SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11972-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PHILLIP CHARLES YORK Respondent

Before:

Mr J. Evans (in the chair)
Mr P. S. L. Housego
Mr M. R. Hallam

Date of Hearing: 15 October 2019

Appearances

Robin Horton, solicitor of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were as follows:

1.1. Between 2010 and 2017, the Respondent took money from client accounts (relating to Mrs JW, Mrs LS, and Mrs BR), without due reason:

1.1.1. he used the money to pay "bills" that he had not sent to the clients;

1.1.2. the amounts he took did not correspond to the "bills";

1.1.3. he took some money which he claimed was a loan from a client (estate of Mrs LS) when the client had not given him permission;

1.1.4. he took some money which he claimed was a loan from a vulnerable client (Mrs JW) but had not provided any evidence for that permission.

Therefore, in relation to conduct before 5 October 2011, the Respondent breached Rules 1.02, 1.04, 1.05, 1.06 and 1.04-06 of the Solicitors Code of Conduct 2007 ("SCC") and Rule 22.1 of the Solicitors Accounts Rules 1998 ("SAR 1998"). In relation to conduct after 5 October 2011, the Respondent breached Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the Principles") and Rule 20.1 of the Solicitors Accounts Rules 2011 ("SAR 2011"). It was also alleged the Respondent had acted dishonestly.

1.2. Allegation 1.2 was pleaded as an alternative to Allegation 1 in respect of Mrs JW alone, on the basis that the Respondent proved his case that the money was a loan. The Respondent took a loan from Mrs JW in 2015. He did not provide the appropriate advice to the client in so doing, and did not tell her about the conflict of interest in so doing.

He did not tell the client concerned that he had already taken money out of the client account belonging to her which he would retrospectively deem a loan. If it was a loan, then the Respondent did not give the proper advice, and took a loan from a client without checking to see if she had the mental capacity to do so.

In relation to conduct before 5 October 2011, the Respondent breached Rules 1.02, 1.04, 1.05, 1.06 and 1.04-06 of the SCC and Rule 3.01(2)(b) of the SAR 1998. In relation to conduct after 5 October 2011, the Respondent breached Principles 2, 4, 5, 6 and 10 and did not achieve Outcome 3.4 of the Principles. It was also alleged the Respondent had acted dishonestly.

1.3. The Respondent did not keep accurate books of account. The accounts showed a shortfall of over £80,000 and some individual accounts were inaccurate (for example, on Mrs JW's matter the accounts recorded balance due of £116,429.73, compared to a ledger balance due of £159,536.92).

In relation to conduct before 5 October 2011, the Respondent breached Rules 1.02, 1.06 and 5.01 of the SCC and Rules 1(g) and 7.1 of the SAR 1998. In relation to conduct after 5 October 2011, the Respondent breached Principles 2, 6 and 8 of the Principles and Rules 1.2 and 7.1 of the SAR 2011.

1.4. The Respondent did not pay client money to his clients promptly. Essentially he kept client money on one account from 2008 to intervention in 2018, and on another from 2010 to intervention. In relation to conduct before 5 October 2011, the Respondent breached Rules 1.02, 1.04, 1.05, 1.06 and 1.04-06 of the SCC and Rule 15(3) of the SAR 1998. In relation to conduct after 5 October 2011, the Respondent breached Principles 2, 4, 5, 6 and 10 of the Principles and Rule 14.3 of the SAR 2011.

1.5. The Respondent did not administer estates properly. He took several years to deal with the administration of the estates (thus keeping beneficiaries from their entitlements) and did not send interim bills. In doing so he breached the following principles:

1.5.1. Principle 2, in that he did not act with integrity;

1.5.2. Principle 5, in that he did not provide a proper standard of service;

1.5.3. Principle 6, in that his behaviour did not maintain the trust the public placed in him and the provision of legal services.

Although the Respondent started administrating one estate before 5 October 2011, the allegations were made regarding his delays after this date.

1.6. In 2017, the Respondent acted for a seller in a transaction in which he sent the proceeds of sale to an unknown third party on whom he did no due diligence. The police afterwards investigated the transaction as being fraudulent. The Respondent therefore acted in a transaction which bore the hallmarks of fraud, without doing appropriate due diligence. In doing so he breached the following principles:

1.6.1. Principle 2, in that he did not act with integrity;

1.6.2. Principle 6, in that his behaviour did not maintain the trust the public placed in him and the provision of legal services.

1.7 In August 2017, when renewing his insurance, the Respondent told his insurer that he did not know of any unreported circumstances. The Respondent knew at the time that the police were investigating one of his instructions. In hiding this from the insurer he breached the following principles:

1.7.1 Principle 2, in that he did not act with integrity;

1.7.2 Principle 6, in that his behaviour did not maintain the trust the public placed in him and the provision of legal services;

1.7.3 Principle 7, in that he did not comply with his legal obligations.

It was also alleged that the Respondent had acted dishonestly.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application and Rule 5 Statement dated 5 June 2019 together with all exhibits.
- Civil Evidence Act Notice dated 20 September 2019.
- Applicant's Statement of Costs dated 4 October 2019.
- Emails from the Applicant to the Tribunal and to the Respondent dated 3 October 2019 and 11 October 2019.

Respondent:

- Emails from the Respondent to the Tribunal dated 1 October 2019 and 10 October 2019.

Service of Proceedings

3. The Respondent did not attend the hearing and was not represented. Another division of the Tribunal had been satisfied at a Case Management Hearing on 14 August 2019 that the Applicant had taken all reasonable steps to bring these proceedings to the attention of the Respondent by sending copies of them to an email address used by him, as well as posting them to a UK address at which he was believed to be residing. That division of the Tribunal had been satisfied that it was reasonable to expect the documents would be brought to the Respondent's attention in accordance with Rule 10(5).

4. The Tribunal was therefore satisfied that the Respondent had been served as required by Rule 10 of the Solicitors (Disciplinary Proceedings) Rules 2007.

Application to Proceed in the Respondent's Absence

5. Mr Horton, on behalf of the Applicant, made an application for the hearing to proceed in the Respondent's absence. He reminded the Tribunal of an email from the Respondent to the Tribunal dated 1 October 2019 in which he had applied for an adjournment on the basis that he had not received a copy of the bundle of documents because he had been residing in the West Indies since last year. He had stated he would need to make arrangements for travel and a place to stay in the UK and that in his view the case was not ready for hearing. That application was refused by the Chairman of the Tribunal on 3 October 2019 who stated:

> "The case is ready for hearing and has been for some time. The Tribunal has already ruled that service of the case papers has been validly effected. In fact, the SRA has gone out of its way to ensure so by sending the papers redacted or otherwise to several addresses by post and email. The Respondent says that he

> is now living abroad but has not given any postal address and in any event his email address is the one that the papers were sent to.
>
> The irresistible inference from that is that the Respondent is not engaging in the process which is not a valid reason to adjourn."

6. Mr Horton stated the Respondent had sent another email to the Tribunal on 10 October 2019 in which he had stated he was trying to organise a flight to England for the hearing but was having financial difficulties. The Respondent had provided some explanations to some of the allegations and had requested a copy of his email be provided to the Tribunal. The Respondent had also stated in that email:

> "In case I can't make it I apologise for my absence to this Honourable Tribunal and no disrespect is intended."

The Tribunal's Decision

7. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Tribunal took into account the criteria set out in the case of R v Hayward and Jones [2001] QB 862, and the guidance in GMC v Adeogba & Visvardis [2016] EWCA Civ 162 when considering whether it was appropriate to proceed in the Respondent's absence.

8. The Respondent was clearly aware of the hearing as he had initially applied for an adjournment which was refused and, in his later email he had indicated that he may not be able to attend. He had not repeated his request for an adjournment when he contacted the Tribunal again on 10 October 2019. It was clear from his emails that he was now residing permanently abroad.

9. The Tribunal concluded that the Respondent was aware of the substantive hearing and had voluntarily absented himself, and waived his right to attend. Indeed, he had specifically apologised to the Tribunal in advance should he not attend.

10. The allegations before the Tribunal were serious and involved allegations of dishonesty. Some of the allegations related to events that had taken place a number of years ago. A significant period of time had elapsed since then and it was therefore in the public interest that matters should be concluded expeditiously. Taking all these matters into account, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence.

The Respondent's Application to Rely on Written Submissions

11. On 14 August 2019, the Tribunal had directed the Respondent to file his Answer and any documents he wished to rely upon by 20 August 2019. The Respondent had failed to comply with this. He had, however, on 10 October 2019, sent an email to the Tribunal and to the Applicant, which set out his response to some of the allegations. He had stated in that email: "I am not computer literate" and also stated that he had been unable to add documents to the Tribunal's online case bundle system. The Respondent had requested his email of 10 October 2019 be added to the bundle.

12. The Tribunal noted that the Respondent had not complied with the directions made but also took into account the fact that he was not present at the hearing today. He had sent late written submissions to the Tribunal and explained he had had difficulties navigating the online case bundle system. Whilst it was not acceptable for parties to fail to comply with directions issued by the Tribunal, in this case the Tribunal concluded that as the Respondent had not attended this final hearing, it was in the interests of justice, as well as being fair to the Respondent in his absence, to take into account the written submissions he had made. The Tribunal therefore allowed the Respondent's application that the Tribunal should take full account of his late submissions.

Factual Background

13. The Respondent, born in 1941, was admitted to the Roll on 2 July 1979. He did not currently have a practising certificate.

14. At the material time, the Respondent practised on his own account under the name P C D York & Co, 181 South Ealing Road, Ealing, London, W5 4RH ("the firm"). His practice consisted of general legal work and his work was mostly conveyancing and probate.

15. On 20 March 2018, following complaints about the Respondent's practice, the SRA started investigating the Respondent and subsequently produced a report dated 25 April 2018. As a result of the investigation, on 9 May 2018 the SRA intervened into the Respondent's practice.

Mrs JW and Mr HW's Estate

16. On 9 September 2006, the Respondent became one of two attorneys under an Enduring Power of Attorney on behalf of Mrs JW. There were concerns about Mrs JW's mental capacity, which the Respondent had recorded, and about which there was correspondence with the National Health Service Mental Health Team.

17. On 18 April 2008, Mrs JW's husband, Mr HW, died intestate. Mrs JW instructed the Respondent to deal with the estate. In May 2008 she was diagnosed with dementia and in 2009 she returned to live in the West Indies.

18. The estate had one major asset (a house) and a number of creditors. On 9 April 2010 the Respondent completed the sale and received the purchase price of £240,000. He kept the money in client account in order to deal with the settlement of the estate.

19. Between 19 February 2009 and 22 April 2010, the Respondent tendered bills totalling £7,986.50. There were no further bills after these dates.

20. The first provisional account on the file was dated 13 December 2012, i.e. nearly 5 years after Mr HW's death. The account was described as "provisional" and recorded the following:

- Costs of £1,386.50, compared to costs billed of £7,986.50;
- A balance due of £116,429.70, compared to a ledger balance of £159,536.92;

- Only £34,662.18 had been sent to Ms JW.

This provisional account (for an estate with one major asset) was therefore inaccurate.

21. By 31 March 2018, 6 years later, and 11 years after instruction, the Respondent still had not completed the estate distribution. The Respondent had sent £110,662.18 to Mrs JW and there was a balance of £227.88.

22. However, the Respondent had transferred a further £87,961 out of client account to himself. He had done so by 33 separate payments between 22 October 2010 and 16 August 2016.

23. The Respondent originally said that the transfers related to the costs of dealing with the estate. This would mean the Respondent having done work to the value of £87,961 on the file, between 2010 and 2015. However, the file only had 15 pieces of correspondence on it and the one major asset had been sold in 2010. The firm's accounts stated that most of the payments were in respect of a "loan". (This "loan" was to himself.)

24. The Respondent said that he had spoken to Mrs JW and she had agreed to loan him the money. The Respondent did not have any evidence regarding:

- the level of costs, as there were only 15 letters on the file after December 2015;
- the setting up, or advising on, the "loan";
- Mrs JW's mental state and capacity to enter into a loan contract. This was important given the Respondent's previous concerns about her capacity and the fact that she had been overseas for a number of years, which indicated the Respondent had not seen her.

25. In his interview with the SRA on 4 April 2018 the Respondent admitted that he should not have taken the £87,691. He stated:

> "I had a problem with my payment where I was...the landlord was pressurising me for money and, I just couldn't find the money to repay it."

26. In answer to a question about whether he had taken the money for his rent, the Respondent stated:

> "Well, yes towards the end I did."

He stated he had "applied for" a loan to reimburse the estate.

Mrs LS' Estate

27. On 8 February 2011, Mrs LS died. The Will appointed Mrs LS' daughter as Executrix and she instructed the Respondent. The Respondent did not send any client care letters.

28. The Respondent's client account recorded receiving two payments into his client account:

- £26,600.84 on 16 November 2016;
- £794,202 on 23 June 2017.

29. The first payment into client account was nearly 6 years after the Respondent accepted instructions to deal with the estate. However, the Respondent had been transferring money from client to office account since 2012. These were stated to be for bills, but the Respondent had not sent any bills to the Executrix. The balance was, essentially, as follows:

Date	Bills	Transfer Out	Transfer In	Balance
13.06.12	600	600		(600)
13.07.12	215	215		(815)
16.11.16	0		26,600.84	25,785.84
20.06.17	21,495			
22.06.17	5,660	6,360		19,425.84
23.06.17		22,000	794,202	791,627.84
28.06.17	50,826.04			
17.08.17		1,650		789,977.83
21.08.17		1,300		788,677.84
07.09.17		43,561		745,116.84
Total	78,796.04	75,686	820,802.84	

30. Overall, the Respondent transferred £75,686 from the client account on behalf of the estate to the office account. The Respondent claimed that £32,125 was for interim bills, even though the total of interim bills (excluding disbursements) was £27,970.

31. The Respondent did not explain the extra, unrecorded invoices for £4,155. The extra £43,561 appeared to be the Respondent taking what he had described as a loan from the estate.

32. The Respondent had not sent any bills. He had therefore transferred money from client account which he said was to pay for bills, which he had never sent to the Executrix. The Respondent only had draft bills on the file up until 22 June 2017. He did not send an estate account until he sent a draft dated 18 July 2018. Therefore, in the 7 years after Mrs LS died, the Respondent had not prepared or sent any bills or any estate accounts, or made any distributions from the estate.

33. On 29 March 2018, the Respondent asked the Executrix if he could borrow £44,000 from the estate. The Executrix refused. This request for a loan seemed to correspond with the transfer of £43,561 which the Respondent had earlier made to himself (on 7 September 2017, 6 months before).

34. On 21 July 2018 the Respondent wrote to a firm of solicitors stating that he would repay the Executrix "the sum of £43,061 [sic] within the next two months with interest". The draft accounts also stated: "Balance due: loan PCD York 43061". This suggested that

the Respondent had made a loan to himself from his client's assets, without telling his client (the Executrix), and had misled the Executrix when he asked permission to borrow money which he had already taken.

35. There was no evidence that the Respondent had paid the money back or given security for the loan. The Respondent did not give the Executrix any information on the circumstances in which a solicitor borrowing from a client was acceptable, or advise separate representation.

36. By the time the Respondent sent the draft accounts, he had only made three payments to the Executrix as follows:

- £20,000 on 3 April 2018;
- £19,500 on 5 April 2018;
- £10,500 on 6 April 2018.

37. These payments were all made after the SRA started to investigate the Respondent. Even in those circumstances, the Respondent did not record these payments on the client account.

38. The draft estate accounts stated that the total amount for interim bills was £27,970, i.e. £4,155 less than the amount of the draft bills. The accounts included reference to disbursements but the office ledger did not record them. Therefore there was an inaccuracy.

39. The final bill (dated 28 June 2018) was for £50,826.04, suggesting that the Respondent had done work to the value of £22,856.04 between 22 June 2017 and 18 June 2018, although there was no evidence on the file of any work being done. The Executrix refused to pay the bill because of the delays.

Mrs BR's Estate

40. In September 2011 Miss BS instructed the Respondent to deal with the estate of her mother, Mrs BR. The client ledger showed two transfers to the office account which did not show on the office ledger:

- 3 September 2015 in the sum of £6,097.13, and
- 22 October 2015 in the sum of £22,790.16.

41. The Respondent provided an attendance note dated 17 October 2015 suggesting that Miss BS had agreed to lend him the money. The note stated: "small interest is to be paid during the loan". This was after the first payment taken by the Respondent.

42. There was no evidence that the Respondent advised Miss BS about the conflict of interest involved. The attendance note also stated that Miss BS wanted "to have part of your interest in your mum's estate to be invested". There was no record of the Respondent advising Miss BS to take independent investment advice although a letter dated 22 October 2015 suggested she did take legal advice.

Fraudulent Sale

43. On 21 February 2017 Ms B instructed the Respondent to act on her behalf on a property sale. Although the Respondent's practice was in London, the property was in Nottingham.

44. Completion took place on 6 March 2017. On Ms B's instructions, the following day, the Respondent sent the purchase monies of £250,000, less £1,105 for costs, to a company called NMEY Limited.

45. There was no evidence that the Respondent had carried out any checks on NMEY Limited. Neither of the company officers had Ms B's name, the company's address was in Surrey and the company's assets were worth under £40,000.

46. The Respondent later admitted to the buyers: "We have no idea of any connection between [Ms B] and NMEY Limited". He admitted to the SRA that he had not done any due diligence.

47. Following the transaction, the buyers had some queries regarding the transaction, and the Respondent tried to contact Ms B, without success. On 13 April 2017 Nottinghamshire Police, following a telephone conversation, asked the Respondent where he had sent the sale proceeds. There was, therefore, already some concern from the police about the transaction in April 2017.

48. On 24 April 2017 the Respondent told the buyers' solicitors that Ms B's telephone number and email address were not working.

49. On 15 May 2017, after the Respondent had already transferred the funds to NMEY Limited, the buyers' solicitors asked the Respondent to contact the bank to see if there were any funds left. On 16 May 2017 the Respondent wrote to the bank, stating that he understood that "the sale was by means of a fraud". The bank wrote to the Respondent on 23 May 2017 to ask for more details about NMEY Limited. He responded stating that he had no other information.

Insurance Renewal Form

50. On 22 August 2017, the Respondent completed his insurance renewal form. One of the questions on the form was:

> "Are you aware of any circumstances or claims that you have not reported to, or which have not been accepted as an effective notification by, your current or any prior insurers?"

The Respondent answered "No". He signed the form stating that it was true to the best of his knowledge.

51. On the same day, the East Midlands Regional Fraud Team had sent the Respondent an email asking for further information about Ms B's property transaction. There was also some correspondence with the police regarding the fraud in August and

October 2017. On 13 October 2017 and 6 November 2017 solicitors for the buyers wrote a letter to the Respondent regarding a possible claim against him.

52. Despite this, the Respondent did not mention the incident to his insurers until 9 November 2017 stating that the delay was because he was ill and had to take time off. In response to queries from the SRA, the Respondent stated that he did not believe the police.

Accounting Inaccuracies

53. As at 31 March 2018, the Respondent's client account showed that there were liabilities to clients of £837,741.50, and client cash available matched that sum. However, there were liabilities of at least £87,961 not included on the Respondent's accounts, namely the amount the Respondent had taken from Mrs JW's estate. There was also a further sum of at least £43,061 (more likely to be £43,561) which the Respondent had taken from Ms LS' estate. There was, therefore, a shortfall, at least some of which the Respondent had not recorded on the books.

54. The Respondent admitted to the SRA during his interview that he had taken unauthorised transfers and that he had applied for a loan to replace the money.

55. The Respondent had also:

- Transferred £50,000 to the Executrix without recording it on the client account;
- Transferred nearly £30,000 from client to office account without recording it on the office account.

Witnesses

56. No witnesses gave evidence.

Findings of Fact and Law

57. The Tribunal had carefully considered all the documents provided and the Applicant's submissions. 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

58. **Allegation 1.1 - Between 2010 and 2017, the Respondent took money from client accounts (relating to Mrs JW, Mrs LS, and Mrs BR), without due reason:**

1.1.1 he used the money to pay "bills" that he had not sent to the clients;

1.1.2 the amounts he took did not correspond to the "bills";

1.1.3 he took some money which he claimed was a loan from a client (estate of Mrs LS) when the client had not given him permission;

1.1.4 he took some money which he claimed was a loan from a vulnerable client (Mrs JW) but had not provided any evidence for that permission.

Therefore, in relation to conduct before 5 October 2011, the Respondent breached Rules 1.02, 1.04, 1.05, 1.06 and 1.04-06 of the Solicitors Code of Conduct 2007 ("SCC") and Rule 22.1 of the Solicitors Accounts Rules 1998 ("SAR 1998"). In relation to conduct after 5 October 2011, the Respondent breached Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the Principles") and Rule 20.1 of the Solicitors Accounts Rules 2011 ("SAR 2011"). It was also alleged the Respondent had acted dishonestly.

58.1 Mr Horton, on behalf of the Applicant, submitted the loan taken from Mrs LS' estate was the most serious matter. He submitted that no work had been done on this estate for 4 years other than some funds coming into the account. He submitted the Respondent had taken the sum of £43,561 on 7 September 2017 and having taken the money, he subsequently tried to get permission from the Executrix by asking her to give him a loan. It was not until 21 July 2018, when the Respondent responded to her solicitors that he stated he would be in funds to replace the amount he had taken within the next 2 months. He further stated that if he was unable to repay the money within that period, he suggested the amount be "registered against my property".

58.2 Mr Horton submitted the Respondent had clearly taken client funds that he was not entitled to and as a result, the books of account were not accurate. He submitted that this behaviour was repeated when the Respondent had also taken funds from Mrs BR's estate on 3 September 2015 (£6,097.13) and 22 October 2015 (£22,790.16). He submitted the Respondent had produced an attendance note dated 17 October 2015 confirming Mrs BR's daughter had agreed to lend him the money, which amounted to the same amount he had taken. He had not, however, informed her that he had already taken some funds from the estate.

58.3 Mr Horton submitted the third loan related to Mr HW's estate. He submitted the Respondent had not provided any evidence that Mrs JW, who was the beneficiary, had the capacity to give permission to appoint the Respondent as her Power of Attorney or grant a loan to him. The loan related to the sum of £87,691 which amount was taken over a period of time between 2010 and 2015. Mr Horton referred the Tribunal to a letter from a Mental Health NHS Trust dated 11 September 2008 which stated that Mrs JW did not have the mental capacity to deal with any financial matters.

58.4 Mr Horton submitted that it was not known whether the Respondent had repaid the loans. He had been made bankrupt in August 2019 and was believed to have been living in the West Indies since late 2018/early 2019. Mr Horton submitted that the Respondent had not "borrowed" money from the estates, on the contrary, he had taken it dishonestly.

58.5 The Respondent, in his email dated 10 October 2019, stated that there had been a dispute between the Executrix and her siblings in relation to the estate of Mrs LS. He stated that the siblings had contested the Will through solicitors and that they would not assist the Executrix in establishing the assets of the estate. The Respondent stated that eventually action was taken by two beneficiaries against the Executrix, which was settled just before a final hearing in the High Court. He stated that agents had to be

employed to find assets in Jamaica and it had taken a long time to obtain probate in Jamaica. The Respondent stated that none of the beneficiaries had corresponded with either the Executrix or himself, and therefore distribution of the estate could not take place within a reasonable time. He stated he had attached "the agreement" dated 21 November 2011 (which was not attached to his email) and he stated that the loan was repaid to the Mrs LS' daughter, the Executrix, through her solicitors.

58.6 The Respondent stated in his email that he had discussed the loan taken from Mrs BR's estate with her daughter and that he had also pointed out his conflict of interest to her. The Respondent stated that the loan was repaid on 28 June 2018.

58.7 The Respondent stated in his email that he did obtain a loan to repay the sum he had borrowed from the estates and that his Trustee in Bankruptcy was in possession of the sum of £100,000 on the Respondent's behalf.

58.8 The Tribunal considered very carefully the various documents to which it had been referred. Some bills on the file relating to Mr HW's estate of £7,986.50 had been tendered (between 19 February and 22 April 2010) but no further bills had been sent after 22 April 2010. The actual costs incurred which were showing on the file for this period were £1,386.50 whereas the amount billed by the Respondent was £7,986.50.

58.9 The Respondent had also transferred to himself from Mr HW's client account the sum of £87,961 over a period between 22 October 2010 and 16 August 2016 by 33 separate payments. However, there were only 15 pieces of correspondence on the file over the period 2010 to 2015. It was also notable that the Respondent had initially stated during his interview with the SRA on 4 April 2018 that the transfers of £87,961 were in respect of costs that he considered were payable to the firm, but he subsequently stated that he had spoken to Mrs JW in Jamaica and she had told him he could borrow this money. Plainly it would not be necessary to borrow money if bills were due for an equivalent amount.

58.10 The Tribunal took into account the letter from the Mental Health NHS Trust dated 11 September 2008 to the firm which stated:

> "… I thought that it had been made very clear to you in correspondence from the Mental Health Team that [JW]'s mental state means that she is not in any position to provide such information …… [JW] is not able to be party to discussions regarding her finances or the affairs of her deceased husband – these will both have to be dealt with via a legal process. There is currently no plan for [JW] to return to the UK."

58.11 It was clear from the content of this letter that Mrs JW was in no position to instruct the Respondent to deal with the estate, certainly after 2008. The Tribunal was informed Mrs JW was formally diagnosed with dementia in July 2007. She did not therefore have the capacity to agree to any loans of £87,961 during the period from 2010 to 2016. There was no reference on the file to the loan agreement. It was also pertinent that the Respondent had admitted to the SRA on 4 April 2018 that he had taken at least some of the money to pay his rent.

58.12 Although the Respondent stated in his email of 10 October 2019 that he had obtained a loan to repay the sums he had borrowed from the estates, he had neither provided any evidence of this nor was there any evidence of repayment. There was no information from the Respondent's Trustee in Bankruptcy to set out the current situation. In any event, he had not been entitled to take the money in the first place so repayment was irrelevant when considering why the money was taken at all.

58.13 The Tribunal concluded that the Respondent had clearly taken money from Mr HW's estate when he was not entitled to do so. Mrs JW did not have the mental capacity to give the Respondent permission to borrow money and he had taken advantage of this by taking and using funds from Mr HW's estate without any authority to do so for his own personal benefit.

58.14 The Tribunal then considered Mrs LS' estate. The client account records showed that the Respondent had been transferring funds from client to office account since 2012 for bills which had not been sent to Mrs LS's daughter, the Executrix. The Respondent had transferred a total of £75,686 from the client account to the office account, claiming £32,125 was for interim bills, even though the interim bill total (excluding disbursements) was £27,970 and he had not sent any of such bills to the client. There was no explanation for £4,155 which related to unrecorded invoices and an additional £43,561 which appeared to be for a "loan" from the estate which was transferred on 7 September 2017.

58.15 It was particularly pertinent that, on 29 March 2018, almost 7 months after the funds had been taken, the Respondent asked the Executrix if he could borrow £44,000 from the estate. She refused and appeared to have appointed solicitors to recover this from the Respondent.

58.16 The Tribunal took into account an email written by the Executrix to the Respondent dated 2 April 2018 in which she stated:

> "Further to my visit to your office on Thursday evening with my son when you asked me to loan to you £44,000 out of my mum's money!, [sic] the same money you have constantly told me that I cannot get/have/touch/use until the finalization [sic] of her estate is complete. Therefore I do not see how you can get/have/touch/use my mum's money before her estate is complete. How do you get the benefit of my mum's money and her family cant [sic].
>
> As my mum's executor I believe I am the one who has the final say and i say that I want all the money you have in your account immediately paid out to the beneficiaries whose information you have.
>
> Honestly I am still in shock. Mr York where do we go from here. I want my family paid out asap I want to put this whole experience behind me an experience which you are making a lot worse for me. Your [sic] telling me to talk to my siblings how can you say that when you know what they have put my family through all that stress and sleepless nights and the tears and seven years later you still don't even understand it.

> I am just so confused about this whole situation and you have made me feel a bit fearful of you - I don't trust you anymore Mr York. But my son thinks I should loan you the money as long as we are all immediately paid. Are you allowed to ask clients for money/loans? And if i do loan to you my mum's money what are we getting from it again its just you who seems to think you should benefit from my mum's money and your [sic] not even family and it seems so wrong!. [sic] I have been with your firm for the past seven years - does it take so long to finish a probate file.
>
> You have my banking details but I will provide them again and look forward to receiving my part of my mum's money with a breakdown of money coming in to PCD York and money being paid out by PCD York to my other siblings……."

58.17 It was clear to the Tribunal from this email that the Executrix had not agreed to make any loan to the Respondent. Indeed, she had refused and had made specific reference to asking for the money being repaid to her and the other beneficiaries immediately, which the Respondent had not done.

58.18 Whilst the Respondent had claimed in his email of 10 October 2019 that he had repaid the money to the Executrix's solicitors, there was no evidence of this before the Tribunal. In any event, the Tribunal considered that whether funds were repaid or not was not relevant because the Respondent had taken the client's funds when he was not entitled to do so, and without her knowledge or consent.

58.19 The Tribunal then considered the estate of Mrs BR. The Respondent had claimed that Mrs BR's daughter had agreed to lend him the sums of £6,097.13 (which he had already taken from the estate on 3 September 2015) and £22,790.16 (which he had taken on 22 October 2015). He had provided an attendance note dated 17 October 2015 as his confirmation of this. This note was dated after the first amount had been taken and stated:

> "We agreed that you would loan to me a sum of £28,800. This sum would be repaid to you when your son becomes 18 years of age in April 2019. Small interest is to be paid during the loan."

58.20 There was no reference to Mrs BR's daughter being asked to seek independent legal advice, and the terms of the loan were very unclear. "Small interest" is not comprehensible as a concept of legal entitlement. Whilst there was some reference to repayment by April 2019 in the attendance note, and repayment on 28 June 2018 in the Respondent's email of 10 October 2019, there was no evidence before the Tribunal that any sums had been repaid. (Not that this would be relevant to the issue of whether the taking of the money was proper, or not.)

58.21 The Tribunal was satisfied that the first payment of £6,097.13 was not a loan, because Mrs BR's daughter did not even know it had been taken when she was asked to make the loan. In the absence of evidence from Mrs BR's daughter or a copy of the loan agreement, there was no evidence that Mrs BR's daughter had agreed to the second amount that was taken on 22 October 2019, or had been given proper advice in relation to it.

58.22 The Tribunal concluded that between 2010 and 2017 the Respondent had taken money from the client accounts relating to the estates of Mr HW, Mrs LS and Mrs BR without proper authority. Rule 22.1 of the SAR 1998 and Rule 20.1 of the SAR 2011 set out the circumstances in which a solicitor was entitled to withdraw money from client account. In this case, the Respondent had failed to send bills of account to Mrs LS's daughter and had taken money for "draft bills". He had taken money as "loans" without the prior consent of the clients. The Tribunal was satisfied that in doing so, the Respondent had breached the Solicitors Accounts Rules and he had failed to act with integrity. He had failed to meet the basic professional standards expected from a solicitor entrusted to look after client funds. He had abused this privileged and trusted role by taking, without any authority, client money for which he was responsible. By doing so he had breached Rule 1.02 of the SCC and Principle 2 of the Principles. He had also breached Rule 22.1 of the SAR 1998 and Rule 20.1 of the SAR 2011.

58.23 The Tribunal was also satisfied that the Respondent had failed to act in the best interests of each of these clients and had failed to provide a proper standard of service to each of them. He had improperly taken money belonging to clients and used it for his own purposes, depriving each of those clients of the benefit of their own funds. He had thereby failed to protect client money. Taking client funds that did not belong to him undermined the trust the public placed in the Respondent and in the provision of legal services. Indeed, Mrs LS' daughter had specifically informed the Respondent in her email to him dated 2 April 2018 that she did not trust him anymore. The Respondent had therefore breached Rules 1.04, 1.05, 1.06 and 1.04-06 of the SCC as well as Principles 4, 5, 6 and 10 of the Principles.

58.24 The Tribunal then considered the allegation of dishonesty and the test set out in the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. Firstly the Tribunal was required to ascertain the actual state of the Respondent's knowledge or belief as to the facts. Having done so, the Tribunal had to consider whether the Respondent's conduct was dishonest by the standards of ordinary decent people. Lord Hughes had set out the test to be applied when considering the issue of dishonesty 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."

58.25 The Tribunal had already found that the Respondent had taken funds from Mr HW's estate in the total sum of £87,961 over the period 22 October 2010 to 16 August 2016 when he knew that Mrs JW did not have the mental capacity to deal with financial matters. Nor did she have any mental capacity to agree to loan him the sum of £87,961 during this time. The Respondent had received a letter from the Mental Health Trust

dated 11 September 2008 informing him that Mrs JW did not have the mental capacity to deal with her finances or the affairs of her deceased husband so he knew full well that she was in no position to consent to the withdrawals that he had made. Notwithstanding this, he had proceeded to take money from Mr HW's estate without any authority. He had admitted to the SRA that he used at least some of this money to pay for his rent. The Tribunal was satisfied that this conduct would be regarded as dishonest and deplorable by the standards of ordinary decent people. The Respondent had clearly taken advantage of a very vulnerable client and used her vulnerability for his own financial benefit. The Tribunal was satisfied he had acted dishonestly.

58.26 In relation to Mrs LS's estate the Respondent had taken the total sum of £43,561 from the estate on 7 September 2017. It was quite clear that he knew he should not have done this because some months later, on 29 March 2018, he had asked Mrs LS' daughter to lend him £44,000. She had refused, but by this time the money had already been taken. The Respondent clearly knew this was wrong, for otherwise he would not have sought retrospective consent, without revealing that he had already taken the money he was then seeking permission to take (but in fact retain). The Tribunal was satisfied that this would be considered dishonest conduct by the standards of ordinary decent people. The Respondent had taken advantage of his position as a trusted solicitor with access to money belonging to beneficiaries for his own personal advantage. The Tribunal found that he had acted dishonestly.

58.27 In relation to Mrs BR's estate, at least the first payment of £6,097.13 was taken on 3 September 2015 before the Respondent had asked Miss BS to lend him this amount. Again, the Respondent knew he should not have taken this because he subsequently asked Miss BS to lend him the money, over a month later, on 17 October 2015, and he did not inform her that he had already taken the funds. The Tribunal was satisfied that this would be considered dishonest conduct by the standards of ordinary decent people. The Respondent had again taken advantage of his position as a trusted solicitor and the Tribunal found that he had acted dishonestly.

58.28 The Tribunal found Allegation 1.1 proved including the allegation of dishonesty.

59. **Allegation 1.2: Allegation 1.2 was pleaded as an alternative to Allegation 1 in respect of Mrs JW alone, on the basis that the Respondent proved his case that the money was a loan. The Respondent took a loan from Mrs JW in 2015. He did not provide the appropriate advice to the client in so doing, and did not tell her about the conflict of interest in so doing. He did not tell the client concerned that he had already taken money out of the client account belonging to her which he would retrospectively deem as a loan. If it was a loan, then the Respondent did not give the proper advice, and took a loan from a client without checking to see if she had the mental capacity to do so.**

In relation to conduct before 5 October 2011, the Respondent breached Rules 1.02, 1.04, 1.05, 1.06 and 1.04-06 of the SCC and Rule 3.01(2)(b) of the SAR 1998. In relation to conduct after 5 October 2011, the Respondent breached Principles 2, 4, 5, 6 and 10 and did not achieve Outcome 3.4 of the Principles. It was also alleged the Respondent had acted dishonestly.

59.1 As Allegation 1.2 was pleaded in the alternative to Allegation 1.1, the Tribunal did not consider this any further, having found Allegation 1.1 proved in its entirety.

60. **Allegation 1.3: The Respondent did not keep accurate books of account. The accounts showed a shortfall of over £80,000 and some individual accounts were inaccurate (for example, on Mrs JW's matter the accounts recorded balance due of £116,429.73, compared to a ledger balance due of £159,536.92).**

In relation to conduct before 5 October 2011, the Respondent breached Rules 1.02, 1.06 and 5.01 of the SCC and Rules 1(g) and 7.1 of the SAR 1998. In relation to conduct after 5 October 2011, the Respondent breached Principles 2, 6 and 8 of the Principles and Rules 1.2 and 7.1 of the SAR 2011.

60.1 Mr Horton submitted the Respondent's books of account were inaccurate and had shortfalls because the Respondent had taken money belonging to clients in circumstances when he should not have done so.

60.2 The Respondent did not address this allegation in his email of 10 October 2019.

60.3 The Tribunal had considered carefully the various documents it had been referred to. The Tribunal had already found that the Respondent had dishonestly taken funds belonging to clients. This had caused shortfalls in client account from 2010 when he had started to take money from Mr HW's estate. As at 31 March 2018, the Respondent's client account showed that there were liabilities to clients in the sum of £837,741.50 and client cash available to match this amount. However, the Tribunal had already found that the Respondent had dishonestly taken at least £87,961 from Mr HW's estate and he had dishonestly taken £43,561 from Mrs LS' estate. It followed therefore that there could not be enough client cash available to meet the client liabilities, which meant there was a shortfall.

60.4 The Tribunal noted that there were also other inconsistencies in the books of account. The Respondent had transferred £50,000 to Mrs LS' daughter during the period 3 April 2018 to 6 April 2018 without recording these payments on the client account. He had also transferred almost £30,000 from client to office account without recording these payments on the office account.

60.5 In addition, the Tribunal noted that the provisional account produced on Mr HW's estate dated 13 December 2012 contained a balance due of £116,429.70 whereas the ledger balance was £159,536.92. The Respondent had only sent the sum of £34,662.18 to Mrs JW as this was set out in the provisional account.

60.6 The Tribunal found that the Respondent's books of account were not accurate. Failure to maintain accurate accounting records was in breach of Rule 1(g) of the SCC and Rule 1.2 of the SAR 2011. Rule 7.1 of the SAR 1998 and Rule 7.1 of the SAR 2011 required any shortfall to be remedied promptly. The Tribunal was satisfied that the Respondent had failed to do this. There were entries on Mrs BR's client account showing transfers to office account in 2015 but no corresponding entry on the office account. The Respondent had failed to record payments made from the client account in 2018. The Tribunal was satisfied that none of the shortfalls had been remedied at the time of the SRA investigation.

60.7 The Tribunal was satisfied that the Respondent had not kept accurate books of account and the accounts showed a shortfall of over £80,000. Members of the public would expect a solicitor to maintain accurate accounting records which would show, at any particular time, the true position in relation to client funds held by that solicitor. A failure to do so and thereby allow a shortfall to accrue of at least £80,000 showed that the Respondent had not run his business properly. The shortfall was in large part by reason of the money taken by the Respondent from clients for his own ends. Solicitors were expected to maintain accurate up-to-date accounting records and failure to do so fell below the high professional standards expected of a solicitor. Allowing shortfalls to accrue on client account, and not keeping clear accurate accounts records amounted to acting with a lack of integrity. The public would expect a solicitor's books of account to be accurate at all times and for a solicitor to run his/her business properly so that client funds were safe at all times. In failing to do so, the Respondent had not maintained the trust the public had placed in him or in the provision of legal services. The Tribunal was satisfied the Respondent had breached Rules 1.02, 1.06 and 5.01 of the SCC as well as Principles 2, 6 and 8 of the Principles.

61. **Allegation 1.4: The Respondent did not pay client money to his clients promptly. Essentially he kept client money on one account from 2008 to intervention in 2018, and on another from 2010 to intervention. In relation to conduct before 5 October 2011, the Respondent breached Rules 1.02, 1.04, 1.05, 1.06 and 1.04-06 of the SCC and Rule 15(3) of the SAR 1998. In relation to conduct after 5 October 2011, the Respondent breached Principles 2, 4, 5, 6 and 10 of the Principles and Rule 14.3 of the SAR 2011.**

61.1 Mr Horton submitted that the Respondent had retained Mrs JW's assets since 2008 as Mr HW's estate was not distributed in full before the intervention. He also submitted that there was no evidence that the Respondent had repaid client money that he had dishonestly taken since 2010.

61.2 The Respondent did not specifically address this allegation in his email of 10 October 2019 although he did refer to obtaining a loan of £100,000 to repay the sums he had borrowed from the estates but stated that this was held by his Trustee-in-Bankruptcy.

61.3 The Tribunal noted that there was no evidence of either the loan the Respondent claimed to have obtained of £100,000, or of repayment of any of the client funds that had been taken. In any event those funds had been dishonestly taken without the clients' consent or knowledge so obtaining any loan to repay the funds was irrelevant. The Tribunal had already found that the Respondent had taken several years to distribute the funds from the estates of Mrs LS and Mr HW. The Tribunal was satisfied that the Respondent had failed to pay money to his clients appropriately. As a result of this, he had deprived the beneficiaries of those estates from the funds that they were properly entitled to, he had not protected client money and he had thereby failed to provide a proper standard of service to those clients.

61.4 The Tribunal had found that the Respondent used client funds for his own purposes and this was a failure to act in the best interests of the clients and showed a lack of integrity. He had failed to behave in a way that connotes moral soundness and a steady adherence to an ethical code. He had signally failed to meet the high professional standards that

were expected of solicitors entrusted with client funds. This was behaviour that did not maintain the trust placed by the public in the Respondent or in the provision of legal services.

61.5 The Tribunal found that the Respondent had breached Rules 1.02, 1.04, 1.05, 1.06 and 1.04-06 of the SCC as well as Principles 2, 4, 5, 6 and 10 of the Principles. He had also breached Rule 15(3) of the SAR 1998 and Rule 14.3 of the SAR 2011 by failing to pay client money out appropriately. He had retained client funds far longer than necessary. He had done so in order that he might defalcate those clients or their beneficiaries of those funds. In the case of Mrs JW he had held the funds for over 10 years and in the case of Mrs LS, he had held the funds for nearly 9 years. He had taken money from client account which he later sought to justify by asking clients for loans for monies he had already taken without their knowledge.

61.6 The Tribunal found Allegation 1.4 proved.

62. **Allegation 1.5: The Respondent did not administer estates properly. He took several years to deal with the administration of the estates (thus keeping beneficiaries from their entitlements) and did not send interim bills. In doing so he breached the following principles:**

1.5.1 Principle 2, in that he did not act with integrity;

1.5.2 Principle 5, in that he did not provide a proper standard of service;

1.5.3 Principle 6, in that his behaviour did not maintain the trust the public placed in him and the provision of legal services.

Although the Respondent started administrating one estate before 5 October 2011, the allegations were made regarding his delays after this date.

62.1 Mr Horton submitted that the Respondent had not administered the estates properly, having taken several years in two cases and not sending clients' interim bills on several cases. He submitted the estates were not properly dealt with until the SRA intervened the Respondent's firm and took over the cases in May 2018. Mr Horton submitted that the interim bills produced on Mr HW's estate were inaccurate by large amounts.

62.2 The Respondent had not addressed this allegation in his email of 10 October 2019.

62.3 The Tribunal noted from the documents provided that the Respondent was instructed to deal with the estate of Mr HW in April 2008. However, by 31 March 2018, some 11 years later, he had still not completed the distribution of the estate. Whilst the Tribunal accepted there may well have been some delay due to Mrs JW's health issues, it would still not expect the distribution to have taken as long as it had.

62.4 On Mrs LS's estate, the Tribunal noted that the Respondent had been instructed to deal with the estate in February 2011. He did not send an estate account until 18 July 2018, some 7 years later.

62.5 The Tribunal had no doubt that the Respondent had failed to properly administer both of these estates. The interim bills he had produced on the estate relating to Mr HW bore little resemblance to the work that appeared to have been done on the file. The interim bills he had produced on the estate relating to Mrs LS were more than the total amount for interim bills recorded in the draft estate accounts and again the final bill dated 18 June 2018 was not supported by any evidence of work done on the file during the period 22 June 2017 to 18 June 2018. During the 7 years after Mrs LS died, the Respondent had not sent any bills, or estate accounts to her daughter and nor did he make any distributions from the estate.

62.6 The Tribunal was satisfied that the Respondent's conduct in failing to properly administer the estates and send interim bills amounted to acting with a lack of integrity. He had not acted with moral soundness and had fallen below the high professional standards expected of solicitors in keeping the beneficiaries waiting for an inordinately long time for monies which rightly belonged to them, and by not providing the interim bills he had been producing. Members of the public quite properly expected estates to be administered by solicitors within a reasonable period time and accurate bills of account to be provided. The Respondent had failed to provide a proper standard of service and had not maintained the trust the public had placed in the Respondent or in the provision of legal services. The Tribunal was satisfied the Respondent had breached Principles 2, 5 and 6 of the Principles.

62.7 The Tribunal found Allegation 1.5 proved.

63. **Allegation 1.6: In 2017, the Respondent acted for a seller in a transaction in which he sent the proceeds of sale to an unknown third party on whom he did no due diligence. The police afterwards investigated the transaction as being fraudulent. The Respondent therefore acted in a transaction which bore the hallmarks of fraud, without doing appropriate due diligence. In doing so he breached the following principles:**

1.6.1 Principle 2, in that he did not act with integrity;

1.6.2 Principle 6, in that his behaviour did not maintain the trust the public placed in him and the provision of legal services.

Allegation 1.7: In August 2017, when renewing his insurance, the Respondent told his insurer that he did not know of any unreported circumstances. The Respondent knew at the time that the police were investigating one of his instructions. In hiding this from the insurer he breached the following principles:

1.7.1 Principle 2, in that he did not act with integrity;

1.7.2 Principle 6, in that his behaviour did not maintain the trust the public placed in him and the provision of legal services;

1.7.3 Principle 7, in that he did not comply with his legal obligations.

It was also alleged the Respondent had acted dishonestly.

63.1 Mr Horton submitted Allegations 1.6 and 1.7 could be dealt with together as they arose from the same facts. He submitted the Respondent had acted on a transaction which bore all the hallmarks of fraud. The property was located in Nottingham when the Respondent was based in London, and he had been asked by the client to transfer the proceeds of sale to a third party who appeared to have no connection to the client. Mr Horton submitted these were all warnings that should have placed the Respondent on notice that there was a need for further investigation before he should proceed with the transaction. He submitted the Respondent had failed to carry out any due diligence on the recipient of the funds and had thereby acted with a lack of integrity.

63.2 Mr Horton further submitted that the Respondent had failed to inform his insurers of this transaction and the potential claim against his firm, even though he had been made aware of the dubious nature of the transaction by the police in April 2017. He submitted this had been dishonest conduct and the Respondent's failure to disclose the possible claim to his insurers aggravated his position.

63.3 The Respondent had not addressed these allegations in his email of 10 October 2019.

63.4 The Tribunal had considered carefully the documents provided as well as the SRA's "Warning Notice on Money Laundering" to which it had been referred. On 7 March 2017, the Respondent had transferred over £248,000 to NMEY Limited on the instructions of his client. During his interview with the SRA on 4 April 2018, the Respondent had admitted that he had not undertaken any checks on NMEY Limited. He also later admitted, in a letter dated 16 May 2017 to the buyer's solicitors, that he had no idea of any connection between his client and NMEY Limited.

63.5 On 13 April 2017, the police became involved and on 24 April 2017, the Respondent found that the contact telephone number and email address that he had been given for his client were not working. Notably, on 16 May 2017, the Respondent wrote to the bank stating that "the sale was by means of a fraud" so there could be no doubt that by this time he was aware of the possibility of a claim against his firm.

63.6 The Tribunal was satisfied that the Respondent had acted in a property transaction that bore the hallmarks of fraud. He had failed to carry out the appropriate due diligence which would have alerted him to the possibility of his firm being used for money laundering. He had not complied with the SRA's "Warning Notice on Money Laundering" and as a result a potential fraud had been allowed to take place through the use of his firm's bank accounts. He had acted with a lack of integrity by failing to undertake basic checks which could have prevented fraudulent activity. Members of the public expected solicitors to act diligently and to carry out the appropriate checks necessary when dealing with property transactions. This protected buyers and sellers in any conveyancing matter. The Respondent had allowed himself to become embroiled in potential money laundering due to his failure to make proper enquiries into potentially suspicious transactions, and had therefore not behaved in accordance with the high professional standards expected of him. This also undermined the trust placed in the Respondent and in the provision of legal services. The Tribunal was satisfied that the Respondent had breached both Principles 2 and 6 of the Principles.

63.7 In relation to Allegation 1.7, the Tribunal took into account the fact that the Respondent had been aware since April 2017, as a result of communications from the police, that the property transaction was being investigated as fraudulent. In May 2017 he had contacted his bank to try to retrieve the funds and specifically made reference to "fraud" in his letter to them. He must therefore have known by that time that there was the possibility of a claim being made against his firm.

63.8 On 22 August 2017, the Respondent had completed his professional indemnity insurance proposal form and had answered a question asking if the firm was aware of any circumstances or claims which had not been reported to his current or any prior insurers. The Respondent had answered "No". Yet that very same day, at 12:12pm, the Respondent had received an email from the police informing him:

> "We believe the property was fraudulently sold by your clients as they did not actually own the property. I believe this is something you were already made aware of by the buyer's solicitor. The following information would be of great assistance to our investigation ……"

63.9 Whilst the Tribunal accepted it was possible that the Respondent could have completed and submitted the insurance proposal form that morning prior to receiving this email, it was inconceivable that he could not have had at the forefront of his mind the possibility of a potential claim relating to the fraudulent transaction when he completed the form, bearing in mind the history of the property sale and the communications that he had already received relating to it. Even if he had completed the form on that morning but before receiving the email from the police that same day, in the unlikely event that the matter was not already at the forefront of his mind, it would certainly have been so on receipt of the email and he had a duty to correct the form so that his insurers were aware of the correct position.

63.10 The Tribunal was satisfied that by failing to inform his insurers, of a potential claim of which he was aware, until 9 November 2017, by which time the policy was in place, the Respondent had misled the insurers who had provided insurance based on the content of the proposal form which they had received. The Respondent had therefore failed to act with integrity. Solicitors were expected to give accurate and honest answers when applying for professional indemnity insurance and a failure to do did not connote moral soundness or show a steady adherence to an ethical code. Nor was it behaviour that met the professional standards expected of solicitors.

63.11 The Tribunal found that the Respondent had failed to comply with his legal obligations as the proposal form clearly contained a statement signed by the Respondent declaring that all the information he had given was true. He knew, at the very latest after 12.12pm that day that the answer he had given on the form was incorrect. He was under an obligation to act with good faith when applying for professional indemnity insurance and had failed to do so. Such conduct undermined the trust placed by the public in the Respondent and in the provision of legal services.

63.12 The Tribunal was satisfied that the Respondent had breached Principles 2, 6 and 7 of the Principles as set out in Allegation 1.7.

63.13 In relation to the issue of dishonesty which was also alleged in Allegation 1.7, the Tribunal had already found that the possibility of a potential claim must have been at the forefront of the Respondent's mind when he completed the proposal form for the reasons already set out. The Respondent, who had been a solicitor since 1979, running his own practice since 1982, would have known that the content of his proposal form would determine the terms of any insurance that might be offered to his firm. His explanation to the SRA that he did not believe the police was simply not credible, and even if that had been the case, he was still obliged to inform his insurers of the true position. The Tribunal was satisfied that ordinary decent people would expect the Respondent to inform the insurer of the possibility of a claim relating to the fraudulent property transaction rather than state there were no circumstances to report. The Tribunal was satisfied that the Respondent had acted dishonestly.

63.14 The Tribunal found Allegations 1.6 and 1.7 proved including the allegation of dishonesty on Allegation 1.7.

Previous Disciplinary Matters

64. The Respondent had appeared before the Tribunal previously on 25 June 1991. Details appear below.

Mitigation

65. The Respondent's mitigation was contained in his email of 10 October 2019. In that email he stated that he had been made bankrupt on 20 August 2019. He provided some information about his professional background and stated he had been a sole practitioner since 1982. He had made reference to obtaining a loan of £100,000 to repay the sums he had borrowed from the estates and said that this was with his Trustee in Bankruptcy.

Sanction

66. The Tribunal had considered carefully the Respondent's email and the documents provided. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

67. The Tribunal firstly considered the Respondent's culpability. The motivation for the Respondent's conduct was to gain a financial advantage by using client funds for his own purposes. Indeed he had made reference to problems he had experienced in relation to paying his rent and had admitted that at least some of the money was used for this purpose. His conduct had been planned, repeated many times, over many years, and he had acted in breach of his position of trust, having taken advantage of one very vulnerable client. He had direct control over the circumstances that had given rise to his actions and he had been very experienced when the conduct took place. The Tribunal concluded that the Respondent's level of culpability was high.

68. The Tribunal then considered the harm caused by the Respondent's conduct. He had caused harm to the numerous beneficiaries who had been deprived of the money that rightly belonged to them for very lengthy periods of time. It was still not clear what

financial losses remained outstanding and whether the clients had received repayment of their money taken by the Respondent. It was clear from the email sent by Mrs LS's daughter to the Respondent dated 2 April 2018 that his conduct had caused immense harm to the reputation of the profession. Harm had also been caused to the insurers who had agreed to provide indemnity insurance to the Respondent based on dishonest information given to them. The Tribunal had no doubt that the Respondent could have reasonably foreseen the extent of harm that was caused by his actions. The Tribunal concluded that the level of harm caused was high.

69. The Tribunal then considered the aggravating factors in this case and identified those as follows:

- The Respondent had acted dishonestly on several occasions. He had dishonestly taken client funds when not authorised to do so and had provided his insurers with misleading information in his professional indemnity insurance proposal application form.

- The Respondent's conduct had been deliberate, calculated and repeated over many years.

- The Respondent had taken advantage of Mrs JW who was a vulnerable person suffering from dementia and therefore not in a position to challenge him.

- He had concealed his behaviour from one client by producing interim bills which were not sent to the client and then deducting client money to pay those "bills", which did not accurately reflect any work done on the file. He had also concealed his behaviour by asking three clients to loan money to him (one of whom had no mental capacity) without telling them that he had already taken that money from their funds.

- The Respondent ought reasonably to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession.

- The Respondent had previously appeared before the Tribunal in 1991 for breaches of the Solicitors Accounts Rules 1986. There was an element of repetition in his conduct as on that occasion the Tribunal had found "The state of his books and records was appalling". He was fined £1,000 and ordered to pay costs.

- On this occasion there had been great harm to clients and to the reputation of the profession.

70. The Tribunal then considered whether there were mitigating factors but was unable to identify any. There was no evidence of insight or contrition other than the Respondent's assertion that he had obtained a loan of £100,000 to repay the funds he had taken. However, in the absence of any evidence of this the Tribunal did not regard this as a mitigating factor.

71. The Tribunal was satisfied that imposing No Order, or a Reprimand or a Fine were not sufficient or appropriate sanctions in this case. The Respondent's level of culpability had been high and the harm he had caused had also been high. He had dishonestly transferred client funds for his own use when he was not entitled to do so, he had deprived clients of their money for long periods of time, he had failed to keep accurate books of account, he had not administered estates properly, he had been involved in a fraudulent property transaction and had dishonestly lied to his insurers when applying for his professional indemnity insurance. The Tribunal had found not only that he had acted dishonestly but also that he had acted with a lack of integrity on numerous occasions. The Tribunal concluded that the Respondent was a risk to the public and there were no restrictions that could be formulated to adequately address that risk.

72. The Tribunal then considered whether a Suspension was appropriate in this case. The Respondent had been found to have acted dishonestly on several occasions. It was quite clear to the Tribunal that the public needed to be protected from him. The Tribunal took into account the case of The SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

> "(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see Bolton and Salisbury. That is the normal and necessary penalty in cases of dishonesty…."

73. The Tribunal was satisfied that there were no exceptional circumstances in this case and that accordingly the appropriate sanction was to remove the Respondent from the Roll of Solicitors. Accordingly the Tribunal made an Order that the Respondent be Struck Off the Roll of Solicitors.

Costs

74. Mr Horton requested an Order for the Applicant's costs in the total sum of £14,509.14. He confirmed these had been calculated on the basis of a one day hearing, on the assumption that the Respondent would not attend the hearing. Mr Horton provided the Tribunal with a Statement of Costs which contained a breakdown of the amount claimed. He confirmed that no additional costs had been claimed in relation to the Respondent's recent application for an adjournment.

75. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £14,509.14.

76. In relation to enforcement of those costs, the Tribunal had particular regard for the case of The SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

> "If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

77. In this case the Respondent had not provided any documentary evidence of his income, expenditure, capital or assets and therefore it was difficult for the Tribunal to take a view of his financial circumstances, other than being informed that he had been made bankrupt. The Respondent had not provided any evidence of his bankruptcy although this was not disputed by the Applicant.

78. The Tribunal was also mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay the costs. However, in the absence of any information about the Respondent's financial position, the Tribunal was unable to conclude that he would have difficulty in meeting any order for costs. In such circumstances, the Tribunal did not consider this was a case where there should be any deferment of the costs order.

Statement of Full Order

79. The Tribunal ORDERED that the Respondent, PHILLIP CHARLES DAVID YORK, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,509.14.

Dated this 3rd day of December 2019
On behalf of the Tribunal

J. Evans
Chairman

JUDGMENT FILED WITH THE LAW SOCIETY
03 DEC 2019