Principles.**

The Applicant's Case

- 30.1 As set out above the Respondent failed promptly to inform beneficiaries of their entitlement to sums from the estate of Client M and made misleading statements as to the reasons for such delay. Such conduct, which was identified by the beneficiaries concerned, would plainly undermine the confidence of such beneficiaries in the Respondent and potentially in solicitors generally, and amounted to a clear breach of her obligations under Principle 6. Further the Respondent’s conduct amounted to a failure to act with integrity in that steady adherence to an ethical code would require the Respondent to ensure that beneficiaries were informed within a reasonable time, where possible, of their entitlement, and that there was no undue delay in making payments. The failure to do so, and the making of misleading statements purporting to explain such failure, amounted to a failure to act with integrity.

- 30.2 Ms EB had given a witness statement to the FIO dated 31 May 2017. That witness statement contained a statement of truth. Ms EB was the daughter of Mr and Mrs F who were beneficiaries of the estate of Client M. That witness statement set out the information that Ms EB had requested from the Respondent but not been given, the fact she had been told that probate had not yet been obtained when it had been and that at the date of the statement Mr and Mrs F had not received their entitlement from Client M's estate.
- 30.3 The mother of two beneficiaries under Client M's will was Mrs MP. Mrs MP had written to the SRA and said that the Respondent had asked her not to disclose the legacies left to her sons to anyone. Mrs MP did as asked as she trusted the Respondent. Mrs MP said that both her sons were in particular need of money at that time. Ultimately Mrs MP had given the Respondent an ultimatum to tell her sons about their legacy by 16 January 2016 or she would give them a copy of the will.
- 30.4 The Respondent's admissions to a breach of Principle 6 in respect of Allegation 1.5 were noted. According to the Applicant, the Respondent appeared to admit providing misleading information to beneficiaries, and attributed such conduct to a "controlling" approach to the provision of information. The misleading statements related to matters within the Respondent's own knowledge. It was not asserted by the Respondent that the misleading statements arose from errors as to matters of fact.
- 30.5 It was the Applicant's case that the misleading statements were made knowingly; the Respondent knew, at the time of making the statements, that they were untrue and misleading. It was also the Applicant's case that the matters admitted by the Respondent in her Answer, insofar as it related to Allegation 1.5, amounted to admissions of conduct which fell short of the ethical standards of the profession, and so amounted to a failure to act with integrity applying the test set out in Wingate and Evans.

The Respondent's Case

- 30.6 In her Answer the Respondent accepted that, on various dates between 2013 and 2016, she provided misleading information to beneficiaries about the reasons for delay in distributing the proceeds of an estate and thereby breached Principle 6. She referred to her previous explanation as to why these delays occurred. The Respondent maintained that she took a rather controlling and perhaps matriarchal approach as to when the beneficiaries should be informed of, and provided with, their monies. This approach was borne out of a desire either:
- To give effect to the testator's wishes, as the Respondent had understood them, and/or
 - To act in the best wishes of the beneficiaries at the time
- 30.7 Whilst the Respondent accepted this conduct constituted a breach of Principle 6, she did not accept it constituted a breach of Principle 2 because she was genuinely (albeit mistakenly) attempting to act in the best interests of the testator and/or the beneficiaries.

The Tribunal's Findings

- 30.8 The Respondent admitted factually that she had on various dates between 2013 and 2016, provided misleading information to beneficiaries about the reasons for delay in distributing the proceeds of an estate. She accepted that she had breached Principle 6. The Tribunal found that the Respondent's admissions were properly made. The Tribunal found the factual basis of the allegation proved and found the breach of Principle 6 proved. The public would expect solicitors, to provide accurate information to beneficiaries about the delay in distributing the proceeds of an estate. In providing misleading information to the beneficiaries the Respondent failed to behave in a way which maintained the trust the public placed in her and in the provision of legal services and so breached Principle 6 of the Principles.
- 30.9 According to the he Respondent she took a rather controlling and perhaps matriarchal approach as to when the beneficiaries should be informed of, and provided with, their monies. A solicitor acting with integrity would not allow her personal judgement to interfere with the administration of a legal document. The Respondent had provided misleading information as to the delay in distributing the proceeds of an estate and in doing so she had failed to act with integrity.
- 30.10 The Tribunal found allegation 1.5 proved in full, beyond reasonable doubt.
31. **Allegation 1.6: On unknown dates between July 2015 and August 2017 occupied, for her personal use and without the knowledge or consent of her client, premises acquired for investment purposes on behalf of an estate client, and thereby breached all or any of Principles 2, 4, 6 and 10 of the Principles.**

The Applicant's Case

- 31.1 The Respondent had admitted that she (on her account, occasionally) occupied client premises, and she was seen by the FIO to have done so with her dogs. Ms NF's evidence indicated that the Respondent's occupation of the property was more extensive than she has asserted and for purposes going beyond protection of a client's assets. In occupying the property for her own purposes without paying an appropriate or any level of rental, and in failing to seek to secure a rental income from the property, the Respondent failed to protect the client's assets.
- 31.2 The Respondent's conduct amounted to a failure to act in the best interests of her client in that she exploited for her own benefit an asset belonging to, and capable of generating revenues for, her client and so breached Principle 4. Public confidence in solicitors would undoubtedly be undermined by solicitors so acting and the Respondent breached Principle 6. The Respondent herself said to the FIO that her occupation of the property "looks horrendous". The failure adequately to protect a client asset, and take reasonable and proportionate steps to generate revenue for the client, amounted to a breach of Principle 10.
- 31.3 The conduct set out above further amounted to a failure to act with integrity, in that the personal exploitation of a client asset, without the client's knowledge or consent, and to the actual or potential detriment of the client, amounts to a failure of steady adherence to an ethical code.

- 31.4 The Applicant noted the Respondent admissions to breaches of Principles 4, 6 and 10. The Respondent admitted that she occupied premises acquired, for investment purposes, on behalf of a client estate. She maintained that she did so only once a month, and solely for the purposes of maintaining the premises. She did not explain what maintenance activities were carried out or why such occupation was necessary, and provided no explanation (other than her own occupation of the premises) as to why she did not seek to derive a rental income from the premises. It was the Applicant's case that the Respondent personally occupied the premises far more frequently than was admitted
- 31.5 The Applicant submitted that the matters admitted by the Respondent in her Answer, insofar as it related to Allegation 1.6, amounted to admissions of conduct which fell short of the ethical standards of the profession, and so amounted to a failure to act with integrity applying the test set out in Wingate and Evans.

The Respondent's Case

- 31.6 The Respondent accepted that, on various dates between July 2015 and August 2017, she occupied, for her personal use and without the knowledge or consent of the beneficiaries, premises for investment purposes on behalf of an investment client, and therefore breached Principles 4, 6 and 10 of the Principles.
- 31.7 The Respondent reiterated her account of events given in SRA interview 13 June 2017. She personally stayed overnight at the property around once per month. On further occasions, she visited the property purely for maintenance purposes. The evidence of Ms NF, who claimed that the Respondent told her that she had been living there, was not correct as the Respondent did not say this to her. The Respondent had decided to personally maintain and look after this investment property, rather than rent it out to tenants or instruct a letting agent. This was in keeping with her personal and rather 'hands-on' approach to managing an estate.
- 31.8 In hindsight, the Respondent accepted that her failure to rent out this property until July 2017 constituted a failure to protect client monies, a failure to maximise income from this investment asset, and hence this was not in the best interests of her client (breaching Principles 4, 6 and 10). However, during that time the Respondent genuinely believed that it was better for her to personally look after the property while certain works and improvements were being carried out. The delay in renting out this property was not simply so that she could use it for her own benefit, and therefore not borne out of a lack of integrity on her part. The Respondent did not accept a breach of Principle 2.

The Tribunal's Findings

- 31.9 The Respondent had made limited admissions as to her occupation of the property and accepted that she had failed to rent it out until July 2017. Based on the witness evidence of Ms NF, the FIO's evidence as to his early morning visit and the fact the Respondent paid all the bills at the property the Tribunal found that on unknown dates between July 2015 and August 2017 the Respondent occupied the property for her own personal use and without the knowledge or consent of her client.

- 31.10 The Respondent admitted that she had breached Principles 4, 6 and 10. The Tribunal considered these admissions properly made. By occupying the property for her own benefit the Respondent had not acted in the best interests of her estate client. The estate had been deprived of rental income. This meant that client money and assets had not been protected. In occupying the property rent free for her own purposes the Respondent had not behaved in a way that maintained the trust that the public placed in her and in the provision of legal services. The public would not expect a solicitor to occupy an investment property free of charge and without her client's knowledge or consent.
- 31.11 The Respondent denied that she lacked integrity. The Tribunal was sure that the Respondent had failed to act with moral soundness, rectitude and steady adherence to an ethical code, applying a purely objective test. She had fallen short of the ethical standards of the profession. No solicitor acting with integrity would have behaved as the Respondent had done.
- 31.12 The Tribunal found allegation 1.6 proved in full, beyond reasonable doubt.

32. Allegation 2: Dishonesty

The Applicant's Case

- 32.1 The Respondent's actions were dishonest in accordance with the test for dishonesty laid down in Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67: the conduct alleged was dishonest by the standards of ordinary decent people.
- 32.2 The Applicant submitted that the particulars of dishonesty and details of the Respondent's actual state of mind were as set out below. It was alleged that the Respondent acted dishonestly by the ordinary standards of reasonable and honest people, in respect of all or any of the matters particularised above, in that she was or must have been aware of her obligations:
- Not to transfer sums from client account to office account other than where such sums were properly due for work undertaken, and only where information about such transfers had been provided to clients;
 - Not to transfer sums which were not properly due for work done and which were very substantially in excess of the amounts which might properly be chargeable;
 - Not to exploit for her own benefit the assets of clients held by or accessible to the respondent solely by reason of her appointment as a solicitor;
- 32.3 The Respondent:
- made transfers of sums from Client Account to Office Account which she knew exceeded either the amount indicated to clients;

- made periodic transfers of sums from Client Account to Office Account in respect of professional fees in the knowledge that work had not been undertaken sufficient to justify such a transfer;
- made transfers of substantial sums from Client to Office Account in respect of professional fees in the knowledge that the sums being transferred did not represent a fair and reasonable fee for the work undertaken;
- made transfers of substantial sums from Client to Office Account in respect of professional fees in the knowledge that clients had not at the time of the transfers been notified of the fact and quantum of transfers;
- knowingly provided misleading information to a client as to the reasons for delay in payment of sums held on behalf of an estate;
- personally benefited from the matters set out above;
- exploited a client asset acquired by her, and to which she had sole access, for her personal benefit and to the detriment of the client; and
- Undertook a course of similar conduct across multiple probate files.

32.4 On an objective basis, the taking of clients' funds, without the clients' knowledge or consent and in circumstances where such funds are not properly due, was regarded as acting dishonestly by the ordinary standards of honest people. Although, under the test recited above, a finding of "subjective" dishonesty was not required, the Applicant submitted that in any event the Tribunal could be satisfied that on a subjective basis, the Respondent acted dishonestly in that:

- she knew that she was not entitled to take, but in any event did take, client funds without the clients' knowledge or consent and in circumstances where those funds were not properly due, and that such conduct would breach the ordinary standards of honest people;
- she knew that she was not entitled to make personal use and derive a person and undisclosed benefit from assets of clients in the form of occupancy of premises bought on behalf of clients for investment purposes.

32.5 Not only was the Respondent's conduct dishonest by the ordinary standards of reasonable and honest people but she must also have been aware that it was dishonest by those standards. A solicitor must have known that the conduct recited above would be viewed as dishonest, at the time of such conduct. Furthermore, the Respondent admitted, in respect of her occupancy of the property, that her conduct would be adversely perceived, by reason of her statement to the FIO, on being identified at the property, that her occupation of the property "looks horrendous" .

32.6 Ms Bruce submitted that dishonesty needed to be seen as a continuing theme in this case. If it was the case that there was some poor paperwork and no information provided as to costs but in every other respect the file was in order it would be difficult to make the case for dishonesty. That was not the position here. The

Respondent would have known her obligations to comply with the SAR and only to bill for sums properly due and not to use the estate's assets for her own benefit. The pattern of transfers, and in particular round sum transfers was more than a coincidence. It was dishonest. There were three probate matters involved, the misconduct took place over a period of time and the sums were grossly in excess of the amounts that should have been billed.

The Respondent's Case

32.7 Due to the Respondent's reasoning already set out in relation to Principle 2, she did not accept that she had acted dishonestly throughout these matters.

The Tribunal's Findings

32.8 Allegation 1.1

32.8.1 Although dishonesty was pleaded in respect of allegation 1.1 the Applicant had not specifically set out why it was dishonest not to provide adequate or accurate information to clients about likely overall costs at the outset of matters or throughout the conduct of them where required.

32.8.2 The Tribunal considered the test for dishonesty as set out in Ivey namely that:

“74. These several considerations provide convincing grounds for holding that the second leg of the test propounded in Ghosh does not correctly represent the law and that directions based upon it ought no longer to be given. The test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: see para 62 above. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

32.8.3 The Tribunal could not be sure beyond reasonable doubt, applying the test in Ivey, that this failure to provide costs information would be considered to be dishonest by the ordinary standards of reasonable and honest people. Dishonesty in respect of allegation 1.1 was not proved. However the Tribunal did consider that the Respondent's conduct in this regard was unacceptable. By giving her the benefit of the doubt the Tribunal was not condoning the misconduct but could not be sure in isolation that her actions were dishonest.

32.9 Allegation 1.2

32.9.1 Although dishonesty was pleaded in respect of allegation 1.2 the Applicant had not specifically set out why it was dishonest not to provide adequate or accurate information to clients about the basis of calculation of costs where required. The Tribunal could not be sure beyond reasonable doubt, applying the test in Ivey, that this failure to provide information as to the basis of calculation of costs would be considered to be dishonest by the ordinary standards of reasonable and honest people. Dishonesty in respect of allegation 1.1 was not proved. However the Tribunal did consider that the Respondent's conduct in this regard was unacceptable. By giving her the benefit of the doubt the Tribunal was not condoning the misconduct but could not be sure in isolation that her actions were dishonest.

32.10 Allegation 1.3

32.10.1 The Respondent had admitted and the Tribunal had found proved the factual basis that on various dates between 6 October 2011 and August 2017 transferred sums from the Firm's client account to office account in respect of her fees otherwise than in accordance with Rules 17.2 and/or 20.1 of the SAR, in that sums transferred were not properly required in payment of the Respondent's fees; and/or a bill of costs or other written notification of the costs incurred had not been given or sent where required;

32.10.2 The Respondent must have been aware of her obligations not to transfer sums from client account to office account other than where sums were properly due for work undertaken and only where information about such transfers had been provided to clients. The Tribunal applied the test in Ivey. The Respondent must have known that the sums were not properly due for legal work undertaken for the clients and that she had not provided information about the transfers to the clients. The Respondent was the COLP and COFA and it was her Firm.

32.10.3 In light of the Respondent's actual state of mind as to knowledge or belief as to facts is established, the question whether her conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. The Tribunal noted that the Respondent transferred sum in excess of the amount properly required, she made transfers without notifying the clients, she made at least one transfer when a payment to HMRC was due and the overdraft limit did not allow the payment to be made from the office account. The transfers occurred in relation to all four clients. The Tribunal concluded that this conduct was dishonest by the standards of ordinary decent people. Allegation 2 was proved beyond reasonable doubt in respect of allegation 1.3.

32.11 Allegation 1.4

32.11.1 The Respondent had admitted and the Tribunal had found proved the factual basis that on various dates between 6 October 2011 and August 2017 she had made transfers from client account to office account of sums which

were in excess of those which might properly be charged for the work undertaken, which did not reflect the work actually undertaken, and which were not fair and reasonable.

32.11.2 The Respondent must have been aware of her obligations not to transfer sums from client account to office account other than where sums might properly be charged for the work undertaken and where the charges reflected the work undertaken and were fair and reasonable.

32.11.3 The Tribunal applied the test in Ivey. The Respondent must have known that the sums could not properly be charged for the work undertaken that they did not reflect the work undertaken and were not fair and reasonable. The Respondent was the COLP and COFA and it was her Firm. In light of the Respondent's actual state of mind as to knowledge or belief as to facts is established, the question whether her conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. The Tribunal noted that the Respondent transferred sums in excess of the amount that might properly be charged for and that did not reflect the work undertaken. The Respondent made at least one transfer when a payment to HMRC was due and the overdraft limit did not allow the payment to be made from the office account. The transfers occurred in relation to all four clients. The Tribunal concluded that this conduct was dishonest by the standards of ordinary decent people. Allegation 2 was proved beyond reasonable doubt in respect of allegation 1.4.

32.12 Allegation 1.5

32.12.1 The Respondent had admitted that she had on various dates between 2013 and 2016 provided misleading information to beneficiaries as to the reasons for the delay in distributing the proceeds of an estate. The Respondent said that she had done this because she took a rather controlling and perhaps matriarchal approach as to when the beneficiaries should be informed of, and provided with, their monies. This approach was borne out of a desire either to give effect to the testator's wishes, as the Respondent had understood them, and/or to act in the best wishes of the beneficiaries at the time. The Respondent must have known that she was providing misleading information to the client as to the reasons for delay in payment of sums held on behalf of an estate.

32.12.2 The Tribunal applied the test in Ivey. Given the Respondent's actual state of mind as to knowledge or belief as to facts the Tribunal concluded that this conduct was dishonest by the standards of ordinary decent people. Allegation 2 was proved beyond reasonable doubt in respect of allegation 1.5.

32.13 Allegation 1.6

32.13.1 The Tribunal had found that on unknown dates between July 2015 and August 2017 the Respondent had occupied, for her personal use and without the knowledge or consent of her client, premises acquired for investment purposes on behalf of an estate client. The Respondent had treated the

property as if it was her own, including paying all the bills, when she knew that the property did not belong to her and that she was occupying it without the knowledge or consent of those who were entitled to benefit from the estate. The Respondent, whilst not accepting the extent of her occupation, had accepted that what she did was wrong.

32.13.2 The Tribunal applied the test in Ivey. Given the Respondent's actual state of mind as to knowledge or belief as to facts the Tribunal concluded that this conduct was dishonest by the standards of ordinary decent people. The Respondent had exploited her professional role as a solicitor to her own benefit. Allegation 2 was proved beyond reasonable doubt in respect of allegation 1.6.

Previous Disciplinary Matters

33. There were no previous findings of the Tribunal.

Mitigation

34. In her letter to the Applicant dated 20 September 2018 the Respondent explained that her solicitors had had to come off the record as she was unable to fund the defence of her case and her PII insurance did not provide legal costs cover for regulatory matters.

35. She explained that her practice was intervened in August 2017 based on the Applicant's investigation and interpretation of the facts and findings. At that time she submitted that there was limited opportunity for a full defence or representation allowed prior to the Intervention. As a result of the Intervention, the damage to her business, career, status and reputation was immediate and catastrophic.

36. The Respondent said that the clients and general public would no doubt have formed their opinion of her as a professional based on the readily available publications made. Three weeks later, the Respondent's mother died after a long and debilitating illness. The position regarding file management and keeping beneficiaries informed of developments was adversely affected during 2015-16 by the serious illness of the Respondent's mother and the time spent caring for her.

37. The Respondent accepted and apologised that her professional standards may have fallen short of what was expected of her and that she had made errors of judgement. These had reflected poorly on her integrity. However, she maintained her position that any acts, omissions or failings on her part were never with dishonest intent. The Respondent's actions were well-intentioned.

38. The Respondent anticipated and expected the Tribunal to strike her name from the Roll. The Respondent provided a report from Dr Woolfson in respect of medical conditions that she had been suffering from over the past six years. The Respondent said that for the past three years she had been receiving holistic therapy and more recently traditional methods of treatment for the same.

Sanction

39. The Tribunal referred to its Guidance Note on Sanctions (Fifth Edition) when considering sanction.
40. The Tribunal assessed the seriousness of the misconduct in order to determine which sanction to impose.
41. The Respondent's level of culpability was complete. The Respondent's motivation for the misconduct was personal financial gain – she benefitted from being able to stay at the property rent free and from using client money to meet office expenses. The misconduct was planned, it started in 2011 and continued until 2017. The misconduct was a very serious breach of a position of trust. The Respondent was involved in the administration of estates and people were reliant on her. The Respondent had direct control over the circumstances giving rise to the misconduct. In the Client M matter she was the executor. The Respondent was admitted as a solicitor in 2002. It was not clear to the Tribunal how experienced the Respondent was in terms of probate work. However she was the COLP and COFA and any solicitor of any experience would have known that they could not do what the Respondent had done. The harm caused was unquantified, it was not exclusively financial as there was also the harm caused by the fact that the estates had not been administered in accordance with the testators' wishes. The Respondent had not deliberately misled the regulator except for saying that she was not living at the property when she clearly had been living there.
42. There had been harm to individuals. The delaying in paying legacies had caused financial detriment and inconvenience. The estate of client M had lost money as the property had not been rented. There had been overbilling on all four estates. The impact of the Respondent's misconduct on any member of the public who knew what she had done was significant and would have caused massive damage to the reputation of the profession. The Respondent knew what she was doing and the harm was reasonably foreseeable. The Tribunal considered that the precise amount of harm may not have been intended but there was collateral damage.
43. Dishonesty had been alleged and proved. The misconduct was deliberate, calculated and repeated. It continued over a period of time. The Tribunal had been told that one of the beneficiaries in the Client CD and VD matters had experienced financial hardship and given the circumstances described the Tribunal considered the beneficiary to be a vulnerable person. There was concealment of wrongdoing, the executor had been told not to say anything to the beneficiaries on one of the estates. The Respondent knew or ought reasonably to have known that the conduct complained of was in material breach of her obligations to protect the public and the reputation of the legal profession. These were all aggravating factors.
44. By way of mitigating factors the Respondent had made a number of admissions to the allegations albeit not to the allegations of lack of integrity or dishonesty. She had cooperated with the Applicant and had filed an Answer in the proceedings. However the Tribunal did not consider that the Respondent had much, if any, insight and there was no evidence that the Respondent had made good any loss. The Tribunal understood from Ms Bruce that there had been a number of claims on the compensation fund.

45. The misconduct found proved was at the most serious end of matters that came before the Tribunal. The public trust solicitors to properly administer estates, raise bills for their charges and to pay monies due to beneficiaries in a timely manner. Given this the Tribunal considered that No Order, Reprimand, Fine and Restriction Orders were insufficient sanction. The Respondent's culpability was high and both the public and the reputation of the profession needed to be protected.
46. A suspension was not sufficient sanction given the seriousness of the misconduct and the need to protect the public and the reputation of the profession. Where there had been a finding of dishonesty as in this case this would almost invariably lead to striking off unless there were exceptional circumstances. The Tribunal determined that the appropriate sanction was Strike-off. It then considered whether there were any exceptional circumstances and decided that there were none.
47. Finally the Tribunal took into account the Respondent's personal mitigation and in particular whether the misconduct arose at a time when the Respondent was affected by physical or mental ill-health that affected her ability to conduct herself to the standards of a reasonable solicitor. The Tribunal had due regard to Dr Woolfson's report but concluded that there was insufficient medical evidence to reach this conclusion. Accordingly the appropriate sanction was for the Respondent's name to be struck-off the Roll of Solicitors.

Costs

48. The Applicant applied for its costs in the sum of £50,245.60 as set out in a costs schedule dated 17 September 2018. The costs were broken down into two parts. The costs of the forensic investigation in the sum of £8,845.60 and the costs of Capsticks solicitors in the sum of £34,500 plus VAT. This was a fixed fee. Ms Bruce submitted that this was relatively complex case. There were six allegations each pleaded on the basis of dishonesty. The total amount claimed was reasonable. In response to a question from the Chair Ms Bruce acknowledged that if the matter had not been on a fixed fee there would have been a reduction due to the fact that the hearing had not lasted for the three days for which it had been listed. She acknowledged that it was perfectly proper for the Tribunal to take this into account.
49. The Tribunal had heard the case and it was appropriate for it to summarily assess costs. The allegations in respect of CD that had not been proved due to the incorrect date range had not been proved had not added to the overall length of the case. However, the Tribunal considered that the Rule 5 should have been correctly pleaded in the first instance and should not have referred to matters prior to 6 October 2011 unless those matters were alleged on the basis of the previous Code of Conduct. On the other hand the papers and bundle were extensive and well-prepared.
50. The Tribunal considered quantum and reduced the sum claimed on the basis that the hearing had been shorter than had been listed, two allegations of dishonesty had not been proved and the issue in relation to the date range for the allegations referred to above. The Tribunal reduced the amount claimed to £46,645.60 and ordered that the Respondent should pay the costs of and incidental to this application and enquiry fixed in that sum.

51. The Respondent had not applied for any costs order not to be enforced without leave of the Tribunal and nor had she provided evidence of means in accordance with the Tribunal's directions. In the circumstances the question of enforcement of the costs order should be left to the Applicant's discretion.

Statement of Full Order

52. The Tribunal Ordered that the Respondent, JOANNE POWER, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £46,645.60.

Dated this 23rd day of October 2018
On behalf of the Tribunal


R. Nicholas
Chairman

Judgment filed
with the Law Society
on 24 OCT 2018