SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11669-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

SUSAN LOUISE LOWE — Respondent

Before:

Ms N. Lucking (in the chair)
Mr W. Ellerton
Dr P. Iyer

Date of Hearing: 5-6 December 2017

Appearances

Ms Natasha Tahta, counsel, of QEB Hollis Whiteman, 1-2 Laurence Poutney Hill, London EC4R 0EU, instructed by Mr Andrew Bullock, counsel, of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Mr Imran Benson, counsel, of Hailsham Chambers, 4 Paper Buildings, Temple, London EC4Y 7EX, instructed by the Respondent, Ms Susan Louise Lowe, who was present.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Susan Louise Lowe, in a Rule 5 Statement dated 7 June 2017, (as amended with the permission of the Tribunal on 5 December 2017), were that:

1.1 Between the 15 August 2011 and 1 October 2014, she misappropriated the total sum of £170,025 from Deputyship Accounts relating to four individuals for whom she had been appointed as a Deputy by the Court of Protection. She thereby breached any or all of:

1.1.1 Principle 2 SRA Principles 2011;
1.1.2 Principle 6 SRA Principles 2011;
1.1.3 Principle 10 SRA Principles 2011; and
1.1.4 Rule 20.1 SRA Accounts Rules 2011

And in respect of any conduct prior to the 6 October 2011, acted in breach of any or all of:

1.1.5 Rule 1.02 of the Code of Conduct 2007
1.1.6 Rule 1.06 of the Code of Conduct 2007
1.1.7 Rule 22 of the Solicitors Accounts Rules 1998.

1.2 Between 15 August 2014 and 19 August 2014 she made a statement to an employee of the SRA concerning the books of account of the firm of Lowe & Co which was untrue and which she knew, or should have known to be untrue. She thereby breached and/or failed to achieve any or all of:

1.2.1 Principle 2 SRA Principles 2011;
1.2.2 Principle 6 SRA Principles 2011;
1.2.3 Principle 7 SRA Principles 2011; and
1.2.4 Outcome O(10.6) SRA Code of Conduct 2011

1.3 On a date unknown prior to 19 August 2014 she created a memorandum dated 12 July 2013 which contained an untrue record of her dealings with client money and which she knew, or should have known, to be untrue at the time that she created it. She thereby breached any or all of:

1.3.1 Principle 2 SRA Principles 2011; and
1.3.2 Principle 6 SRA Principles 2011

1.4 Between 23 November 2012 and 17 June 2014, she took payment of management costs in relationship to her appointment as a Deputy by the Court of Protection amounting to a total of £222,257.74 without seeking detailed assessment of those costs by the Senior Court Costs Office ("SCCO"). She thereby breached:

1.4.1 Principle 6 SRA Principles 2011; and
1.4.2 Principle 7 SRA Principles 2011

2. Dishonesty was alleged with respect to the allegations at paragraph 1.1 to 1.3 but dishonesty was not an essential ingredient to prove those allegations.

Documents

3. The Tribunal reviewed all of the documents submitted by the parties, which included:

Applicant: -

- Application dated 9 June 2017
- Rule 5 Statement, with exhibits, dated 7 June 2017
- Schedule of costs as at issue
- Schedule of costs dated 30 November 2017
- Copy Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67 ("Ivey")

Respondent: -

- Answer dated 3 July 2017
- Amended Answer dated 20 September 2017
- Respondent's witness statement dated 14 November 2017, with exhibits
- Personal financial statement dated 14 November 2017, with supporting documents
- Various letters, September 2014 to September 2017, re medical issues
- Copy letter Applicant to Respondent 20 September 2017

Preliminary Matter - Amendment of Allegations and Rule 5 Statement

4. Ms Tahta for the Applicant made a preliminary application to make some small amendments to the allegations in the Rule 5 Statement.

5. Allegation 1.1 incorrectly referred to "Principles" 1.02 and 1.06 of the Code of Conduct 2007. There being no objection by Mr Benson for the Respondent, and to ensure clarity, the Tribunal agreed the allegations at 1.1.5 and 1.1.6 should be amended to refer to the "Rules". The word "of" was inserted into the second line of the allegation at 1.3; again, there was no objection and the amendment was permitted.

6. Ms Tahta further asked for, and was granted, permission to amend a reference in a passage dealing with allegation 1.1, which referred to the Code of Conduct "2011", to state that the date of the relevant Code was 2007. A page reference to a particular document relevant to allegation 1.3 was amended on the face of the Rule 5 Statement so that the document would be properly identified. References in allegation 1.4 in the Rule 5 Statement to the "Supreme Courts Costs Office" were amended to "Senior Courts Costs Office". The Tribunal also permitted a date to be amended to show the correct year, in relation to the Applicant's investigation. All of the amendments above were noted to be minor; there was no injustice or difficulty caused to the Respondent by allowing these changes.

7. Ms Tahta submitted that the Rule 5 Statement, as drafted and signed in June 2017, referred to the test for dishonesty set out in Bultitude v Law Society [2004] EWCA Civ 1853 ("Bultitude") and Twinsectra v Yardley and others [2002] UKHL 12

("Twinsectra"), which were then the authorities on dishonesty in professional disciplinary cases. However, the judgment in Ivey, given on 25 October 2017 by the Supreme Court, set out a different test. It was submitted that the Rule 5 Statement should be amended to remove the references to Bultitude and Twinsectra and instead set out the test from paragraph 74 of Ivey as follows:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the 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."

8. Mr Benson for the Respondent accepted that this was the correct test. The Tribunal agreed to all the amendments as proposed for the Applicant.

9. Ms Tahta applied for permission for the Applicant's Forensic Investigation Officer ("FI Officer"), Ms Taylor, to be present in court during the opening. It was not yet certain if Ms Taylor would be called to give evidence; it might be necessary if during the opening there was any lack of clarity about some factual matters and having Ms Taylor in court could help to avoid any misunderstandings about the facts in the case. Mr Benson had no objection, and the Tribunal gave permission.

Factual Background

10. The Respondent was born in 1965 and was admitted to the Roll of Solicitors in 1998. At the date of the hearing the Respondent's name remained on the Roll but she did not hold a practising certificate.

11. From 25 June 2006 the Respondent carried on in practice as a solicitor upon her own account under the style of Lowe & Co ("the Firm") initially from offices in Marston Mortaine, Bedfordshire (up until 7 October 2016) and (thereafter) from offices in Newport Pagnell.

12. In the course of her practice, the Respondent specialised in work in relation to the Mental Capacity Act 2005 ("MCA"), acting as a Deputy appointed by the Court of Protection ("CoP") in cases where an individual (referred to as "P" in the jargon) was not able to make their own decisions concerning the management of their property and affairs or health and welfare. A Deputy:

12.1 Has authority to act for P only in accordance with the terms of the Deputyship Order by which they are appointed and for so long as that Order continues; and

12.2 Must adhere to the Mental Capacity Act Code of Practice and only make decisions for P under the authority of the Court.

13. On 15 August 2014, a duly authorised Forensic Investigator in the employment of the Applicant commenced an inspection of the books of account and other documents of the Firm ("the First Investigation"). That inspection concluded on 19 August 2014 with an outcome of "no further action".

14. On 12 October 2016 the FI Officer, Ms Taylor, commenced a further inspection of those books and documents ("the Second Investigation"). That inspection culminated in a Report dated 3 January 2017 ("the FI Report") which reported, amongst other matters, that a shortage of £60,025 existed upon the client account of the Firm as a result of improper transfers between Deputyship Accounts and the Office Account of the Firm. It also reported that between 27 November 2012 and 17 June 2014 costs to a total of £222,257.74 had been taken by the Respondent without first having been assessed as required under her Deputyship.

Allegation 1.1

15. The FI Report reported that the shortage of £60,025 identified by the FI Officer as existing on the client account of the Firm was caused by 20 payments, parts of payments or inter-ledger transfers made by the Respondent from Deputyship Accounts in relation to the following clients:

15.1 Mrs SB. The shortage in her case was caused by three payments or transfers to a total value of £18,659. These were made on the following dates:

15.1.1 On 24 June 2014, when the Respondent took a payment of £4,800, purportedly on account of costs. Although a bill of costs was raised, the Respondent accepted that the costs taken were not properly payable by Mrs SB, when she was interviewed in the course of the Second Investigation on 15 December 2016.

15.1.2 On 26 June 2014, when the Respondent authorised the transfer of the sum of £7,200 from the Deputyship Account in the name of Mrs SB to the Deputyship account in the name of Mr MP. That payment was then used to make a payment on behalf of Mrs BG, for whom the Respondent also acted as Deputy.

15.1.3 On 8 August 2014, when the Respondent authorised the transfer of the sum of £10,000 from the Deputyship Account in the name of Mrs SB to the Deputyship Account in the name of Mr FM. The effect of that transfer was to clear a debit balance which had previously existed on the client matter ledger relating to Mr FM, leaving a credit balance of £7,789.47.

15.2 Mr RL. The shortage in his case was caused by 16 payments from the Deputyship Account in his name to the office account of the Firm, to a total value of £26,542 made between 15 August 2011 and 9 July 2013. Each of the payments was purportedly made in respect of the payment of the Respondent's costs, but no bill of costs was raised, or other written notification of the costs given.

15.3 Ms PB. The shortage in her case was caused by a single payment of £6,000 from the Deputyship Account in her name made on 1 October 2014, purportedly in respect of costs. Although a bill of costs was raised, the Respondent accepted that the costs

taken were not properly payable by Ms PB, when she was interviewed in the course of the Second Investigation on 15 December 2016; and

15.4 Mr RB. The shortage in his case was attributable to one transfer from the Deputyship Account in his name to the office account of £12,478.99 made on 12 July 2013. Analysis by the FI Officer of the accounting records of the Firm showed that, of this sum, only £4,754.99 had been spent on behalf of Mr RB. Of the balance of £7,724:

15.4.1 £4,365.40 was paid by the Respondent to Tees Solicitors on 26 July 2013, understood to be in respect of legal costs incurred by her husband in connection with an Employment Tribunal ("ET") claim.

15.4.2 £3358.60 was apparently paid out in respect of building, decorating and landscaping expenses. The Respondent accepted that this did not relate to Mr RB, when she was interviewed in the course of the Second Investigation on 15 December 2016.

16. In addition to the transfers giving rise to the shortage, the FI Report also identified a further four occasions between 19 June 2014 and 1 October 2014 when the Respondent had made transfers of sums ranging in value between £10,000 and £40,000 and amounting to a total of £110,000 from Deputyship Accounts held in the names of Mrs SB and Ms PB to the Deputyship Account held in the name of Mrs BG. These payments, each of which was said to be by way of loan, had been repaid by the date of the FI Report and were not, therefore, reported by the FI Officer as forming part of the shortage. The FI Report indicated the following:

16.1 On 19 June 2014 the Respondent authorised a transfer of £30,000 from the Deputyship Account relating to Mrs SB to the Deputyship Account relating to Mrs BG;

16.2 On 6 August 2014 the Respondent authorised a further transfer of £40,000 from the Deputyship Account relating to Mrs SB to the Deputyship Account relating to Mrs BG;

16.3 On 16 September 2014 the Respondent authorised a final transfer of £30,000 from the Deputyship Account relating to Mrs SB to the Deputyship Account relating to Mrs BG; and

16.4 On 1 October 2014 the Respondent authorised the transfer of the sum of £10,000 from the Deputyship Account relating to Ms PB to the Deputyship Account relating to Mrs BG.

The purported loans from Mrs SB were repaid on 27 April 2015 and the purported loan from Ms PB was repaid on 5 May 2015.

17. On the death of a person in relation to whom a Deputy has been appointed, the CoP ceases to have jurisdiction and the Deputyship therefore comes to an end. As shown by a Grant of Administration Mrs SB died intestate on 17 June 2014. Letters of administration were not granted to her estate until 20 April 2015. Ms PB died on

27 September 2014 leaving a Will. The Respondent no longer had authority to make these purported loans pursuant to her Deputyship after those dates:

17.1 Monies comprised within the estate of Mrs SB could only have been lent to Mrs BG by the Respondent on the instructions of the Public Trustee (prior to a grant of letters of administration);

17.2 Monies comprised within the estate of Ms PB could have only been lent to Mrs BG on the instructions of the sole executor of the estate, Mr SJ.
The Respondent did not have instructions from either the Public Trustee or Mr SJ to make the purported loans identified in paragraph 16 above.

Allegation 1.2

18. In the course of the First Investigation, which commenced on 15 August 2014, the Respondent informed the forensic investigator that the entry in the client matter ledger relating to Mr RB in relation to the transfer of £12,478.99 to the office account made on 12 July 2013 related to "...repayment of monies lent to the client in respect of a property purchase which was now providing the client with a rental income ... The funds lent by [the Respondent] represented the deposit funds and ancillary costs. There was no written agreement in respect of the loan by the firm because as [the Respondent] became Deputy for [Mr RB] she was her own client..." This was noted in a note prepared in the course of the First Investigation. In support of this explanation the Respondent had produced a copy of an office account bank statement, which showed a payment of £12,000 going to Tees Solicitors on 14 November 2012. The Applicant submitted that that explanation was untrue.

Allegation 1.3

19. In the course of the First Investigation, the Respondent produced a Memorandum to the forensic investigator, which was purportedly dated 12 July 2013, in support of her explanation that the payment made from the Deputyship Bank Account in the name of Mr RB had been made by way of repayment of a loan of deposit monies which had previously been made to Mr RB. That memorandum reads as follows:

> "Now that [Mr RB's]'s money is in from Motley and Hope and the purchase of [3 DM] has concluded, please reimburse the Lowe and Co office account with the deposit money we loaned him to assist with the deposit while waiting for Motley and Hope to release the money to us and also the money we paid out in respect of decorating and refurbishing."

On the face of the Memorandum, the Respondent was identified as the author of the document. The Applicant's position was that as the Respondent had never made a loan to Mr RB of any deposit money, the contents of the Memorandum were (necessarily) untrue.

Allegation 1.4

20. Where a solicitor is appointed as a Deputy by the CoP an Order is made which covers costs. This will ordinarily entitle the solicitor:

20.1 Either to receive fixed costs at the rate prescribed by Practice Direction – Fixed Costs, supplementing Part 19 of the CoP Rules 2007. The maximum remuneration which a solicitor can receive at a fixed rate for acting as a Deputy is £1,970 (in the first year) and £1,655 (in the second and subsequent years); or

20.2 Elect for detailed assessment of annual management charges. In this case the solicitor "...may take payments on account for the first three quarters of the year which are proportionate and reasonable taking into account the size of the estate and the functions they have performed. Interim quarterly Bills must not exceed 20% of the estimated annual management charges – that is up to 60% for the whole year. ... At the end of the annual management year, the deputy must submit their annual bill to the Senior Courts Costs Office for detailed assessment and adjust the final total due to reflect payments on account already received."

21. Tables appearing within the FI Report indicated that the Respondent had failed to comply with these obligations in that she had taken sums in excess of the amount which she was entitled to receive by way of fixed costs in relation to the following individuals in the following years without submitting an annual bill to the SCCO for assessment.

21.1 In relation to her Deputyship for Mrs SB, where she had acted as Deputy between 27 November 2012 and 17 June 2014:

21.1.1 In relation to the year to 27 November 2013 - £14,400

21.1.2 In relation to the subsequent period to 17 June 2014 - £8,160

21.2 In relation to her Deputyship for Mrs BG, where she had acted as Deputy from 15 July 2013 up to the date of the commencement of the investigation:

21.2.1 In relation to the year to 15 July 2014 - £13,594.40

21.2.2 In relation to the year to 15 July 2015 - £5,520

21.2.3 In relation to the year to 15 July 2016 - £8,520

21.3 In relation to her Deputyship for Ms PB, where she had acted as Deputy from 12 August 2013 up to 27 September 2014:

21.3.1 In relation to the year to 12 August 2014 - £17,824

21.4 In relation to her Deputyship for Mr RB, where she had acted as Deputy from 2 January 2013 up to the date of the commencement of the investigation:

21.4.1 In relation to the year 2 January 2013 to 2 January 2014 - £15,800

21.4.2 In relation to the year 2 January 2014 to 2 January 2015 - £25,842

21.4.3 In relation to the year 2 January 2015 to 2 January 2016 -£3,162

21.4.4 In relation to the year 2 January 2016 to 2 January 2017 - £3,042

21.5 In relation to her Deputyship for Ms JG, where she had acted as Deputy from 20 November 2014 up to the date of the commencement of the investigation:

21.5.1 In relation to the year 20 November 2014 to 20 November 2015 - £55,993.34

21.5.2 In relation to the year 20 November 2015 to 20 November 2016 – £50,400.

22. In interview with the FI Officer, the Respondent admitted that she should have submitted an annual bill in respect of each of these matters to the SCCO for detailed assessment but had failed to do so. Her explanation for that failure was "…pressure of work. I just – lots of other things going on…"

The Applicant's Investigation

23. The Applicant took the following steps to investigate the allegations which it made against the Respondent:

23.1 On 25 January 2017, a Regulatory Supervisor employed by the Applicant wrote to the Respondent, enclosing a Supervision Report which recommended intervention into the practice of the Firm, and the referral of the conduct of the Respondent to the Tribunal. The Respondent was invited to provide any written comments by 1 February 2017.

23.2 On 31 January 2017 Jayne Willetts & Co Solicitors wrote to the Supervisor on behalf of the Respondent, making representations against intervention. The allegations of dishonesty made in the Report were denied. It was also said that,

> "In 2014, when the majority of the incidents which are the subject of this investigation occurred, our client's father in law with whom she had a close and loving relationship was dying from [redacted] which had been diagnosed in 2013. He died on 29 April 2014. Our client and her husband were devastated at his loss and the stress of this caused our client, who has relapsing [medical condition], to have a significant relapse of her condition…"

With respect to client funds it confirmed that.

> "…all transactions are now independently routed through the firm's accountant who, on the advice of the client's previous auditor, has his own access code for using the firm's online banking system. This is to enable all payments to be separately verified and properly attributed. Payment slips must be presented for all transactions and the accounts are reconciled weekly by the client's independent cashier. Our client's most recent SRA audit was without adverse comment and she has no doubt the audit currently being undertaken will be similarly presented."

23.3 Further representations were received from Jayne Willetts & Co on 3 February 2017, in response to a Memorandum from the Regulatory Supervisor dated 2 February 2017 and 6 February 2017, in response to a Memorandum from the Regulatory Supervisor dated 3 February 2017.

24. On 7 February 2017 an Adjudication Panel of the Applicant decided to intervene into the practice of the Respondent, trading as Lowe & Co, and to refer her conduct to the Tribunal.

Witnesses

25. The Respondent, Mrs Susan Louise Lowe, gave evidence on her own account.

26. In examination in chief, the Respondent confirmed that the contents of her witness statement dated 14 November 2017 were true to the best of her knowledge, information and belief.

27. The Respondent addressed in particular the allegations of dishonesty and lack of integrity, which she denied. In her examination in chief, she told the Tribunal about the circumstances of various transactions, and what she had known or believed at the relevant times. The Respondent told the Tribunal about various personal/family circumstances which had caused her to be away from the office at some periods. The Respondent also told the Tribunal that the Firm's cashier had had access to the office internet banking facilities until 2014. All banking transactions appeared to have been carried out by the Respondent, because a generic code was used, but a number of the relevant transactions had been carried out by the cashier. The Respondent also told the Tribunal about the project to refurbish Mrs BG's property and that she had "panicked" when Mrs BG's account ran out of money to complete the works, particularly as Mrs BG's partner did not make good on a promise to pay the remaining costs of the work. The Respondent accepted that, in a state of panic, she had broken the Accounts Rules. With regard to the loans from Mrs SB's account, the Respondent maintained that she had spoken to the beneficiaries of the estate who had agreed to make a loan; the Respondent was aware that the beneficiaries said she had not had their agreement to use the estate monies to make loans. The Respondent told the Tribunal that during the First Investigation, she had believed the explanation she gave to the investigating officer about the transfer of £12,478.99 from the account of Mr RB to the Firm's office account (allegation 1.3). The Respondent denied that she had written the Memo referred to under allegation 1.3; she believed the cashier had written it to cover up what she (the cashier) had done in transferring the money.

28. Under cross examination, the Respondent accepted that the Memorandum apparently dated 12 July 2013 had helped to bring the First Investigation to an end. The Respondent denied she had gained anything from producing the Memorandum to the investigating officer. It was put to the Respondent that she had lied to the Applicant, to the Office of the Public Guardian ("OPG") and the Tribunal concerning various matters; the Respondent denied this.

29. The Respondent accepted that she understood the submission that in taking over £200,000 in costs without those costs being overseen by the SCCO may have been of benefit to her. The Respondent accepted that she had taken costs from Mrs SB's

estate in advance, and without producing a bill. The Respondent told the Tribunal that it was correct that the beneficiaries had not had the chance to challenge the costs initially, but they could have done so at the end of the administration and been recompensed; in fact, the Respondent had repaid the costs to the estate. The Respondent admitted that the loans made from Deputyship accounts to other accounts had been unauthorised and she could not explain why no paperwork had been produced to record the loans, save for the transfers shown on the ledgers. The Respondent told the Tribunal that all of the accounts had been repaid in November 2016 because of the Second Investigation which had drawn her attention to the problems e.g. with Mrs SB's estate. The Respondent accepted that the amount loaned from Mrs SB's account, almost £110,000, was substantial and that the loan had been undocumented and did not attract interest; there would have been no recourse for the beneficiaries if something had gone wrong with the refurbishment project for Mrs BG, or if something had happened to the Respondent as she was the only person who knew about the monies.

30. The Respondent was asked about a letter sent to the OPG on 23 February 2016, in the course of an investigation by the OPG. It was put to her that the letter was misleading concerning the loan from Mrs SB's estate and her knowledge of who the beneficiaries were and how to contact them. The Respondent told the Tribunal that it was never her intention to mislead the OPG and the letter was simply badly drafted but accepted it could appear misleading. The Respondent told the Tribunal that she had understood that she had the authority of Mrs SB's beneficiaries to use money to loan to Mrs BG. The Respondent accepted that there had been a delay in obtaining the Grant of Letters of Administration (until 20 April 2015) because the estate could not be administered until funds were repaid on the sale of Mrs BG's property. The Respondent was asked about her correspondence with Mr DW, one of the beneficiaries of Mrs SB, who had enquired about the estate accounts. The Respondent accepted she had been foolish to suggest in an email of 3 October 2016 that the estate accounts had been completed, when they had not been done. The Respondent went on to accept that this was dishonest. The Respondent also accepted that a letter concerning Mrs SB dated 1 August 2014 was not honest, as it implied that the Respondent was Mrs SB's Deputy, when Mrs SB had died over a month before. The Respondent accepted that she had signed and dated a document on 16 September 2014 setting out various breaches of the Accounts Rules. This followed the First Investigation. The breaches register was dated the same date as a further breach. The Respondent told the Tribunal that she had "got into a hole" and had to complete the work on Mrs BG's property and then sell it. She knew that she was breaching the Accounts Rules, and the Deputyship requirements, and that this was a serious matter. It was put to the Respondent that in making loans from the Deputyship accounts of recently deceased clients, her behaviour had been "thoroughly dishonest"; the Respondent replied, "It you say so". The Respondent accepted that in not seeking the authority of Ms PB's Executor, Mr SJ, to make a loan from the account, she had shown a lack of integrity.

31. The Respondent accepted that she had neither billed nor sent her costs for assessment on the Mr RL matter over a two-year period, when she had not been Mr RL's Deputy. The Respondent was asked about the transfer of £12,478.99 from Mr RB's Deputyship account to the Firm's office account on 12 July 2013. The Respondent could not explain why she had told the investigating officer in 2014 that this was repayment of a loan the Firm had made to Mr RB. She told the Tribunal that she had

not authorised the transfer and that she did not believe she had created the Memorandum referring to the loan, but had not queried it when she handed it over to the investigating officer. The Respondent told the Tribunal that she believed the account she gave was true at the time she gave it, but now accepted it was not true. The bank statement she had produced to the investigating officer in August 2014 showed a transfer of £12,000 to Tees Solicitors in November 2012. The Respondent told the Tribunal that she had panicked and may have been confused about whether that firm had acted in the conveyancing for Mr RB. The Respondent accepted that the purchase had in fact taken place in November 2013, with other solicitors conducting the purchase, and that no deposit had been paid; the Respondent told the Tribunal that she had thought the Firm had loaned some money for the purchase.

32. In response to questions from the Tribunal, the Respondent stated that she kept attendance notes, but had not kept as many as she should have done on the matters in issue in this case. The Respondent told the Tribunal, with regard to Mrs SB's estate, that she had traced the three beneficiaries, nephews of the deceased; she maintained that she had told them about the legal costs. With regard to the Firm's cashier, the Respondent told the Tribunal that she had ended her access to internet banking when it became clear that there had been problems with her work. The Respondent told the Tribunal that she had probably billed the £4,000 on this matter on 24 June 2014 by reference to time records on the system. The Respondent could not say why the invoice appeared to be so scant, as it did not specify the charging rate or time spent, or work done. The Respondent told the Tribunal that as Mrs SB had died, the OPG would have no further role with regard to costs. The Respondent told the Tribunal that she had not realised there was a shortage on the client account in this matter (of £18,659) until the Second Investigation took place, although she accepted that it was important for proper accounts records to be kept. The Respondent told the Tribunal that it had initially been difficult to trace Mrs SB's beneficiaries but Mr DW, one of the nephews, had attended the funeral; the other two lived in Australia. The Respondent told the Tribunal that she understood from Mr DW that there was not a problem in using the account for a loan re Mrs BG. The Respondent accepted that Mr DW did not know about the loans made after June 2014, but he had indicated that he did not think there was a problem with the first of the loans (in June 2014). The Respondent told the Tribunal that she had kept a cousin of Ms PB informed about costs, but not the Executor, Mr SJ; that cousin had asked her to carry out work, including continuing with building work on the property, and Mr SJ had agreed. The Respondent told the Tribunal that she had made attendance notes, but did not know where they were as she did not have the files any more. The Respondent told the Tribunal that she had transferred money (by way of unauthorised loans) to complete the works at Mrs BG's property when Mrs BG's partner failed to provide the necessary funds.

33. The Respondent told the Tribunal that Mr RB's conveyancing had been carried out by H Solicitors, not Tees Solicitors. The Respondent told the Tribunal that she had panicked when she had run out of funding for Mrs BG's rebuilding work and had not thought about selling the house as it stood, without completing the work. The Respondent told the Tribunal that refurbishing a property was not unusual work for a Deputy; she had arranged the clearance or refurbishment of about 12 houses in that capacity. The Respondent told the Tribunal that she had not thought there was a risk of running out of money for the works, but should have realised that was a risk. The

Respondent accepted that the sum of £12,000 paid to Tees Solicitors in November 2012 was for employment law work they had done for the Firm.

Findings of Fact and Law

34. 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. For reasons of privacy, details of the Respondent's medical condition have not been included in this Judgment.

35. The Tribunal took into account a submission on behalf of the Respondent that it should not take into account certain documents which had been put to the Respondent as showing that she had been misleading in correspondence. There were no allegations relating to that correspondence, and it was submitted that it was unfair to use those items against the Respondent. The Tribunal was careful, in considering the allegations, not to stray into making findings on issues which were not part of the allegations. However, the Tribunal was satisfied that it was reasonable for the Applicant to ask questions about items which were within the Rule 5 bundle and which might throw light on the events and on the Respondent's state of mind at certain points.

36. **Allegation 1.1 - Between the 15 August 2011 and 1 October 2014, she misappropriated the total sum of £170,025 from Deputyship Accounts relating to four individuals for whom she had been appointed as a Deputy by the Court of Protection. She thereby breached any or all of:**

1.1.1 Principle 2 SRA Principles 2011;
1.1.2 Principle 6 SRA Principles 2011;
1.1.3 Principle 10 SRA Principles 2011; and
1.1.4 Rule 20.1 SRA Accounts Rules 2011

And in respect of any conduct prior to the 6 October 2011, acted in breach of any or all of:

1.1.5 Rule 1.02 of the Code of Conduct 2007
1.1.6 Rule 1.06 of the Code of Conduct 2007
1.1.7 Rule 22 of the Solicitors Accounts Rules 1998.

36.1 The factual background to this allegation is set out at paragraphs 15 to 17 above. The Respondent accepted that the transactions set out had taken place. The Respondent further admitted that her conduct was in breach of the relevant Accounts Rules, would tend to diminish rather than maintain the trust the public would place in her and in the provision of legal services, and that she had failed to protect client money. Her Amended Answer contained admissions of allegations 1.1.2, 1.1.3. 1.1.4, 1.1.6 and 1.1.7, but denied the lack of integrity allegations at 1.1.1 and 1.1.5. Although in her first Answer, the Respondent had admitted all the allegations, including lack of integrity, the Tribunal proceeded on the basis that the alleged lack of integrity was fully contested.

Applicant's Submissions

36.2 The Applicant's position was that although it was accepted that the Respondent had repaid the sums which had been taken without authorisation and in breach of the Accounts Rules, since these matters came to light, this did not mean the allegation of lack of integrity could not be proved. The Applicant did not suggest that the word "misappropriated" in the allegation in itself implied dishonesty, about which there was a separate allegation. The allegation related to the misuse of client funds in relation to four Deputyship clients, including use of their money after the Deputyship had ended either through death or otherwise. The total sum of £170,025 referred to in this allegation was made up of unauthorised loans of £110,000 (£100,000 from the Deputyship account of Mrs SB and £10,000 from the Deputyship account of Ms PB) for the purpose of paying for building works at the property of Mrs BG and transfers for costs (after the end of the Deputyship period) on the matters of Mrs SB, Ms PB and Mr RL, along with a transfer on the matter of Mr RB which was not wholly for the benefit of this client. It was noted that the Respondent accepted that each of the transactions relied on had taken place on the dates and in the amounts pleaded by the Applicant.

36.3 Ms Tahta made submissions on this allegation by reference to the Respondent's dealings with the accounts of each of the four clients concerned.

36.4 Mrs SB: The Respondent had used funds on the Deputyship account of Mrs SB to make loans to the account of Mrs BG, another Deputyship client. £100,000 of the £110,000 of unauthorised loans were made from Mrs SB's account.

36.5 Ms Tahta told the Tribunal that the Respondent was appointed as Mrs SB's Deputy on 27 November 2012. She died intestate on 17 June 2014. Her beneficiaries under the intestacy were three nephews; two, who lived in Australia, were the sons of one of Mrs SB's brothers and the third, Mr DW, who lived in Jersey, was the only child of another of Mrs SB's brothers. Two days after Mrs SB's death, £30,000 was transferred from Mrs SB's Deputyship account to that of Mrs BG. On 6 August 2014, approximately six weeks after Mrs SB's death, a further £40,000 was transferred. Then, on 16 September 2014, about three months after Mrs SB's death, the Respondent transferred a further £30,000 to Mrs BG's account. The Deputyship for Mrs SB ended on her death; thereafter the Respondent was not entitled to take any Deputyship costs, but may have been entitled to claim payment for work done with the agreement of the estate. The Respondent had taken £4,800 in costs on 24 June 2014, a week after Mrs SB's death. The invoice was addressed to the care home at which Mrs SB had lived. Two days later, on 26 June 2014, the Respondent transferred £7,200 from Mrs SB's account to that of Mr MP, another Deputyship client, which was then used to make a payment on behalf of Mrs BG for the refurbishment of Mrs BG's property, the costs of which were increasing. This transfer was, in effect, an unauthorised loan to Mrs BG. A further £10,000 was transferred from Mrs SB's account on 8 August 2014, about six weeks after Mrs SB's death, to the Deputyship account of a Mr FM. This had the effect of returning that account to credit.

36.6 Ms Tahta submitted that following the Respondent's decision to refurbish Mrs BG's property, she had on four occasions taken money from Mrs SB's Deputyship account, after that account should have been closed. It was noted that on the death of a Deputyship client, the funds on that ledger should be transferred to a general client account. Ms Tahta told the Tribunal that the FI Report indicated that the funds had been repaid, to Mrs SB's Deputyship account, in April 2015 (on the sale of Mrs BG's property). Ms Tahta referred to the interview between the FI Officer and the Respondent in which the Respondent had accepted that the reason it had taken such a long time to administer Mrs SB's estate was because she was awaiting the sale of Mrs BG's property and repayment of the sums which had been "loaned" by Mrs SB. With regard to the £7,200 which had been transferred to Mr MP's account, it was noted that that had not been repaid at the extraction date used by the FI Officer (30 September 2016) and the loan to Mr FM's account had been only partially repaid, in May 2015. As at the extraction date, £18,659 of the above sums had not been repaid.

36.7 Ms Tahta submitted that the Respondent knew the Deputyship rules very well, having been asked to assist in formulating the rules. She was experienced in these matters and was also familiar with the Accounts Rules, as she dealt with client monies in CoP matters. The Respondent had not moved Mrs SB's money to the general client account, as she should have done, and made loans from it as well as claiming costs of £4,800 after the end of the Deputyship. With regard to the allegation of lack of integrity (and dishonesty) Ms Tahta submitted that it was clear that the Respondent had made attempts to trace Mrs SB's relatives, and there had been payments to tracing agents for this service. Before the Applicant had become involved, the OPG had investigated matters, including why the Respondent had not obtained the consent of the beneficiaries to the various transfers and use of Mrs SB's money. The Respondent had stated in the letter of 23 February 2016 that "there was no-one from whom I could have sought permission" and that the family had "retrospectively authorised the investment provided they did not lose out in any way". The Respondent had accepted that she did not have the authority to make decisions about the use of Mrs SB's money after her death; any such decisions would have to be made by the Public Trustee until an administrator were appointed. The Respondent did not seek permission from the Public Trustee. Further, the Respondent had contact details for the nephews in Australia; she wrote to them on 17 and 18 June 2014, i.e. very shortly after Mrs SB's death. The other nephew had been traced in time for him to be able to attend his aunt's funeral in July 2014, when the Respondent met him. It was submitted that making the unauthorised loans from Mrs SB's account was done in a dishonest manner, given that the Respondent knew how to contact the beneficiaries of Mrs SB's estate. It was submitted that the Respondent had given a misleading impression to the OPG about the difficulties in tracing Mrs SB's relatives. Mr DW, who was the major beneficiary in the intestacy, had been asked by the Applicant if he had given retrospective authority; he had said he did not, and would have had no reason to agree to make an unsecured loan, which attracted no interest. The Tribunal was referred to an email from Mr DW to the Applicant dated 29 November 2016 which not only stated that Mr DW denied giving authority, but stated that Mr DW had consulted his cousins who also denied agreeing to make any loans from their inheritance. Ms Tahta also drew attention to correspondence concerning Mrs SB's shares and to the National Grid which, it was submitted, suggested that the Respondent had authority to deal with Mrs SB's affairs, when she did not, including

signing a letter dated 1 August 2014 (about 6 weeks after Mrs SB's death) as "Deputy for [Mrs SB]". Ms Tahta also drew the Tribunal's attention to emails between Mr DW and the Respondent in which he asked for the final estate accounts (in October 2016) and the responses given by the Respondent.

36.8 Ms PB: The Respondent was appointed as Ms PB's Deputy on 12 August 2013. Ms PB died on 27 September 2014, leaving a Will in which Mr SJ was named as her Executor. Three days after Ms PB's death, on 1 October 2014, the Respondent transferred £10,000 from the Deputyship account (which should have been closed) to the account of Mrs BG. In addition, she transferred £6,000 – purportedly for costs – on the same date. It was submitted that the Respondent had had no authority to make the loan or take costs in this way. Ms Tahta noted that the Respondent had admitted to making the transfers. It was submitted that the Respondent knew there was an Executor, but did not seek his authority to make the loan or take costs and instead relied on a discussion with another relative of the deceased, who had no authority to permit the loan or agree costs.

36.9 Mr RL: Ms Tahta submitted that the matter of Mr RL was slightly different as the Respondent's Deputyship ended on 23 July 2011; Mr RL died on 31 December 2013. A total of 16 payments were made from the Deputyship account, which continued to exist although the Deputyship had expired. It was submitted that this was in a period when the Respondent was not entitled to costs as a Deputy, and she should not have been running a Deputyship account for Mr RL. Some £26,542 was taken in costs in the relevant period, which was under two years. No written notification of costs was given to anyone.

36.10. Mr RB: On 12 July 2013 the sum of £12,478.99 was transferred to office account from the Deputyship account in the name of Mr RB. It was accepted by the Applicant that £4,754.99 of this related to expenditure for the benefit of Mr RB; various works had been carried out at a property which the Respondent had bought for Mr RB in order to provide a rental income and a cooker had been purchased for that property. The remainder was not for Mr RB's benefit and a shortage of £7,724 was thereby created on his Deputyship account. This matter was also relevant to allegations 1.2 and 1.3.

36.11 The Applicant's general submission on lack of integrity with regard to this allegation, as set out in the Rule 5 Statement, was that a solicitor of integrity would never appropriate money which they held in a fiduciary capacity for a vulnerable person for their own use. It was submitted that the Respondent had done so, and had engaged in a course of conduct between 15 August 2011 and 1 October 2014 which demonstrated either a deliberate or, at best, reckless, disregard for the professional rules governing the treatment of client money such as to amount to a lack of integrity on her part. The trust that the public placed in the Respondent, and in the provision of legal services would inevitably have been diminished by reason of that course of conduct.

Respondent's Submissions

36.12 There were no specific submissions on the issue of lack of integrity. The submissions made on the dishonesty allegation, set out below, were considered by the Tribunal in the course of its deliberations on this allegation.

The Tribunal's Findings

36.13 The Tribunal considered carefully the submissions of the parties, the evidence in the FI Report (the contents of which were not disputed by the Respondent) and the evidence given by the Respondent.

36.14 The Tribunal noted that Rule 20.1 of the SRA Accounts Rules 2011 sets out the circumstances in which it is permissible to withdraw client money from client account. A solicitor may not withdraw client money from client account otherwise than in the circumstances set out in that rule. None of the payments relied on in relation to this allegation were permitted by Rule 20.1 (or its predecessor rule) and the total value of the inappropriate payments amounted to £170,025. The Tribunal was satisfied that it was proper to describe the transactions as amounting to "misappropriation", as they were not authorised or permitted by the Accounts Rules and/or the Rules governing Deputyship matters. The sum involved was significant. Most of the relevant events were in the period 2013 to 2014, with the largest amounts being in 2014 after the deaths of Mrs SB and Ms PB.

36.15 The Tribunal noted and was satisfied that the Respondent was experienced in work of this kind; it was her specialism and she had even contributed to the preparation of the relevant Deputyship rules. There could be no doubt that the Respondent was fully familiar with all of the relevant rules and procedures. The Tribunal also noted and found that work as a Deputy involved managing the affairs of vulnerable individuals, who were unable to make decisions for themselves. Any solicitor, doing any sort of work, must adhere to the highest standards of probity with regards to dealing with clients' money. Where clients are vulnerable, that duty is even more important than normal as the client has no means of protecting themselves or monitoring the actions of their solicitor. The Accounts Rules and the specific rules concerning Deputyship matters were intended to protect clients. All of the Respondent's Deputyship clients were vulnerable.

36.16. All of the money mentioned with regard to this allegation was held by the Respondent for the benefit of the client and should only have been used for the benefit of the client to whom it belonged. The Respondent was acting in a position of trust. The money was not hers, and she knew her duties with regard to dealing with it properly. In particular, the Respondent knew that on the death of a Deputyship client, her authority to deal with that client's affairs ceased and the money held should be transferred to a general client account. She also knew that the authority of the OPG ceased, and that the SCCO would not be able to carry out an assessment of the Deputyship costs thereafter. The Respondent was well aware that she would need the authority of the Public Trustee, or the administrator/executor of the estate, or at least the beneficiaries before taking any significant step in dealing with the deceased client's money. Where a Deputyship ended other than by death, and a new Deputy was not appointed promptly, the Respondent could and should have applied to the OPG for a new Deputy to be put in place and/or should have sought any necessary authorities if there was urgency in dealing with the client's affairs.

36.17 The matter of Mrs SB was particularly egregious. The Respondent was dealing with a client whose relatives were not in close contact with her during the Deputyship; there was, apparently, no-one around to challenge what she did. The Tribunal found that

the Respondent had chosen to use Mrs SB's money for Mrs BG in the hope or expectation that there would be no immediate challenges from the beneficiaries. The Respondent transferred £4,800 just a week after Mrs SB's death, in reliance on a bill which was issued on 24 June 2014. That bill was not itemised. It did not include a charging rate, the number of hours worked, a description of the work which had been undertaken, or the period covered by the bill. It would be a difficult bill to challenge, even if it had been sent to someone with the authority to agree to those costs or dispute them. The invoice was addressed to the care home at which the late Mrs SB had lived. The charges were neither the fixed costs a Deputy could elect to take, nor were they subject to any assessment to confirm that they were reasonable. There was no allegation that the Respondent had overcharged any client, but the costs had not been checked. It may well have been the case that the Respondent would have been entitled to payment for the work she had done in the final period of Mrs SB's Deputyship matter, and this amount may have been reasonable. However, the Respondent was not entitled to be paid this sum at the point at which she took payment.

36.18 The Tribunal noted and found that the Respondent was well aware that Mrs SB died intestate. From her witness statement it was apparent that she knew and understood the intestacy rules. Whilst there was no doubt a period in which the Respondent did not know who the beneficiaries would be or how to contact them, she had clearly traced the two nephews in Australia within a day or two of Mrs SB's death, as she wrote to them on 17 and 18 June 2014. The Respondent could have sought permission to take some costs, but did not mention this to the nephews initially. It was not clear at what point the Respondent had the contact details of Mr DW, the nephew in Jersey, but he was able to attend Mrs SB's funeral on 14 July 2014; the Respondent met him on that occasion. Thereafter, there was no reason whatsoever to take any steps with regard to Mrs SB's money or estate without the specific authority of the three beneficiaries.

36.19 The Tribunal noted that three unauthorised loans had been made from Mrs SB's account after her death, totalling £100,000. The first tranche was taken just two days after Mrs SB's death. The later tranches were taken seven weeks and about three months after Mrs SB's death. The money had been repaid into the account, but not until Mrs BG's property had been renovated and sold. This delayed the administration of the estate. The loans were not only unauthorised but undocumented. There was nothing to suggest that anyone other than the Respondent knew about these unsecured loans; had anything happened to her, the money may not have been recovered and repaid to Mrs SB's estate. No interest was paid on the unauthorised loans. Whilst the Respondent had given evidence that Mr DW had given an indication that he agreed to both costs and these loans being taken from Mrs SB's funds, there was no letter or email or even an attendance note recording any such discussion. It was, in any event, inherently unlikely that a beneficiary in Mr DW's position would have agreed to any unsecured loans being made, with no interest, for a project in which neither he nor anyone connected to Mrs SB had any interest.

36.20 In considering the allegation of lack of integrity, the Tribunal not only noted the above facts and circumstances, but also the Respondent's attempts to cover up what had happened. Firstly, the Respondent had not finalised the estate accounts for Mrs SB's estate but in emails to Mr DW in and around October 2016 she had

indicated that she was "unable to trace a copy of the final account on our system." Even more seriously, in a letter to the OPG on 23 February 2016 the Respondent had stated:

> "At the time of the loan [Mrs SB] had recently died. We were at a crucial stage in the build process for [Mrs SB's] house. We were trying to find [Mrs SB's] family…"
>
> "At the time of the loan from [Mrs SB's] estate, there was no-one from whom I could have sought permission. As [Mrs SB] had died, the OPG no longer had jurisdiction and I was still making extensive enquiries into the whereabouts of [Mrs SB's] family. Once I found [Mrs SB's] family, I explained what I had done and they retrospectively authorised the investment provided they did not lose out in any way…"

The Tribunal found that these statements were seriously misleading, and untrue, where no loans were made until after the Respondent knew about the two nephews in Australia and two of the three tranches were transferred after the Respondent was in contact with all three. The Respondent told the Tribunal, under cross examination, that the letter had been badly drafted; the Tribunal could not accept this. There had been repetition of the seriously misleading indication that the Respondent did not know how to contact the relevant people at the time she used money from Mrs SB's estate. Further, the Tribunal was satisfied that there had been no retrospective authority given for what the Respondent had done. The Respondent had accepted in evidence that the letter was misleading. She had used Mrs SB's estate money improperly and had sought to conceal what had happened. Even without the concealment, there was sufficient impropriety in the dealings with Mrs SB's money to clearly establish a lack of integrity.

36.21 With regards to Mr RL, the Respondent had made a total of 16 payments from the Deputyship account to the office account of the firm totalling over £26,500 in a period of almost two years, when the Respondent was not Mr RL's Deputy. The costs the Respondent had taken had not been checked, and the bills were not available at the time of the Applicant's investigation. It was correct that as the Respondent was not the Deputy, her costs could not have been assessed in the usual way by the SCCO. However, given that she had no authority to take any significant steps on behalf of Mr RL, it was unclear what work could have been done by her which led to such large costs. It may well have been acceptable to keep matters "ticking over", until a new Deputy was appointed and payment of those costs could then have been authorised by the new Deputy, if appropriate. The Respondent knew that she could have asked the OPG to appoint a new Deputy, or for authority to take any urgent and necessary steps on behalf of Mr RL (and to bill for any such approved work). In her witness statement, the Respondent had stated that, "There was a reasonable belief, when these costs were taken, that these monies were or would end up being owed to [the Firm] for the work I was doing." It may be that the Respondent would have been entitled to some payment for work done in keeping Mr RL's matters "ticking over". However, she was not entitled at the time she took payment. The Respondent had not taken any steps to notify the OPG that she was taking costs, or how they were calculated and for what work. This conduct clearly lacked integrity. A solicitor acting with integrity would have informed the OPG and taken steps more promptly to ensure that a new

Deputy was appointed. The Respondent had shown a clear disregard for the rules and safeguards in place for Deputyship matters.

36.22 In the matter of Ms PB, the Respondent had taken costs of £6,000 just four days after Ms PB's death. The Deputyship ended on death and the Respondent was aware that Ms PB had left a Will in which Mr SJ was named as the Executor. She could and should have taken instructions from the Executor before taking any costs after Ms PB's death. The Respondent stated in her witness statement that the costs she took (£5,000 plus VAT) were for "existing and likely future costs" and that she had had a reasonable belief that the monies were, or would end up being owed to the Firm. The Tribunal found that there was no reasonable basis for thinking that any future costs would be due to the Firm; there was no retainer in place to deal with the administration of Ms PB's estate. With regard to costs claimed for work already done, the Respondent could and should have asked the Executor. It was not proper to take costs for work which had not yet been done.

36.23 With regard to Mr RB, £12,478.99 had been transferred from his Deputyship account but only £4,754.99 had been used for the benefit of Mr RB. At best, this showed a significant failure to protect and deal with Mr RB's assets properly. The Respondent had been unable to explain why she had made the transfers. The use of the money was not properly and clearly recorded, as explored further with regard to allegation 1.3. The fact that some of Mr RB's money had been used for the benefit of the Respondent or her Firm was of great concern.

36.24 The Tribunal was satisfied so that it was sure on the facts and on the admissions of the Respondent that her conduct in respect of all of the transactions set out in relation to this allegation was in breach of the relevant Accounts Rules and was conduct which would tend to diminish, rather than maintain the trust the public would place in the Respondent and in the provision of legal services. With regard to all those transactions after October 2011, the Respondent was also in breach of Principle 10. The Respondent had denied that her actions lacked integrity. However, the Tribunal was satisfied so that it was sure on the evidence presented that the Respondent had lacked integrity, in breach of Principle 2 and, with regard to Mr RL's matter prior to October 2011 she was in breach of Rule 1.02 of the Code of Conduct 2007. All parts of the allegation had been proved to the required standard.

37. **Allegation 1.2 - Between 15 August 2014 and 19 August 2014 she made a statement to an employee of the SRA concerning the books of account of the firm of Lowe & Co which were untrue and which she knew, or should have known to be untrue. She thereby breached and / or failed to achieve any or all of:**

1.2.1 Principle 2 SRA Principles 2011;
1.2.2 Principle 6 SRA Principles 2011;
1.2.3 Principle 7 SRA Principles 2011; and
1.2.4 Outcome O(10.6) SRA Code of Conduct 2011

37.1 The factual background to this allegation is set out at paragraph 18 above. The Respondent denied this allegation and stated that at the time of the first inspection, in August 2014, she had believed what she told the investigating officer was true, although she now knew it was not correct.

37.2 The Tribunal noted and found that the explanation that the Respondent gave in August 2014 was not correct as:

37.2.1 The Respondent/her Firm had never lent Mr RB money as a deposit for a property, so there was no need for Mr RB's account to make any repayment;

37.2.2 The transfer to office account of £12,478.99 made on 12 July 2013 did not relate to the purchase of a property, was only partly for the benefit of Mr RB and was mainly used to make payments for the benefit of the Respondent herself and / or third parties unconnected to Mr RB;

37.2.3 The payment of £12,000 to Tees Solicitors on 14 November 2012 related to legal costs incurred either by the Respondent's husband in connection with Employment Tribunal proceedings, or by the Firm in relation to employment law advice.

37.3 The Tribunal also noted and found that as a result of the explanations given to the investigating officer in 2014, that investigation had ended with no further action being taken. The Respondent understood at the time of the investigation that it was important that she gave truthful and complete information to her regulator and should take great care in answering any questions, including checking documentation if she could not recall a particular transaction. The Respondent had given as her only explanation for giving inaccurate information that she had been confused and had panicked; she had denied that she had deliberately been untruthful.

37.4 The transfer in question, from Mr RB's Deputyship account, had taken place on 12 July 2013 to the Firm's office account. It was accepted that £4,754.99 of this amount had in fact been used for Mr RB's benefit. The transfer had been described on the ledger as "transfer re loan"; the Respondent had subsequently accepted that this was not an accurate description of the transfer. However, in August 2014 the Respondent had told the investigating officer that the loan was shown by a transfer to Tees Solicitors made on 14 November 2012 in the sum of £12,000.

37.5 It was correct that a property had been purchased for Mr RB, to provide a rental income, at 3 DM (close to a property purchased by the Respondent). The completion statement showed that completion took place on 22 May 2013. There was no mention on the completion statement of any deposit being paid; it appeared that exchange of contracts and completion may have taken place on the same date. At the time of the purchase, Mr RB's Deputyship account contained over £400,000, as it had since at least April 2013. There would have been no reason to lend Mr RB money for a deposit and, as noted, no deposit was actually paid. There was no documentation to support the explanation that there had been a loan. Had there been a loan, it should have been clearly documented particularly where it was not shown on a ledger (as, in the Respondent's original explanation, the loan was made before the Deputyship account was opened).

37.6 The Respondent had relied on a bank statement showing the payment to Tees Solicitors in the sum of £12,000 on 14 November 2012 as supporting the explanation she gave. However, as the Respondent confirmed in her oral evidence, Tees Solicitors gave employment law advice and had not been the conveyancing

solicitors. The Tribunal found that the Respondent would have recalled that Hilliers Solicitors carried out the conveyancing, not Tees Solicitors; indeed, she gave to the Tribunal a coherent account about how that firm had been selected. The Tribunal noted that the Respondent did not become Mr RB's Deputy until 2 January 2013, nearly two months after the payment to Tees Solicitors.

37.7 The Tribunal found that not only was the explanation that the Respondent gave to the investigating officer untrue, but the Respondent must have known it to be untrue at the time it was given. The Tribunal noted that in her witness statement the Respondent had referred to suffering a relapse of a medical condition at or about the time relevant to this allegation and allegation 1.3. There was a letter from a medical practitioner about this, but no information or evidence about what debilitating effects were suffered, or their intensity or effect on the Respondent's ability to work. There was no evidence to suggest that the condition had an impact on the Respondent's memory or ability to analyse information or respond to questions. The Respondent was able to explain the £12,000 payment to Tees Solicitors during the investigation in November 2016 and was fully aware by then that there had been no loan for Mr RB's benefit. The Tribunal accepted the Applicant's submission that it was inconceivable that the Respondent was able to recall the true position as at those dates but could not do so at the time of the first inspection in August 2014. In any event, the making of a loan of £12,000 to a client would have been a significant outlay for her, such that she might be expected to recall whether or not it had been made two years later. This was particularly so where the purported loan was said to have been made before the Deputyship began; this would have been an even more unusual circumstance.

37.8 The Tribunal further accepted and found that a solicitor of integrity does not tell deliberate untruths to their regulator. If a solicitor does so then not only will they fail to co-operate with their regulator but the trust that the public places in them and in the provision of legal services will also inevitably be diminished.

37.9 The Tribunal was satisfied to the required standard that this allegation had been proved in full.

38. **Allegation 1.3 - On a date unknown prior to 19 August 2014 she created a memorandum dated 12 July 2013 which contained an untrue record of her dealings with client money and which she knew, or should have known, to be untrue at the time that she created it. She thereby breached any or all of:**

1.3.1 Principle 2 SRA Principles 2011; and
1.3.2 Principle 6 SRA Principles 2011

38.1 The factual background to this allegation is set out at paragraph 19 above. The Respondent denied this allegation, which is closely linked to allegation 1.2 above.

38.2 The Applicant's position was that since the Respondent had never made a loan to Mr RB of deposit money to buy a house, the contents of the Memorandum, which bore the date 12 July 2013, were necessarily untrue. The Applicant further submitted that the Respondent must have known its contents to be untrue. The Applicant submitted that the purpose in creating the Memorandum could only have been:

38.2.1 Either to facilitate the transfer of £12,478.99 from the Deputyship Account in the name of Mr RB to the office account of the Firm on 12 July 2013 (in which case its purpose was to mislead the accounts department of the Firm as to the propriety of the transfer which they were being asked to effect); or

38.2.2 To lend credence to the account which the Respondent gave to the investigating officer of her dealings with the Deputyship Account in relation to Mr RB in the course of the First Investigation (in which case its purpose was to mislead the Forensic Investigator).

38.3 The Applicant submitted that under no circumstances would a solicitor of integrity knowingly create a document which was designed to mislead others. If a solicitor did so, then the trust that the public placed in them and in the provision of legal services would inevitably be diminished. The public would expect any document emanating from a solicitor's office to be strictly true and accurate.

38.4 The Respondent's evidence was that she did not believe that she had created the Memorandum. In her witness statement, the Respondent referred to having a genuine belief that the transfer related to Mr RB's investment property and that she had surmised that the Firm must have loaned Mr RB £12,000 towards the deposit. The Respondent had accepted in her statement that if she had done a more thorough search, she would have realised that Tees Solicitors did not do the conveyancing in the purchase of Mr RB's property. The Respondent went on to state that she had found the Memorandum on the Firm's computer system, in the appropriate client folder. The Respondent went on to state:

> "... I had no recollection of having created the memo but with 35+ other clients to deal with on a day-to-day basis, my ability to recall writing one particular document was not infallible. At the time I was in a state of panic and even though I read the memo before I presented it to the FIO, as I had no other explanation for why the payment had been made, I presumed the memo was true. On the day I gave the memo to the FIO and made the statement, I did not know – or believe – that the memo was untrue. Why else would it exist?
>
> I do not believe I created the memo. I have no recollection of writing the memo and would not have created a document I knew to be untrue. I realise I told the second FIO that I wrote the memo but, again, overwhelmed with stress and being completely unable to understand how else the memo had come to exist, I felt I had no choice but to accept that I must have written it and just could not recall the circumstances.
>
> It is only on reflection that I now believe, although I cannot definitively prove this, that the cashier wrote the memo to explain a transfer which I still, even after revisiting all the paperwork, do not understand."

38.5 In examination in chief, the Respondent told the Tribunal that she did not believe she wrote the Memorandum as it was not in a style she would have used and that she believed the cashier wrote it to cover up what she had done; the Respondent told the Tribunal that she had got rid of the cashier because of the mistakes she was making.

38.6 Under cross examination, the Respondent told the Tribunal that neither she nor the cashier gained anything by creating the Memorandum, but accepted that after she produced the Memorandum and bank statement, the First Investigation had ended. The Respondent asked the Tribunal to accept that she had not authorised the transfer from Mr RB's account. The Respondent accepted that when she handed the Memorandum to the first investigating officer she had not raised the possibility that someone else had written it, even though she now stated it was not written in her style. The Respondent reiterated that she had forgotten that she had not loaned money to Mr RB to help buy a property.

38.7 The Tribunal found the Respondent's explanation for the Memorandum was not credible. The Respondent had had a reason to create and produce the Memorandum, namely to bring the first investigation to an end. In other evidence, the Respondent had stated that she had not kept detailed attendance notes, and it was clear she had not kept proper records on her files. The detail in the Memorandum did not fit with what appeared to be her usual conduct on the four client matters in issue of not keeping proper records. The Tribunal found the content and style of the Memorandum odd in that it gave much more exposition than would be normal in an ongoing matter. It was addressed to "[JM], Cashier" and was stated to be from "Susan Lowe, Principal" and contained a detailed narrative rather than a simple instruction.

38.8 The Tribunal noted that no metadata had been produced by the Applicant to show who had created the document and on what date. The Tribunal considered carefully whether this allegation could be proved to the required standard without such evidence. The Tribunal noted that even if the Respondent had not created the Memorandum, she produced it to the investigating officer in August 2014, together with a bank statement, to support the position which she then asserted which was that the transfer represented a repayment of a loan from the Firm.

38.9 The Tribunal could not accept that the Respondent had genuinely believed her Firm had loaned a large sum to a client; it was an unusual thing to do and would be very memorable if it had happened. The Respondent had had no reason to think that Tees Solicitors had carried out the conveyancing, and any examination of the client file would have shown that Hilliers did the conveyancing and that no deposit had been paid. There was no proper reason to think that the Memorandum was created by the cashier, or anyone other than the Respondent. The Tribunal noted the Respondent's evidence about mistakes made by the cashier over a period of time. However, there was nothing to suggest that this transfer had been made in error by the cashier. If the Respondent had had concerns about the cashier, in August 2014 she could have told the investigating officer that she could not explain the transfer and that it may have been carried out by the cashier without the Respondent's knowledge or approval. Instead, she chose to try to explain the transfer by producing this Memorandum, and the bank statement. The Tribunal found that the Respondent had produced the Memorandum for one of two purposes: to convince the accounts department that the transfer was proper; or for the purposes of the investigation (or, indeed, any audit of

the Firm's accounts). Despite the absence of any metadata, there was no reasonable doubt that the Respondent had created the Memorandum.

38.10 The Tribunal noted further that in her oral evidence, the Respondent did not make any outright denial that she had created the Memorandum, but had phrased her answers in terms that she "did not believe" she had created it. The Tribunal also noted that the Respondent had changed her story with regard to the Memorandum over time. In August 2014 she had presented it to the investigating officer as positively supporting the assertion that the Firm had loaned Mr RB £12,000 – an assertion which had no basis in reality. In November 2016 she had told the FI Officer that she knew the payment of £12,000 to Tees Solicitors was in respect to her husband's employment law matter but had told the Tribunal that this was a payment for advice given to the Firm. In November 2016 the Respondent told the FI Officer that she "did not remember ever having seen that attendance note" (which was a reference to the Memorandum), but also told the FI Officer that she had authorised the transfer in question. The Respondent had developed her position to making the assertion that she did not believe she had created the Memorandum, and that she believed the cashier had done so. The Tribunal was satisfied on the evidence, including the unconvincing way in which the Respondent gave evidence, that the Memorandum had been created by the Respondent. As the Respondent knew that she had not made a loan to Mr RB, before the Deputyship, she knew that the Memorandum was untrue when it was created. There was no doubt that the Respondent's actions lacked integrity and would tend to diminish, rather than maintain, the trust the public would place in the Respondent and the provision of legal services. The allegation had been proved to the higher standard.

39. **Allegation 1.4 - Between 23 November 2012 and 17 June 2014, she took payment of management costs in relationship to her appointment as a Deputy by the Court of Protection amounting to total of £222,257.74 without seeking detailed assessment of those costs by the Senior Court Costs Office. She thereby breached:**

1.4.1 Principle 6 SRA Principles 2011; and
1.4.2 Principle 7 SRA Principles 2011

39.1 The factual background to this allegation is set out at paragraphs 20 to 22 above. The Respondent admitted this allegation.

39.2 The Tribunal noted the Applicant's position, as set out in the Rule 5 Statement, that the public would be mindful of the need to ensure that the interests of vulnerable people who are under the jurisdiction of the CoP are adequately protected. The public would therefore trust a solicitor who is acting as a Deputy to comply strictly with the legal requirements as to the assessment of their costs which exist for the protection of the person for whom they act as Deputy.

39.3 The Tribunal noted that the Respondent had admitted this allegation. The evidence was overwhelming, and the Respondent could not properly have challenged it. There was no allegation that the Respondent had actually overcharged any clients for whom she acted as a Deputy. The misconduct lay in taking very significant amounts in costs, over a period of over 18 months, without allowing any supervision or checking

of those costs. The misconduct was made the more serious because the Respondent well knew the relevant rules and procedures, which were in place to ensure that vulnerable clients were protected. The Respondent set out at some length in her witness statement her comments on the various rules. She set out a number of reasons for not having the costs assessed or checked, which the Tribunal noted.

39.4 The Tribunal was satisfied that the Respondent's conduct was such as would tend to diminish, rather than maintain, the public's trust in the Respondent and in the provision of legal services and that it was in breach of her legal and regulatory obligations. This allegation was proved to the required standard, on the facts and on the admission.

40. **Dishonesty was alleged with respect to the allegations at paragraph 1.1 to 1.3 but dishonesty was not an essential ingredient to prove those allegations.**

40.1 The factual background to the allegation of dishonesty is set out at paragraphs 15 to 19 above. Both parties accepted that the proper test to apply in considering this allegation was that set out in Ivey.

Applicant's Submissions

40.2 The Applicant's position was that in:

40.2.1 Misappropriating client funds to a value of £170,025 between 15 August 2011 and 1 October 2014; and/or

40.2.3 Knowingly making an untrue statement to the investigating officer conducting the First Investigation concerning the circumstances of the transfer of the sum of £12,478.99 from the Deputyship account in relation to Mr RB made on 12 July 2013; and / or

40.2.4 Creating the memorandum purportedly dated 12 July 2013

the Respondent acted dishonestly.

40.3 Further factors relied on by the Applicant were that:

40.3.1 The Respondent was an experienced solicitor who had been in practice for in excess of 15 years at the time of the matters giving rise to the allegations against her. As such, she must be taken to have been familiar with the provisions of the SRA Accounts Rules and to have understood the sacrosanct character of client account. It followed that she must also be taken to have acted with knowing impropriety in misappropriating funds from the Deputyship Accounts in relation to Mrs SB, Mr RL, Ms PB and Mr RB.

40.3.2 Those misappropriations were not isolated incidents. Rather, they constituted a course of conduct extending over a period in excess of three years. The Respondent had ample opportunity to reflect on the propriety of her dealings with client monies.

40.3.3 The movement of funds between the Deputyship Account in the name of Mrs SB to the Deputyship Account in the name of Mr FM on 8 August 2014 and the various transfers to the Deputyship Account in the name of Mrs BG demonstrated a conscious decision on her part to take monies belonging to one client in order to make a payment on behalf of another.

40.3.4 The Respondent's actions in creating the Memorandum purportedly dated 12 July 2013 could only be explained on the basis that she considered that the transfer from the Deputyship Bank Account in relation to Mr RB would either be challenged by the accounts department of the Firm, or be a matter of concern to the investigating officer conducting the First Investigation. It necessarily followed that the Respondent recognised that the making of that transfer would be regarded as wrong by others.

40.3.5 Following on from this, the Respondent's actions in knowingly providing an untrue explanation for the reason for that transfer to the investigator conducting the First Investigation again demonstrated an awareness that what she had done would be viewed as wrong by others. She would otherwise have had no reason to conceal her actions.

40.3.6 The circumstances in which that explanation was given, and, in particular the fact that it was reinforced by the production of the office bank account and the Memorandum demonstrate that the Respondent engaged in a deliberate and intentional act of deception on that occasion. She presented the investigating officer with an untruthful account which was designed to withstand scrutiny.

40.3.7 When interviewed by the FI Officer in the course of the Second Investigation on 15 December 2016 the Respondent:

- Accepted that the making of the various transfers from the Deputyship Account in relation to Mrs SB to the Deputyship account in relation to Mrs BG were "…the wrong thing to do…";

- Accepted that the transfer of the sum of £10,000 from the Deputyship Account in the name of Mrs SB to the Deputyship Account in the name of Mr FM "…was wrong. I shouldn't have done it…";

- Accepted that the transfer of the sum of £10,000 from the Deputyship Account in the name of Ms PB to the Deputyship Account in relation to Mrs BG was also wrong and made without authority;

- Was unable to give an honest explanation for the creation of the Memorandum purportedly dated 12 July 2013;

- Accepted that "…the outcome is highly likely to be that I'm gonna get struck off…". This statement demonstrated that the Respondent understood that she was guilty of very serious misconduct.

40.4 It was submitted that no honest solicitor would misappropriate moneys from three vulnerable clients for their own personal financial benefit and then give an untrue account of their dealings with one of those clients to their regulator, falsifying documents in support of their explanation. However, the Respondent had done so.

40.5 In response to Mr Benson's submissions on dishonesty, set out below, and in particular with regard to the Ivey decision, Ms Tahta submitted that it was not necessary for there to be deception for an action to be dishonest, nor did there have to be any gain. With regard to Mr Benson's submissions about the letter to the OPG of 23 February 2016, Ms Tahta submitted that the Tribunal was not precluded from considering it. Allegation 1.1 dealt with a number of transfers, some of which overlapped with matters investigated by the OPG. The Respondent had set out in the letter an explanation as to why she had not obtained permission from the beneficiaries of Mrs SB before making the transfers and her explanation formed part of the reason the Applicant alleged she had been dishonest. It was submitted that the letter gave a clear indication of the Respondent's state of mind. She had suggested she had not contacted Mrs SB's relatives at the relevant time because she could not; that was untrue. Ms Tahta submitted that it would be a nonsense if the Tribunal could not take this into account.

Respondent's Submissions

40.6 Mr Benson for the Respondent submitted that dishonesty would generally involve deception, lies and behaving in a way that no honest person would. The Respondent accepted the various Rule breaches which were alleged but denied dishonesty. Mr Benson referred the Tribunal to paragraph 45 of Ivey in which it was noted that "cheating involves deception of the other party" and that "it will usually be easy to describe what was done as dishonest". It was stated at paragraph 48 of Ivey that "Dishonesty is not a matter of law, but a jury question of facts and standards." At paragraph 51 there was a further reference to deception and, it was submitted, this linked deception to dishonesty and at paragraph 67 there was a further reference to dishonesty being a matter for the jury. The quotation set out at paragraph 7 above was accepted as setting out the relevant test. Mr Benson submitted that there was a danger of making a finding of dishonesty because the Rule breaches had been admitted. Mr Benson submitted that the Tribunal should consider whether there had been a process of deception and whether the Respondent had consciously taken money without being entitled to it. If the Tribunal found that the Respondent knew she was not entitled to deal with the money as she did, then that could lead to a finding of dishonesty.

40.7 Mr Benson submitted that the Respondent was a solicitor who had tried to serve her clients. In the cases of the Deputyship clients who had died (and Mr RL), it was submitted that the Respondent had carried out work for which she had not yet been paid. It was submitted that the Respondent had sought payment of her costs in the belief it would all be sorted out during the administration of the estates. The Applicant had not alleged that the costs had all been taken dishonesty. Mr Benson submitted that the Respondent had got into a muddle, and had made admissions about that. It was submitted that the Respondent had acted throughout in the best interests of her clients.

40.8 In the light of those submissions, Mr Benson submitted that the Tribunal was left to consider three issues:

40.8.1 The £110,000 from Mrs SB (and Ms PB) for Mrs BG. Mr Benson submitted that there had been no benefit to the Respondent in carrying out this work for Mrs BG. She had made poor decisions, which led to being left in a position where Mrs BG's house did not have a roof. The Respondent had wanted to see the project through. Mrs SB and Ms PB's estates had been repaid. It was submitted that whilst there had been a breach of the Rules, there was no deception or dishonesty.

40.8.2 The Memorandum dated 12 July 2013, which appeared to explain a payment from the account of Mr RB. The Respondent denied that she had created the Memo, and it was submitted that the Respondent had herself been deceived by it. The Respondent had passed the Memo to the investigating officer in good faith. It was submitted that the Firm's cashier had "messed up" and had created the Memo to cover her tracks, having made an incorrect payment. The cashier had not been called to give evidence, and there was no metadata showing when the Memo was created and by whom. Whilst there was clearly some doubt about how this document had been produced, it was for the Applicant to prove that it had been prepared by the Respondent; it would have been easy to detect who had created it and when. It was submitted that the Respondent would not have sacrificed her career for £12,000.

40.8.3 With regard to the costs which had been taken, it was submitted that the Respondent believed that the costs would all be sorted out at a later stage. Whilst she should not have taken the costs when she did, it was not dishonest. Mr Benson reminded the Tribunal to exercise caution when considering the evidence given in relation to the letter to the OPG dated 23 February 2016; there had been no allegation about this letter, and it would be wrong to use it to attack the Respondent's character.

40.8.4 Mr Benson submitted that the Respondent had made efforts at her personal expense to ensure the no-one was worse off as a result of what had happened. It was only the Respondent who had suffered financially. She had even refunded costs which she believed she may have been entitled to because she had taken them without using the proper process. The Respondent had lost her Firm, her income and was now liable to pay the costs of the intervention into her Firm.

The Tribunal's Decision

40.9 The Tribunal noted that there was no allegation of dishonesty with regard to allegation 1.4. It also noted that the Respondent had not suggested that her conduct was linked or caused by any medical condition which made her unable to understand what she was doing. The only explanation offered had been that there had been pressures of work and that the Respondent had undergone a relapse in her medical condition in 2014, at about the time of the First Investigation; there was no evidence that that relapse had any notable effect on the Respondent's ability to conduct her work. The Tribunal also noted that in the Respondent's Answer dated 3 July 2017, at

which point she was legally represented, the Respondent had admitted all of the allegations, including the allegation of dishonesty. The Respondent's explanation for making that admission, which was subsequently withdrawn, was that at the time she was, "broken by the process – to the point that I became depressed and very ill... In this state of mind I was prepared to accept anything in order to make this process go away as quickly and painlessly as possible. However, I have now had an opportunity to clear my head and properly address myself to the issues. I do not believe I was dishonest and feel I have the strength to assert this. I accept it is for the SDT to decide on all the evidence and I would like to have this independently decided." There was no medical evidence concerning the Respondent's mental health at the relevant time, although there was a letter from a medical practitioner which linked a number of difficulties the Respondent was experiencing in the summer of 2017 to her underlying medical condition.

40.10 The Tribunal noted that there was no suggestion that at the time of this hearing the Respondent was suffering any particular health difficulties which might affect her concentration or ability to give evidence. The Tribunal found the Respondent's evidence unconvincing when she spoke about what she had known or believed at various points. It noted that she often gave evidence at one remove e.g. saying "I maintain that I spoke to the beneficiaries" rather than saying "I did speak to the beneficiaries". More importantly, the Respondent's evidence was at odds with what she must have known or understood at the relevant times.

40.11 The Tribunal noted its findings in relation to allegations 1.1, 1.2 and 1.3, set out above, which are not repeated here. The Tribunal had regard to the test for dishonesty set out in Ivey. The Tribunal was required to consider the Respondent's actual state of knowledge or belief as to the facts before applying the objective standards of ordinary decent people.

40.12 With regard to the matter of Mrs SB, the Respondent knew that from the date of Mrs SB's death she was no longer a Deputy. The Respondent was very familiar with the relevant rules which applied in a field of law in which she was experienced and, indeed, in which she appeared to be an expert. The Respondent knew that she had no authority to make loans for the benefit of Mrs BG or take costs, for her own benefit, after Mrs SB's death. The Respondent was aware of the identities of the beneficiaries of Mrs SB's estate very shortly after Mrs SB's death. She was also aware that in the absence of any identified beneficiaries, she could have taken instructions from the Public Trustee. The Respondent began to take the costs in question and make unauthorised loans shortly after Mrs SB's death. The Tribunal was satisfied that she knew she was not entitled to take these steps. The Tribunal noted that Mrs SB's estate was repaid the loan monies when Mrs BG's property was sold. However, that did not mean the original action was honest. The Respondent had not recorded the unauthorised loan, and was aware that it was not documented or secured. She had concealed the loans from the beneficiaries. The Tribunal was satisfied that she had not obtained any authority from Mrs SB's beneficiaries to make the loans, or take the costs which were in issue. The Respondent knew that she was in a fiduciary position, acting for a vulnerable client and thereafter was required to protect the assets of the estate, pending its administration and distribution. The Respondent knew that she was not entitled to take costs at the point at which she did so. In all of these circumstances, there was no doubt that the Respondent knew that what she was doing

was wrong. This finding was reinforced by the Respondent's response to the OPG in February 2016 in which she sought to further conceal what she had done.

40.13 The Tribunal also noted and found that on two occasions after Mrs SB's death, the Respondent wrote letters to third parties which suggested that the Deputyship was in place. In a letter to Equiniti, concerning Mrs SB's shareholdings, dated 31 July 2014, the Respondent wrote: "We can confirm that the Court of Protection Order has been registered and the Court of Protection Order documentation has been returned separately". In a letter to the National Grid Share Register dated 1 August 2014, the Respondent wrote: "... I now enclose a copy of the Deputyship Order from the Court of Protection", explained that this meant she had the power to "take possession or control of the property and affairs of [Mrs SB]..." and ended with the Respondent signing as "Deputy for [Mrs SB]". The purpose of these letters was clearly to allow the Respondent to gather in Mrs SB's assets, at a point when she was not the Deputy for Mrs SB and had not been appointed by those entitled on the intestacy to act on their behalf. The Tribunal reminded itself that there was no allegation of dishonesty in relation to these letters. However, they were clearly misleading letters and added to the clear conclusion that the Respondent knew full well that she was dealing with Mrs SB's affairs in an inappropriate way. She was fully aware that the Deputyship had ceased on Mrs SB's death and she could have been in no doubt about all the circumstances as she knew and understood the relevant rules and knew that Mrs SB had died. Further evidence that the Respondent was well aware that what she was doing was wrong was seen in a document prepared and/or signed by the Respondent on 16 September 2014, shortly after the First Investigation. This document was described as a "Register of breaches of Accounts Rules 2013/14". With regard to Mrs SB, it recorded that the Deputyship account should have been closed on Mrs SB's death and transferred to the client account (or a probate account). The document also recorded the unauthorised loans made on 19 June and 6 August 2014 as being breaches, along with a loan of £30,000 made for the benefit of Mrs BG on 16 September 2014. The Respondent had told the Tribunal that she knew that the loans were improper, and had therefore recorded them on the register of breaches. The Tribunal was very concerned that she recorded a breach at the time of the breach; she clearly knew that what she was continuing to do was improper.

40.14 Given the state of the Respondent's knowledge at all relevant times, there was no doubt that her conduct with regard to Mrs SB, under allegation 1.1, was dishonest.

40.15 In the matter of Ms PB, the Respondent knew of Ms PB's death, and that the Deputyship was thereby ended. She also knew that Ms PB had left a Will, naming Mr SJ as her Executor. Within days of Ms PB's death, the Respondent took costs, to which she was not entitled at that time. The Respondent may have had a reason to think that some costs would be payable for her work in the final stages of the Deputyship, but the Tribunal found she knew that she was not entitled to those costs at that time; she knew that she should obtain the authority of the Executor to take any steps with regard to Ms PB's assets. The Respondent had the same knowledge when she used Ms PB's money to make an unauthorised loan of £10,000 for the benefit of Mrs BG. The Respondent also knew that the loan was undocumented and unsecured, and that it had not been approved when she had no power to make decisions about Ms PB's money. The Tribunal noted that the Respondent had spoken to a cousin of Ms PB about certain matters, but she knew that he had no authority to take any

decisions about the estate. The Tribunal noted that in the interview with the FI Officer on 15 December 2016 the Respondent had admitted that she knew that making the loan was "wrong" and "stupid" and stated, "I knew it was wrong". There was no doubt that in relation to the estate of Ms PB, as alleged in allegation 1.1, the Respondent's conduct was dishonest in accordance with the test in Ivey.

40.16 With regard to Mr RL, the Respondent had taken payment on 16 occasions after the Deputyship order ended and when there was no Deputy in place. The costs taken in the period of almost two years amounted to £26,542, which was a significant sum. The Respondent knew that she was not the Deputy. The Tribunal noted and accepted that there had been a period of uncertainty about whether or not a new Deputy was needed as, according to the Respondent, it had been thought that Mr RL might die in the summer of 2011 and there had later been some discussion as to whether Mr RL's sister might be appointed. However, the Respondent did not keep the OPG informed, let alone ask the OPG to deal with appointing a new Deputy. Neither did she inform the OPG that she was taking costs. It may well have been reasonable to make sure that matters were kept "ticking over" for Mr RL e.g. paying any relevant care home fees or other proper expenses but it was not reasonable to undertake such significant work as to justify costs of over £26,000 in a two-year period. The Tribunal found that the Respondent knew that she was not entitled to take all of these costs and that the transfers to pay these costs were improper. An ordinarily honest member of the public would regard it as dishonest for a solicitor, who was fully conversant with the rules and the need to protect client money, to take money for costs when there was no right to take such costs. The Tribunal was satisfied that the Respondent's conduct had been systematic and deliberate rather than arising from any muddle or confusion. This applied both in relation to the transfers and the fact that she had failed to be transparent in what she was doing e.g. keeping the OPG informed and seeking their directions. In relation to Mr RL and allegation 1.1, the Tribunal was satisfied so that it was sure that the Respondent had been dishonest.

40.17 In the matter of Mr RB, the Respondent had made a transfer which was not justified; only part of the funds had been used for the benefit of Mr RB. The Respondent had been unable to explain the transfer. The Respondent had given evidence to the effect that the transfer had been carried out by the cashier, without her authority. The Tribunal could not accept that evidence; it was satisfied that she had authorised the transfer. The Respondent was the sole principal of the Firm. The relevant transfer took place in July 2013. The Respondent's evidence in her witness statement was that by August 2013 concerns had been raised about the cashier, which were then investigated, after which the cashier resigned. The complaints, set out in a note of the investigation exhibited to the Respondent's witness statement, indicated that the cashier had been late in making various payments, had paid some bills from the wrong accounts and had been somewhat abrupt in manner; there were only a few examples given of incorrect postings. Alarmingly, the note recorded that at the time of the investigation (August 2013) no office account reconciliations had been carried out since October 2012. As the principal of the Firm, the Respondent knew that the accounts were not being managed properly; if she did not, that was a significant failure to run the Firm properly. Against this background, during the investigation in August 2014 it would have been understandable if the Respondent had at that point sought to blame the cashier for making an improper transfer. She did not do so and instead tried to explain the transfer by producing a bank statement and the

Memorandum bearing the date 12 July 2013. As already noted, the Tribunal was satisfied that the Respondent had created the Memorandum and it found that she had done so in order to either cover up the improper transfer so far as the accounts team or any auditors were concerned, or to mislead the investigation officer. The Memorandum succeeded in achieving the latter. Even if the transfer had been made as a result of muddle or confusion, rather than as a deliberate act, the degree of muddle which would have been necessary for such a state of affairs was significant. Where a solicitor was charged with looking after the financial affairs of a vulnerable client, the public would rightly expect that solicitor to carry out those duties with care and diligence. Such a departure from the standards of care required, given the Respondent's knowledge that she was required to act with great care, would itself amount to dishonesty on the facts of this case. On the facts of this case, the Respondent could not escape censure by relying on the fact that her record keeping had been so poor; continuing to act for vulnerable individuals when one was not doing it with sufficient competence could well be regarded as dishonest by members of the public, particularly when that work was done for remuneration rather than voluntarily.

40.18 The Tribunal was satisfied that the Respondent had not only made an improper transfer, which had been done dishonestly , but she had then made a false statement to the investigating officer in the First Investigation, and had created a false Memorandum which gave an untrue explanation for the transfer. The Respondent's conduct with regard to Mr RB, under allegations 1.1, 1.2 and 1.3 was dishonest in accordance with the test in Ivey.

40.19 For the reasons given above, the Tribunal was satisfied to the higher standard that the Respondent's conduct was dishonest, as alleged by the Applicant, in relation to allegations 1.1, 1.2 and 1.3.

Previous Disciplinary Matters

41. There were no previous matters in which any findings had been made against the Respondent.

Mitigation

42. Mr Benson for the Respondent submitted that, in the light of the Tribunal's findings on dishonesty, there could be no real opposition to the usual sanction in such cases.

Sanction

43. The Tribunal had regard to its Guidance Note on Sanction (December 2016), to all of the facts of the case and the submissions of the parties.

44. The Tribunal had made findings of dishonesty with regard to three serious allegations. It was not submitted that there were any exceptional circumstances, and the Tribunal did not find there to be anything exceptional. Indeed, the dishonesty was very serious, as it involved the misuse of funds belonging to vulnerable clients for whom the Respondent had been in a position of trust. In these circumstances, it was clear that it was not appropriate to make no order, to impose a reprimand, a fine or suspension. The misconduct was so serious that the most reasonable and appropriate

sanction was to strike the Respondent off the Roll of solicitors. Even without the finding of dishonesty, the misconduct was so serious that striking off may well have been the appropriate sanction.

Costs

45. Ms Tahta, for the Applicant, applied for an order for the Respondent to pay the Applicant's costs of the proceedings and referred to the schedule of costs to the date of hearing, in the total sum of £15,392.90. The legal costs were calculated at the rate of £130 per hour, with forensic investigation costs of £9,324.90 and counsel's fees of £3,000.

46. Mr Benson, for the Respondent, did not object in principle to an order for the Respondent to pay costs. He submitted that the time spent on certain tasks, for example preparation of the certificate of readiness, were too high. Mr Benson submitted that in the light of the clarity of the FI Report, the time spent in drafting the Rule 5 Statement was high. Mr Benson submitted that the costs of the tasks mentioned could reasonably be halved, along with a reduction in the time spent by the FI Officer on reviewing information and preparing the FI Report. It was submitted also that as a matter of principle, the investigation costs should be treated as a general overhead of the Applicant and should not form part of the costs of the case.

47. Mr Benson submitted that the Tribunal should have regard to the Respondent's means in determining costs. He told the Tribunal that the Respondent had no income and was an unpaid carer for a family member. Mr Benson referred to the Respondent's financial statement, which indicated that the Respondent had creditors including the Applicant; the costs of the intervention into the Firm were over £90,000. Mr Benson told the Tribunal that the Respondent had some investment properties with total valuations of around £430,000; those properties were subject to mortgages and the value of one of the properties was being reduced due to the presence of knotweed in the garden.

48. Ms Tahta submitted that the time spent and costs incurred by the Applicant were reasonable, given the nature of the case and the detail presented in the FI Report. Ms Tahta submitted that the investigation costs should not be treated as a general overhead of the Applicant. Those costs had been incurred because of the conduct of the Respondent. Ms Tahta submitted that the time spent in drafting and preparation by the Applicant's in-house counsel was very reasonable and overall the costs were low for a case of this kind. The Tribunal should bear in mind that the decision in Ivey had meant the case had to be reviewed. Also, the Respondent had submitted two separate Answers; the considerable change in her position had had to be considered.

49. With regard to the Respondent's means, Ms Tahta submitted that in the event the Respondent were to be made bankrupt at some point, the Applicant would like a costs order so that it could claim in the bankruptcy along with other creditors; it would not be a creditor if there were no enforceable costs order. Ms Tahta took issue with the property valuations supplied by the Respondent, as Zoopla valuations suggested significantly higher valuations. In response to a question from the Tribunal, Ms Tahta told the Tribunal that the Zoopla valuations were based on the last purchase price of a particular property and the general increase or decrease in property prices in the

relevant area since the last transaction. Such valuations could not take into account the condition of the property; the condition may not significantly affect the value of the property.

The Tribunal's Decision

50. The Tribunal determined that it was appropriate to order the Respondent to pay the Applicant's reasonable costs of the proceedings. All of the allegations had been proved.

51. The Tribunal determined that it was reasonable to include the costs of the forensic investigation in the costs of the proceedings. The Applicant sometimes undertook investigations which did not lead to any prosecution, in which case the costs involved were absorbed into the Applicant's general overheads and running costs. However, it was possible to identify the specific costs involved in investigating the Respondent's misconduct and it was reasonable for those costs to be included in the sums claimed.

52. The Tribunal considered carefully the submissions made for the Respondent about the amount of the costs. In this instance, the Tribunal was satisfied that the costs claimed were entirely reasonable and proper. The rate at which legal work was claimed was very reasonable, as were the charges for the forensic investigation. Counsel's fee was unobjectionable. The Tribunal was satisfied that the time spent on the case was reasonable. Indeed, overall the costs appeared to be on the low side for a case which had involved considerable analysis of the facts in order to present the case to the Tribunal in such good order. The Tribunal determined that the reasonable and proportionate costs of the proceedings were £15,392.90, as claimed.

53. The Tribunal considered whether the costs should be reduced, or an order preventing enforcement until further order of the Tribunal would be appropriate. The Tribunal noted that whilst the Respondent was not in a healthy financial position, there was some equity in the properties she co-owned. There was no reason for the Applicant to miss out on attempting to obtain the costs, although the Tribunal would expect the Applicant to proceed in a measured way. If the Respondent were to be made bankrupt at some point, the costs ordered by the Tribunal could form part of the bankruptcy debts; this would not be the case if the costs order were deferred. The Tribunal therefore ordered the Respondent to pay the costs in the sum claimed.

Statement of Full Order

54. The Tribunal Ordered that the Respondent, SUSAN LOUISE LOWE, 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 £15,392.90.

Dated this 16th day of January 2018
On behalf of the Tribunal

Nicola Lucking.

N. Lucking
Chairman

Judgment filed
with the Law Society
on 16 JAN 2018

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11669-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

SUSAN LOUISE LOWE — Respondent

Before:

Ms N. Lucking (in the chair)
Mr W. Ellerton
Dr P. Iyer

Date of Hearing: 5 December 2017

APPENDIX

Extracts from the SRA Principles 2011 and the Code of Conduct 2011

Principles

There are ten mandatory Principles which apply to all those regulated by the SRA, as follows.

You must:

1. Uphold the rule of law and the proper administration of justice;
2. Act with integrity;
3. Not allow your independence to be compromised;
4. Act in the best interests of each client;

5. Provide a proper standard of service to your clients;

6. Behave in a way that maintains the trust the public places in you and in the provision of legal services;

7. Comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;

8. Run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

9. Run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity;

10. Protect client money and assets.

Outcomes:

O(10.6) You co-operate fully with the SRA and the Legal Ombudsman at all times including in relation to any investigation about a claim for redress against you.

Solicitors Accounts Rules 2011

Rule 20: Withdrawals from a client account

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

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

(b) properly required for a payment in the execution of a particular trust, including the purchase of an investment (other than money) in accordance with the trustee's powers;

(c) properly required for payment of a disbursement on behalf of the client or trust;

(d) properly required in full or partial reimbursement of money spent by you on behalf of the client or trust;

(e) transferred to another client account;

(f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing;

(g) transferred to an account other than a client account (such as an account outside England and Wales), or retained in cash, by a trustee in the proper performance of his or her duties;

(h) a refund to you of an advance no longer required to fund a payment on behalf of a client or trust (see rule 14.2(b));

(i) money which has been paid into the account in breach of the rules (for example, money paid into the wrong separate designated client account) - see rule 20.5 below;

(j) money not covered by (a) to (i) above, where you comply with the conditions set out in rule 20.2; or

(k) money not covered by (a) to (i) above, withdrawn from the account on the written authorisation of the SRA. The SRA may impose a condition that you pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received.

Note: Rule 22 of the Solicitors Accounts Rules 1998 was in the same terms as Rule 20 of the 2011 Rules.

Code of Conduct 2007 – extract

Rules

1.02 You must act with integrity

1.06 You must not behave in a way that is likely to diminish the trust the public places in you or the legal profession.