

IN THE MATTER OF TREVOR AUSTIN TRENT HOBDEN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr N Pearson (in the chair)
Mr W M Hartley
Mrs C Pickering

Date of Hearing: 17th November 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by David Elwyn Barton of 13–17 Lower Stone Street, Maidstone, Kent, ME15 6JX on the 27th April 2009 that Trevor Austin Trent Hobden solicitor of Convey First, Independent House, 18–20 Thorpe Road, Norwich, Norfolk, NR1 1RY be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations were as follows:-

- (a) In breach of Rule 19(2) of the Solicitors Account Rules 1998 he transferred money from client to office account in respect of costs without having first given or sent a bill of costs or other written notification of the costs incurred to the client or paying party;
- (b) In breach of Rule 22 of the said Rules he withdrew client money from client account in circumstances other than permitted thereby. In so doing the Respondent was also dishonest (although for the avoidance of doubt it would be submitted the Tribunal could find the allegation proved either with or without dishonesty);

- (c) Contrary to Principle 14.12 of the Guide to the Professional Conduct of Solicitors (8th Edition) 1999, he took unfair advantage of his client by overcharging for work done. The charge was so excessive as to amount to culpable overcharging;
- (d) He acted in breach of Rule 1 of the Solicitors' Practice Rules 1990 in each and all of the following respects:
 - i He compromised or impaired, or was likely so to do, his independence or integrity;
 - ii. He compromised or impaired, or was likely so to do, his duty to act in the best interest of his client;
 - iii He compromised or impaired, or was likely so to do, both his good repute and that of the solicitors' profession.

The brief particulars were as follows:

He made false and misleading statements in correspondence to Mrs VAW and to Mrs EMC and in so doing was dishonest;

He made an agreement with the executor of the estate of FBK, Deceased to which he failed to adhere, and in doing was dishonest;

He failed to act in the best interest of Mr Kn by failing to give advice concerning the receipt of insurance commission.

- (e) He failed to comply with provisions of Rule 15 of the Solicitors' Practice Rules 1990 in relation to the provisions of proper information on costs.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS.

The Respondent denied the allegations and in particular denied that he had been dishonest. Mr Shelley, a costs draftsman, had prepared a report dated 7th February 2007 which was before the Tribunal.

At the conclusion of the hearing the Tribunal made the following Order:

The Tribunal Orders that the Respondent Trevor Austin Trent Hobden of Convey First, Independent House, 18-20 Thorpe Road, Norwich, Norfolk, NR1 1RY, 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 £14,250 exclusive of Value Added Tax.

After pronouncing its Order the Applicant made application to the Tribunal that the Striking off Order should not come into force for a period of time as the Respondent was a sole practitioner in a conveyancing practice and an immediate striking off would necessitate the immediate closure of his practice. The Respondent had some 35 completions arranged in the month following the hearing. The Tribunal was requested to allow a period of time to enable

the Respondent to make an orderly closure of his practice and to ensure that his clients suffered the least possible inconvenience. The Tribunal was invited to defer the effect of its Order until 1st January 2010. The Applicant accepted that the immediate closure of the Respondent's practice would cause inconvenience to clients and might well adversely affect conveyancing transactions where an exchange of contracts on completion was imminent. The Applicant considered that deferring the effect of the Order until 1st January was too long a period and suggested that one week might be appropriate. The Tribunal having considered all that was said carefully and to ensure that the Respondent's clients suffered a minimum of inconvenience ordered that its Order should not be filed with The Law Society until 5.00pm on Tuesday 8th December 2009.

The Respondent's background

1. The Respondent, born in 1962, was admitted as a solicitor in 1989. His name remained on the Roll of Solicitors.
2. At all material times the Respondent was in practice with partners under the style of Leathes Prior and subsequently Canada House Partnership (which also used the name CHP) from Canada House, 4 Grammar School Road, North Walsham, Norfolk, NR28 9JH.
3. At the time of the hearing the Respondent practised as a sole principal as Convey First, Independent House, 18-20 Thorpe Road, Norwich Norfolk, NR1 1RY.

The Evidence before the Tribunal

4. On 14th June 2006, a Forensic Investigation Officer of the SRA (the FIO) began an inspection of the books of account and other documents of Canada House Partnership, the Respondent having been a partner in its predecessor practice, Leathes Prior, from 6th July 1992 until 1st August 1999, and having been a partner in Canada House Partnership from 30th April 1999 until he left on 1st September 2005.
5. The FIO established that there was a cash shortage on client account which arose by reason of failure to deliver bills on four probate matters. The bills varied in amount from £3,525 to £13,571.50 and totalled £36,484.

K Deceased

6. The Respondent acted for the personal representative, Mrs C, with regard to the intestacy of K Deceased who had died on 25th December 2000. Letters of Administration were granted on 8th October 2001.
7. The following invoices were raised:-

Date	Reference	£
10 January 2001	2649	1,175.00
16 July 2001	3445	881.25
31 August 2001	3692	646.50
12 September 2001	3737	587.50

2 October 2001	3885	587.50
19 February 2002	4536	587.50
25 April 2002	4862	881.25
16 July 2002	5227	1,762.50
12 February 2003	6391	1,175.00
9 July 2003	7635	587.50
11 March 2004	9692	1,175.00
14 February 2005	12338	1,175.00
22 July 2005	13092	1,175.00
5 August 2005	13162	<u>1,175.00</u>
		<u>12,337.50</u>

There was no evidence available to the FIO that any of these bills had been delivered to the personal representative who was the firm's client. The net estate was declared to be less than £20,000.

Kn Deceased

8. The Respondent acted for the executors. Mr Kn died on 5th January 1995. Probate was granted on 5th July 1995. The declared net value of estate was £412,760.
9. The following invoices were raised:-

Date	Reference	£
21 July 1995	10341	1,175.00
25 January 1996	11019	587.50
29 April 1996	11403	1,175.00
30 September 1996	11934	1,762.50
31 October 1996	12065	1,48.75
30 April 1997	12839	1,468.75
10 February 2005	12309	1,175.00
14 March 2005	12482	1,175.00
20 May 2005	12778	1,175.00
21 July 2005	13083	<u>1,175.00</u>
		<u>£12,337.50</u>

There was no evidence that the invoices had been delivered to the executors.

10. With regard to K Deceased and Kn Deceased the Respondent explained that he had inherited the files from Mr G, a former partner in the firm, who had retired from the firm in October 2004.
11. It was the Respondent's oral evidence that the files did not record all of the work undertaken by Mr G. The Respondent had reviewed the files when he could and bills were rendered when he had completed a review which did not extend to the whole file. A further bill was generated when the Respondent reviewed the next part of the file in cases where Mr G had delivered a bill or bills and he had undercharged. The way the bills were raised also explained why the firm's fees were in round sums to which VAT had been added.

12. The Respondent explained that Mr G had headed up the firm's probate department in which there were unadmitted staff including a probate clerk, SC.
13. The FIO during the course of the investigation had been concerned about the level of the fees charged on probate files of which the Respondent had conduct. As a result Mr Nick Shelley of Bennett & Shelley, costs draftsmen, were asked to provide an opinion on the fees charged in eleven matters including those of K Deceased and Kn Deceased.
14. Mr Shelley reported that he had access to the original probate files. In his report he set out the basic principles relating to solicitors' charges for non-contentious business. He explained that costing involved assessing time spent on work by reference to manual or computerised time records and the papers contained in a file to include documents, correspondence and attendance notes. He pointed out that the assessment of solicitors' costs is not an exact science and quoted Donaldson J in *Property and Reversionary Investment Corporation Ltd v Secretary of State for the Environment* [1975] 2 ALL ER 436, "... To arrive at a sum which is fair and reasonable... is an exercise in assessment, an exercise in balanced judgement – not an arithmetical calculation." Mr Shelley went on to explain the nature of "interim" bills.
15. Mr Shelley "costed" the files on the assumption that there would be a standard charge-out rate which was applied in each of these matters. He was not aware of the Respondent's charge-out rates but had adopted a scale of rates actually applied by solicitors in the Respondent's geographical area of practice ranging from £80 per hour in 1993 to £175 per hour in 2006.
16. Mr Shelley reported that the estates to which the files related remained unfinished for many years. Costs charged were about twice the value of the time recorded on the files. There was no client care letter nor evidence that bills were sent to the executors. If the costs had been based on the value of the time spent, then much of the time had been estimated. The amount of work estimated exceeded the work that was recorded.
17. The FIO in his report summarised Mr Shelley's views contained in his report as follows:-

Matter	Net Value of Estate	Costs Taken Net of VAT	Reasonable Costs as per Costs Draftsman	Excess
NR Deceased	Under £25,000	£1,500.00	£820.00	£680.00
FR Deceased	Under £200,000	£2,000.00	£1,080.00	£920.00
G Deceased	£590.850	Unable to ascertain Costs		
ID Deceased	Under £6,000	£1,710.20	£1,865.00	£174.80
DD Pre death	N/A	£1,1265.00	Subject to Court of Protection	
DD Deceased	£70,000	£3,906.82	£1,080.00	
K Deceased	Under £210,000	£11,500.00	£1,730.00	£9,770.00
C Deceased	Under £60,000	Unable to ascertain costs		
JD Deceased	£225,965	£4,892.50	£2,400.00	£2,492.50

AB Deceased	Under £204,000	£6,000.00	£2,400.00	£3,600.00
Kn Deceased	£412,760	£9,500.00	£5,500.00	£4,000.00

18. It was the Respondent's evidence that he had not seen a client care letter on any of the probate files he inherited. He had not sent one to the clients himself.
19. The Respondent said that Mr G had not made attendance notes and neither had the Respondent himself.
20. It was the Respondent's position that there was a huge percentage of work that was never recorded on the files. It was obvious what had been done to reach relevant stages and ultimately to come to a conclusion. It was the Respondent's position that he did not challenge Mr Shelley's report, but reliance could not be placed upon it because Mr Shelley did not have full information relating to the work undertaken.

G Deceased – Net Value of Estate £598,850 – No Opinion as to Costs

21. In the matter of G Deceased, Mr G and Ms C were the executors. G Deceased died on 3rd January 1997. Her estate had a net value of £590,850.
22. Mr Shelley wrote in his report, "This was the complicated administration of a substantial estate. There was much detailed work. Costs appear high when compared to the value of the recorded time, but most of the work was done in 1997 and 1998, for which period the papers are clearly incomplete. At that period there was little formal time recording. In view of the difficulties in assessing costs a long time after the event where papers have been lost, it is impossible to determine from my examination of the file whether the costs charged are justified by the circumstances of the matter".

ID Deceased, DD – Pre death, and D D Deceased

23. The Respondent acted for the above in their general affairs, in the Court of Protection for DD and the administration of their estates on their deaths. I D Deceased died on 6th November 1998, and DD Deceased died on 10th October 1999.
24. Mr Shelley wrote in his report, "The solicitors were involved in the affairs of this elderly couple both before and after they died. They were instructed to act in Court of Protection proceedings where costs were billed directly to the client and deducted from her assets instead of being approved by the Court. It would be inappropriate to assess reasonable charges for that work as it would amount to "second-guessing" a costs officer. As to the remaining work, the solicitor prepared a full assessment of the value of work which only slightly exceeds my assessment. However, the costs actually taken up to April 2000 are nearly twice what I assessed as reasonable"..... "These costs [DD pre-death] were taken without authority. The solicitor has conspicuously failed to comply with Orders of the Court of Protection. When instructed by a Receiver in proceedings in the Court of Protection, a solicitor must either take fixed costs under the scheme agreed between the Court and the Law Society or arrange for costs to be assessed at the Supreme Court Costs Office. There are bills of costs distinguishing what has been charged for Court of Protection work, but there is nothing to show that the solicitor applied to have these costs assessed"..... "There are grave irregularities in

billing DD's affairs before death. The solicitor ignored Court Orders in connection with the sale of a house and with the application to appoint a Receiver. Unless he accepted fixed costs, the Court Order required him to apply for detailed assessment of his costs".

25. In his oral evidence the Respondent said he had obtained the Court of Protection's consent to the sale of the property. He knew he had to do this or the transfer would not be registered by the Land Registry. He did not know about the Court of Protection requirement that a solicitor's bill be approved. The FIO reported that at interview the Respondent said he did not recall having responsibility for that file at the time. He said he thought Mr G had retired in about 2004, so the Respondent would not have had conduct of that file.

K Deceased

26. Mr Shelley wrote in his report, "The solicitor acted for the administrator of a modest estate in intestacy. Even allowing for a generous margin of error, there is a significant overcharge. Substantial costs were taken when the file was dormant. Total costs represent the value of about 80 hours work. If that number of chargeable hours had been done, the matter is likely to have generated many more papers than were in the file which I examined".
27. Mr Shelley highlighted the following areas of concern:-
- (i) irregularities in how this file has been billed;
 - (ii) there was a copy of the client care letter concerning costs which should have been sent to the Administrator at the outset;
 - (iii) there was no correspondence to the client enclosing copies of the bills of costs, and thus no evidence that the solicitor kept her informed of costs as they arose, or at all;
 - (iv) some of the bills were not on file;
 - (v) although "round sum bills" might be "payments on account" rather than interim statute bills, it is doubtful whether it was proper to raise a bill for £1,000 on 9th January 2001 at a time when virtually no work had been done, K Deceased having died on Christmas Day;
 - (vi) certain bills were raised at short intervals, in particular those raised on 31st August, 12th September and 2nd October 2001, when there was little activity;
 - (vii) seven bills totalling £7,000 were raised from July 2002 to August 2005 when the file was dormant, pending conclusion of the estate's claim against a surveyor;
28. In his oral evidence the Respondent said that he went into the office over the Christmas period and did a great deal of work on the file. In his interview with the FIO the Respondent said, "There was quite a lot of work done on the file in terms of communication on a regular basis with the executor. Generally time recording did not

exist on files, so they would show a severe lack of any movement on those files at any stage, but that did not necessarily reflect the true position in terms of the billing or the work done.”

C Deceased

29. The firm acted for the executor, Mr G (a partner), so this was a controlled trust. C Deceased died on 14th January 2004 and probate was obtained on 15th April 2004. The whole estate was bequeathed to the niece of the deceased.
30. Mr Shelley wrote in his report, “The solicitor was the executor of a modest estate. There was little recorded time but unrecorded time was no doubt spent. Although the costs charged exceeded the value of costs assessed internally by the solicitor, the difference between that assessment and the costs charged is not great. While it may not have been reasonable to charge for time that was not recorded, forensic assessment is insufficiently precise to provide certainty on that point.”
31. A note appeared on the file as follows:-

“C Deceased

13/07/2005

Dictated by TH-

With the tape is the C Deceased file. I note the comments made by [SC] but having looked through the file there are lots of instances where work clearly must have been done to progress the file but it has actually not be recorded in an appropriate manner. I therefore want you to increase preparation and attendance to 10 hours, letters out 93, letters in 104, phone calls 73 and then re-cost the file”.

32. In his oral evidence the Respondent said that was his instruction to a member of staff and it reflected his consistent position that the files did not record all of the work actually done.

J Deceased

33. The firm acted for Mrs D as executrix for her husband, JD Deceased, who died on 11th May 2004, and her son DD, who died on 19th February 2004. Probate was granted in the estate of JD Deceased on 23rd September 2004 and in the estate of DD on 28th September 2004.
34. Mr Shelley wrote in his report, “The solicitor arranged an enduring power of attorney for a terminally ill man and after his death acted in the administration of the estate which was relatively straightforward. The solicitor also assisted the widow in connection with the estate of her son who had recently died, although her son’s estate was actually administered by Spanish lawyers. There appears to be an overcharge in the probate administration of nearly £2,000. If costs are justified on a time-costs basis, there are charges for more than 20 hours of unrecorded work. My assessment of four hours unrecorded work seems a more realistic amount of unrecorded time”.
35. Mr Shelley pointed out “irregularities in how this file had been billed, namely:-

- (i) no costs information was given to the client, either on taking instructions or during the course of the matter;
- (ii) the solicitor issued three bills in quick succession early in 2005 (on 2nd February, 24th February and 10th March 2005) and while some time would have been spent dealing with the deed of variation, no time was recorded for this or for the preparation of the agreement;
- (iii) in the absence of any time recording or any other evidence of significant activity during this period, there were no circumstances which might justify taking further payments on account in addition to those already taken.”

36. It was the FIO’s view that Mr G had started the file but the Respondent had undertaken the bulk of the work as the grant of probate had been made only shortly before Mr G’s retirement from the partnership. The Respondent told the FIO that the deed of variation had been a complicated document to prepare and he thought Mr G had outsourced its preparation to an accountant as he had done on some other occasions.

37. Five invoices raised bore Mr G’s reference. They were dated after Mr G had left the firm. A credit note representing a reduction in costs had been prepared.

38. The file contained a memorandum from the probate clerk to the Respondent dated 29th April 2005 in the following terms:-

“The DD file has been costed at £592.50 plus VAT. The only work done on this was getting Grant of Probate.

With regard to JD Deceased you have requested an extra £1,000 plus VAT to be added. You have spent 2.25 hours relating to the Deeds and meeting with Mrs D and her son, Michael. This would equate to £393.75 plus VAT.

£393.75	JD
<u>£592.50</u>	DD
£986.25	

Do you want me to add £1,000 to the Estate Accounts or £1,000 plus £592.50?”

The Respondent had added a hand written note, “This one Trent” underlining £1,000 plus £592.50.

B Deceased

- 39. The Respondent acted for the executor of B Deceased who died on 17th August 2004. A grant of probate was obtained on 2nd November 2004.
- 40. Mr Shelley wrote in his report, “This was a straightforward estate wound up within a year of death. Costs are more than twice what I would expect to see. On a time-cost basis they represent about 40 hours work, although the only papers were contained in

two slim manila files. If these costs are justified by “estimated time” at least three quarters of the time on this matter was not recorded”.

41. A credit note had been issued in June 2005 for £2,232.86.

Kn Deceased

42. Mr G and the Respondent acted for Kn Deceased’s executors. Kn died on 5th January 1995. Probate was granted on 5th July 1995.
43. Mr Shelley wrote in his report, “This matter involved the preparation of the will, giving investment advice to the clients over many years, dealing with probate for one of the clients, acting as an independent trustee in a discretionary trust set up to reduce tax and sundry conveyancing. It was agreed from the start that the solicitors would provide all investment services at no cost and in return could retain commission. Such commissions were substantial since the clients originally invested more than £400,000 and later reinvested the same capital on the solicitor’s advice. Despite that agreement, the solicitors raised costs in excess of £20,000 for services which they had agreed to provide free. Charges for the preparation of wills and the initial charges raised for probate when the matter was active, were fair and reasonable, but when the estate was finally wound up after lying dormant for years, the solicitors raised charges which are not justified by the additional time spent”.
44. Mr Shelley pointed out, “Irregularities in how this file had been billed, in particular those bills that were VAT exempt because they concerned the provision of investment advice were in breach of the retainer with Mr and Mrs Kn and trustees of Mrs Kn’s settlement in 2002, two of those bills purported to cover future work and there was duplication of costs in three bills; there was no client care letter; there were no letters sending bills to the clients and costs had been mentioned only once in correspondence”.
45. The costs figures included in the estate and trust accounts understated the actual charges. The May 2005 estate accounts recorded charges of £5,047.82 when the bills to that date totalled £8,500. The trust accounts dated June 2005 recorded charges of £10,260.33 inclusive of VAT when the bills to that date totalled £24,502.75 inclusive of VAT”.
46. The FIO had accepted that the bills raised for investment advice were not necessarily in breach of the retainer but took the view that bills totalling £22,000 were a device to remove insurance commissions due to the firm that had been erroneously credited to the client ledger account. Mr Shelley had been unaware of the accounting errors when he prepared his report. Mr and Mrs Kn had not been advised of the amounts of the commission received by the firm. An investment in 1993 of £172,000 had resulted in a commission payment of £8,730 and upon re-investment in 2002 there had been commissions totalling £30,724.51 which had been erroneously posted to the client ledger.

E Deceased

47. The firm (Mr G and the Respondent) acted as E Deceased’s joint executors. Mr E died on 2nd February 1997. A grant of probate was obtained on 2nd June 1998. The net

value of the estate was £349,729. Following his retirement Mr G had renounced his trusteeship in favour of Mr Nick Sutherland, the senior partner, on 24th February 2005. The Respondent asked SC, the probate clerk, to review the file. She did so and reported back on 10th February 2005.

48. SC had ascertained that the file had been closed and archived by the Respondent. He had raised four invoices between 23rd November 2004 and 29th April 2005, when the file was closed, amounting to £9,281.43 before VAT. There was no evidence of any work having been done to support the invoices.
49. The estate was subject to the interest of a life tenant to whom all the income was to be paid. The issue of the invoices reduced the client ledger balance of £10,812.85 at 23rd November 2004 to nil as at 29th April 2005. Mr Shelley had not been asked to consider the costings in this case.
50. On 22nd February 2006 Mr Sutherland wrote to the Respondent seeking explanation. The Respondent did not reply. He told the Tribunal that he was no longer at the firm and was in dispute with his former partner and was not minded to reply.
51. In his letter of 13th August 2002 to Mrs VW, one of the beneficiaries of the estate of DD Deceased, the Respondent said "I can now confirm that all the share certificates have been sent to the relevant registrar together with stock transfer forms. Each share will be split equally between yourself and Mrs L and separate share certificates will be issued".
52. SC in her memorandum to the Respondent dated 6th January 2005 set out that after two years and four months stock transfer forms still required signatures and share certificates still needed to be distributed.
53. In the matter of K Deceased the Respondent wrote to the personal representative, Mrs C, on 27th May 2002 saying, "I also confirm that I have now received interest in the sum of £89.74 from the purchasers' solicitors as a result of this matter not completing on the 17th May and this has also been transferred to the [K Deceased] Probate Account." Such transfer had not been recorded on the relevant ledger.
54. In the matter of FBK Deceased, Mr H, the executor wrote a letter to the Respondent dated 14th January 2005 in which he said "I re-iterate your agreement that no more fees are payable". On 10th February, 14th March, 20th May and 21st July 2005 the Respondent raised invoices for £1,000 plus VAT.
55. In N & FR deceased Mr Shelley considered that there had been an overcharge of £680 (approximately 87%).
56. In his oral evidence the Respondent said that he had qualified what he told the FIO by making it clear that he was speaking from recollection and that he might have been wrong. The Respondent said the same when he gave his oral evidence to the Tribunal.
57. The Respondent said that he had succeeded Mr G in having conduct of the files under consideration. Mr G had retired in March or April 2004. There had been no formal handover of the files. Mr G had had his own office. When Mr G retired the

Respondent's partners thought that the Respondent could take responsibility for the probate department. The Respondent had gone to into Mr G's office and physically checked his files. There were some 100 to 200 of them. The probate team had consisted of Mr G, SC and another lady. Mr G had not been in the office on a regular basis before his retirement and much of the day to day responsibility for the probate matters had fallen on members of the probate team.

58. The Respondent accepted that he had prepared bills on probate files. When asked who signed bills the Respondent said that it varied. He sometimes signed them and sometimes they were signed by others.
59. At the time when Mr G left the practice there were three partners and some 26 staff. The Respondent had left the firm at the end of July 2005. He left the files to which the Tribunal had been referred at the firm. At the time of his interview with the FIO he did not have any of the files. None of the files had been made available at the hearing.
60. In connection with the suggestion that the Respondent had over-charged he said that he had in all cases thought it was appropriate to charge and that the amount was appropriate. The files had contained a number of details as was evidenced by Mr Shelley's remarks. Much work had been undertaken but not recorded on the files. It had to be the case that work had been undertaken to achieve a particular stage in the conduct of a particular matter. By way of example the Respondent said that executors' oaths and inheritance tax forms had to be completed before a grant of probate could be obtained, but the work undertaken in connection with the completion of those documents had not been recorded. The firm had an electronic system for recording files and it was the case that a part of some files had been recorded on paper and a part had been recorded on the electronic system. The practice had decided to archive files electronically and that had been done from about 1999.
61. The Respondent had confirmed that he had inherited the probate/trust files and had found no client care letters on those files. He accepted that perhaps he should have rectified that deficiency and sent them out himself. He had not done so. He had not been responsible for opening the files.
62. The Respondent explained that he was primarily involved in conveyancing which represented 96 to 97% of the work that he undertook.
63. The Respondent said that when he endeavoured to explain the situation he had tried to be as helpful as he could but he did not have full and complete recollection of all matters which had taken place a long time ago.
64. The Respondent had explained that "technically" he had not retired from the firm. The decision to leave had been that of the Respondent but he considered that he had been a similar position to an employee who had been constructively dismissed. He felt that he had had no choice. He had suffered difficulties within the partnership from not long after Mr G retired. He said he had been trying to assess the impact of there being no Mr G upon the dynamics of the partnership. He had been struggling to answer that question at the time that he decided to leave.

65. When it was put to the Respondent that Mr G remained a consultant until the 29th October 2004 he said that he did not know. The Respondent said the partners were relaxed and trusting when Mr G was there. There had been three equity partners and one salaried partner. The equity partners were entitled to equal shares. They worked in defined areas and they had employed a practice manager to deal with matters relating to compliance.
66. When the Respondent had left the partnership and had physically left the building he did not know about any concerns over billing.
67. The Respondent confirmed that he had received a letter from Mr Sutherland dated 22nd February 2006 which set out details of the bills rendered in the matter of E Deceased. The letter asked very specific questions. The Respondent said that he chose not to answer it as he could not bring himself to communicate with Mr Sutherland. The Respondent told the Tribunal that the four bills were rendered by him and it was he who took the decision on the amounts.
68. The file in E Deceased was one that the Respondent had inherited from Mr G and he had not been able to deal with it in “one fell swoop”. He decided that it would be best to review the file, as he had with others, and had drawn bills in round sums which reflected the position he had reached when reviewing the file. When he had found the time to review a subsequent part of the file he issued a further bill for the period from the date of his earlier review up to the date he had now further considered the file. The Respondent accepted that Mr G had rendered a £4,000 bill on this file in 1998. The Respondent explained that that bill did not relate to the work that he had undertaken. He had conducted a “re-review”, that was to say the file had been reviewed twice. He said there had not been duplicate billing. He confirmed that each of his bills related to a “partial review”. He had decided that Mr G had undercharged and had reviewed the whole of the matter from the date when the file had been opened.
69. The Respondent confirmed that he had taken responsibility for the review of Mr G’s files. There had been monthly meetings with the partners and the practice manager to discuss affairs. SC, the probate clerk also reported direct to Mr Sutherland. The Respondent said he took a nominal responsibility for SC. The Respondent said he had given instructions to the probate team to issue bills to relevant clients. He had been tasked with the responsibility of reviewing all of Mr G’s files to check whether they needed billing, archiving or further work.
70. The Respondent told the Tribunal that billing levels were discussed at partners’ meetings and that the billing of the probate department was shown separately from the billing of the conveyancing department.
71. In the matter of Kn deceased where the Respondent was a co-executor with Mr G, the Respondent explained that Mr G had undertaken all the work. It was the practice that where two partners in the firm were chosen to be executors one partner had conduct of the file and the other acted simply as a signatory when required but had no input into the management of the matter. In this matter, the Respondent accepted that his billing had reduced the client account balance to zero but he could not remember when a review had been conducted by him. The Respondent did not accept that he knew that the file had been archived in circumstances where there was a continuing trust. He said

that he probably would have made the assumption that the file could be archived if there was a nil balance on the client ledger. He accepted that there was a life tenant. He said he had not seen the will. As the mere second signatory he had no knowledge of the will nor any details of the estate. He agreed that he should have read the will. When asked why a letter had been sent bearing his reference and asking the client to ask for the Respondent when communicating with the firm, the Respondent said that it would not necessarily have been a letter that he had dictated but SC would have prepared and sent the letter.

72. The Respondent asserted that he had been the only person with responsibilities for the probate department but the day to day management of probate files had been left to SC. When asked if he did not wonder when looking at the file why the file continued to be open in 2005 when the death had occurred in 1998 the Respondent said that it was an example of a file where the partnership had doubted whether Mr G had dealt appropriately with the matter. The Respondent said the file had not been archived on his instruction.
73. The Respondent acknowledged that he had rendered the bill in K Deceased in January. He said the firm probably closed over Christmas and he would have been there working. The Respondent was not able to remember his charging rate but he believed he had kept the executor advised.
74. The Respondent said he was a conveyancer and was used to working for fixed fees and did not consider that a charge in a round sum was unusual or odd. The Respondent accepted that the bills under consideration had had a short one line narrative but he said that was the normal practice of the firm.
75. The Respondent told the Tribunal that he could not remember consulting Mr G about the files he inherited and he agreed that in omitting to do so he ran the risk that he might get things wrong. He confirmed that notwithstanding that risk he proceeded as he did. He had so proceeded because he had confidence in his ability to assess the files.
76. Mr G had retired. Issues had been discussed at partners meetings. The Respondent had not done things in isolation. Information had been notified to Mr Sutherland but the Respondent accepted that he alone decided the relevant figures. The Respondent said that at the time the bills were drawn the firm had no concerns at all about the possibility of over-billing.
77. The Respondent denied that he had been reckless and disagreed that concern had been expressed within the partnership and there had been some dialogue about this.
78. The Respondent explained that certain documents were kept on an electronic case management system.
79. When asked why he had not given the explanations to the SRA that he had given to the Tribunal, the Respondent said that he genuinely thought that his giving such details would not make any difference as he was by then embroiled in the process. He could not see any benefit. He had taken the view that the allegations would reach a

conclusion at the Tribunal. He wanted to deal with the matter, as he in fact now had done, with the assistance of representation.

80. It was pointed out to the Respondent that he had in his letter of 10th September 2008 told the SRA that he would need a minimum period of 12 months to make a full response after concluding his own investigations. When told that he could not have 12 months to reply the Respondent had sent an email saying that he was not refusing to comment on the report but he was not able to comment without a formal investigation of the files.
81. In a subsequent email (23rd September 2008) the Respondent explained that financial issues were discussed when the partners met together at the firm since the introduction of a practice manager. He said he could only sensibly work out a budget and know what his department might produce in the way of fees in connection with conveyancing. He had no understanding of how the probate department might or might not perform. He said that the firm's targets were quite low as no one had any idea of performance.
82. When asked why he had sent a credit note the Respondent explained that the client had been concerned about the level of work undertaken and he had reconsidered the firm's fees with the assistance of SC. He had made a reduction.
83. When asked why he had told SC to increase the hours recorded on a file the Respondent said that he had arrived at the large number of hours, letters, phone calls and so on because he was aware that far more work must have been done but had not been recorded.
84. The Respondent told the Tribunal that he genuinely believed that the bills that he rendered were entirely justified and reasonable.

The Submissions of the Applicant

85. During the period 10th January 2001 to 5th August 2005, 14 bills totalling £13,571.50 were raised and amounts transferred from client to office account in breach of the Solicitors Accounts Rules. Neither a bill nor a written intimation of costs had been sent or delivered to the personal representative client.
86. From about 2001 the Respondent acted in connection with the administration of the estate of Kn Deceased. During the period 10th February to 21st July 2005, four round sum bills totalling £4,700 were raised. During the period 21st July 1995 to 21st July 2005 14 such bills were raised and paid, but it was accepted that the Respondent had been personally responsible only for the most recent four. The relevant sums were transferred from client to office account in breach of the Solicitors Accounts Rules as no bill or written intimation of costs had been sent or delivered to the executor client.
87. In the matter of R Deceased final bills were raised long after the work had been completed. There was no evidence of bills having been delivered.
88. Under the Solicitors Accounts Rules client money due in respect of costs may only be withdrawn from client account when it is properly required for payment of a solicitor's

costs. There are further safeguards in respect of controlled trust money (relevant in the matter of E Deceased).

89. It was the Applicant's case that the Respondent raised bills, which he repeatedly failed to deliver to the paying party, in circumstances where he nonetheless made client to office account transfers in settlement of such bills. In breach of Principle 14.12 he used his position as a solicitor to take unfair advantage for himself.
90. The Respondent withdrew client money from client account, purportedly in respect of costs, when he was not entitled to do so in accordance with the provisions of Rule 22.
91. Mr Shelley, an expert law costs draftsman instructed by the SRA, expressed an opinion about the level of charging and the extent to which the provisions of Rule 15 of the Solicitors Practice Rules 1990 had been complied with having reviewed files of which the Respondent had conduct.
92. Mr Shelley's findings in his Report may be summarised:-
 - (a) in some cases there was significant overcharging. The level of overcharging was high;
 - (b) there was no system for recording time spent. There was no evidence that fee earners were required to log their time either electronically or manually. There was no system for recording on the files themselves the time spent in attendances on people or documents, and to a large extent time based costs would have been calculated by references to estimates.
 - (c) in some cases substantial costs were transferred on matters which had been dormant for several years when no work had been done and where there was no evidence that earlier work had not been charged for.
93. In the matters of N and FR Deceased there had been an overcharge of £680 (approximately 85%). The Respondent was grossly reckless in relation to this estate. The Respondent had been recorded as saying "... When costing a file, not that I am saying I did it here, but when you cost a file you put it in your hand and weigh it".
94. In the cases of ID Deceased and DD Deceased there was an overcharge of £2,826 in relation to the work undertaken both before and after the deaths. Costs for work done before Mrs DD's death were taken without the authority of the Court of Protection. The Respondent had conduct of this matter from 31st March 2000 to 24th May 2005 and yet he told the FIO that he did not conduct any Court of Protection matters.
95. In K Deceased's case there had been a substantial overcharge of £9,970. The first bill was raised shortly after the death for £1,000 plus VAT. By that date virtually no work had been done. Further round sum bills were raised later but not sent to the client; work was not undertaken to justify those bills. Seven bills, totalling £7,000 had been drawn between July 2002 and in August 2005 when the file was dormant. It was alleged that the Respondent acted dishonestly in relation to the raising of the following bills (which also constituted culpable overcharging) and the transfer of the money from client to office account:

- (i) 10th January 2001 when, in view of K Deceased's death on the 25th December 2000, £1000 work of work had not been undertaken;
 - (ii) 31st August, 12th September and 2nd October 2001 in round sums when the file showed little activity during this period;
 - (iii) 16th July 2002, 12th February 2003, 9th July 2003, 11th March 2004, 14th February 2005, 22nd July 2005 and 5th August 2005, all in round sums during a period when the file was dormant.
96. In the matter of D Deceased there was an overcharge of £2,492, over twice the reasonable costs properly chargeable. The Respondent undertook the bulk of the work on the administration of this estate following G's departure from the firm at the end of October 2004. Three bills were raised in quick succession involving round sums of £500 plus VAT. The Respondent told the FIO he could not recall having day to day conduct of the transaction. The documents show that the Respondent did conduct this matter. The frequency of billing such round sums with no evidence of work undertaken and the absence of the provision of costs information to the client led the Applicant to allege that the Respondent was dishonest in raising bills that were not justified and improperly withdrawing the money from client account.
97. In the matter of B Deceased there was an overcharge of £3,600, being twice the amount justifiable by reference to the work undertaken. The costs were transferred from client to office account, although a credit note had subsequently been issued.
98. In the matter of Kn Deceased there was a culpable and significant overcharge of £4,000, equating to 73%. A letter from Mr H the executor, dated 14th January 2005 recorded an agreement with the Respondent that "...no more fees are payable". Four invoices had been raised after that. It was Mr Shelley's view that the costs information in the Kn Deceased estate and the trust accounts was misleading in that they significantly understated the amounts attributable to the firm's costs. The Applicant alleged that the Respondent's actions had been dishonest in connection with Kn Deceased and related family matters.
99. In the matter of E deceased, SC had been requested by the Respondent to review the file. She discovered that the Respondent had closed and archived it, but before doing so had raised four invoices in round sums between 23rd November 2004 and 29th April 2005 when the file had been closed. The bills totalled £9,281.43 excluding VAT. There was no evidence of any work having been undertaken to support the bills. There was a life interest and the file should not have been archived. When the amount of the fourth bill (dated 29th April 2005) was transferred to office account the balance on the client's ledger was nil. The Applicant alleged that the Respondent acted dishonestly in raising these bills and withdrawing the money from the client account. This represented not only culpable overcharging, but the improper withdrawal of client money contrary to Rule 22. Further, this was controlled trust money by virtue of Rule 2(2)(h)(i) of the Solicitors Accounts Rules, and Rule 22(2) prevented the withdrawal of any of these sums of money in the stated manner.

100. It was further the Applicant's submission in that the Respondent made a false and misleading statement to W and to Mrs C. See paragraphs 51-53 above.
101. The Respondent had reached an agreement with Mr H to which he failed to adhere. See paragraph 54 above.
102. The Respondent had failed to act in the best interest of Mr and Mrs Kn in failing to advise that insurance commission of £39,454.51, received in place of costs, could have been available for further investment.
103. There had been a failure to provide costs information to any of the clients or paying parties named in Mr Shelley's report in breach of Practice Rule 15.

The Submissions of the Respondent

104. The Respondent genuinely believed that the bills that he rendered had been justified.
105. With regard to the first allegation the Respondent thought that the bills had been sent out. To some extent that allegation related to bills that had been sent out before he took over the conduct of the files. The Respondent believed that the team responsible for sending out the bills had done so.
106. With regard to the allegation that the Respondent had been guilty of overcharging and taking unfair advantage, he had genuinely believed that he was entitled to charge. The Respondent accepted that his action might have been unprofessional or reckless but it was not done with any dishonest intent.
107. In the matter of K Deceased there was evidence contained in the Respondent's exhibits that there had been correspondence indicating that the fees had been agreed.
108. The matters that were the subject of the allegations had been inherited by the Respondent from Mr G upon Mr G's retirement. The Respondent had been placed in a position where he had to assess work done by someone else and not just work that he had undertaken himself.
109. All of the matters upon which complaint had been based were at least four years old. They were three years old at the time when the Respondent was interviewed by the FIO and at the time of the interview he did not have the benefit of looking at the files. The Respondent had made it plain that he had given answers to questions raised to the best of his recollection. If his answers had been wrong that was not because of any attempt to dissemble but because his recollection after such a long period of time had become clouded.

The Tribunal's Findings of Fact

110. The Tribunal having seen and heard him give evidence did not find the Respondent to be a satisfactory and reliable witness. He was evasive when responding to questions in cross-examination.

111. When the Respondent justified charging £1,000 plus VAT a few days after the deceased's death on Christmas Day, the Tribunal did not believe him when he said he had worked over the Christmas period and had undertaken exactly £1,000 worth of work.
112. It had been the Respondent's position that he was a conveyancer and he did not know about probate. Despite claiming that to be the case he told the Tribunal that he had undertaken reviews of files that he had inherited. On his own evidence he was in no position to carry out satisfactory reviews. Somewhat implausibly he said he had not telephoned or spoken to Mr G about the files or the matter of charges. The Tribunal did not believe that the Respondent had carried out genuine reviews of the files in question.
113. The Tribunal recognised that it was perfectly possible that full information was not recorded on any particular file. Whilst this would be an unsatisfactory state of affairs the Tribunal recognises that solicitors' files are not always as well kept as they should be. However the Tribunal rejected the Respondent's explanation that a great deal of work had been undertaken on files but had not been recorded. Mr Shelley, an experienced costs draftsman, had taken that into account and the Tribunal accepted Mr Shelley's report the content of which, indeed, had not been disputed by the Respondent.
114. The Tribunal rejected the Respondent's explanation that he drew a bill in a piecemeal fashion at the end of each section of file he reviewed. The Tribunal found as a fact that the Respondent drew bills on a number of occasions in round sums neither knowing nor caring whether the amounts charged properly related to work undertaken or whether the amounts charged were justified and reasonable. The Tribunal noted that the Respondent did not challenge any part of Mr Shelley's report. He relied on his explanation that the files had not been complete. As stated above the Tribunal recognised that Mr Shelley had taken into account the fact that there was no formal system of time recording on the files and had made allowances for this.
115. In light of the above, the Tribunal found that the bills to which Mr Shelley referred did demonstrate the overcharge which he identified and those which he considered had been drawn where there had been insufficient work to justify them had been so drawn. The Tribunal found that the bills had not been delivered to the paying parties which rendered the transfer of the sums billed from client to office account improper.
116. The Respondent accepted that client care letters had not been sent on a number of matters and it was his own evidence that he had not sought to rectify that omission when the files became his responsibility. The Tribunal finds that there was a breach of the professional client care requirements in this respect.

The Tribunal's Findings on the Allegations

117. The Tribunal found allegations (a), (b), (c) and (e) to have been substantiated. The Tribunal found that the Respondent had been dishonest. The Applicant had, in effect, sought to run allegations (c) and (d) together, but the Tribunal found allegation (d) not to have been substantiated as an individual allegation in respect of the particulars alleged.

118. In reaching its conclusion that the Respondent had been dishonest the Tribunal applied the two part test expressed by Lord Hutton in Twinsectra v Yardley [2002] UKKL12 [2002] 2 ALL ER 377. The Tribunal found that in taking money from a deceased's estate in payment of bills which had not been properly rendered, such payments having been made in breach of Rule 22 of the Solicitors Accounts Rules, when he had drawn the bills neither knowing nor caring whether the costs claimed therein were properly due and or reasonable and where the paying parties did not know that he was doing so, the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having heard and seen the Respondent give evidence and heard his explanation for the drawing of the bills and the transfers of the costs and his assertions that it was the responsibility of the firm's probate department to deliver bills and that he had reviewed files inherited by him and had drawn the bills in accordance with his reviews, which assertion the Tribunal did not believe as a matter of fact, the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he was fully and properly entitled to charge the amounts that he did or to transfer the money from the client account to office account and therefore that he knew that what he was doing was dishonest by those same standards.

The Respondent's Mitigation

119. The Respondent started his career with a firm that had merged with Leathes Prior, and became a partner with CHP in 1999. The continuing partner, Mr Sutherland, had not been happy that the Respondent was leaving and the Respondent served notice dissolving the partnership. The Respondent has since been the subject of a number of claims and demands from the continuing partner which he believed not to be justified. A salaried partner and the office manager had also left at about the same time. The firm had not been a "happy ship".
120. The Respondent subsequently worked for another firm of solicitors and then set up his own practice which had proved very successful and popular with clients. Reputable accountants had recently prepared an Annual Report qualified only in respect of two minor issues which had been rectified. The SRA Practice Standards Unit had recently conducted a monitoring unit. Minor issues had been raised and had been addressed in full.
121. The interests of clients were of vital importance to the Respondent who would never knowingly do anything against the interest of his clients. He had been deeply distressed by the allegation that he had overcharged clients and acted dishonestly.
122. The Respondent had made it clear that with the passage of time and without the opportunity of seeing the files under discussion he had had to rely on the best of his recollection and to remember actions taken some six years prior to the interview with the FIO. He had not intended to give any inaccurate answer. As far as any other specific matters were concerned the Respondent's memory of the matters had faded over time and he had not had access to any files in order to refresh his memory until very shortly before the disciplinary hearing. He accepted his responsibility where there was a failure to record the work done, and offered his apologies for that. He never intended to make charges that had not been properly incurred.

123. At the time of the hearing the Respondent was a sole practitioner. His income was derived from his practice which also employed his wife as an office assistant. They had no other employees.
124. The Respondent was highly regarded by his clients, his contacts and introducers. The Tribunal was handed a number of “thank you” cards that had been received from satisfied clients. The Respondent took great pride in his practice and had worked hard to make it a success. He enjoyed the challenge of being a sole practitioner, which had given him a deeper insight into client care and practice standards. In his first year of practice, he achieved gross profits of £87,000 despite the difficult economic circumstances. He conservatively estimated that the gross profit for his second year would be in the region of £280,000.
125. The Respondent currently held a practising certificate free of any conditions, although he was subject to a requirement that he attend a course on the Solicitors Code of Conduct and the Solicitors Accounts Rules in the practising year 07/08. He had complied. His ability to practise had not hitherto or since been subject to restriction.
126. The Respondent had two school age children. He gave details of his income, outgoings and disposable income.
127. These matters had been hanging over the Respondent’s head for some time. All of the client matters were at least four years old. The Respondent might have been at error in making some of his responses but he had never formulated any attempt to mislead.
128. The Respondent relied entirely on his practice for his income and the consequences of an interference with his ability to practise would be disastrous. It was hoped that the Tribunal would in all the circumstances take a lenient stand.

The Tribunal’s Sanction and its Reasons

129. The Tribunal had found serious allegations to have been substantiated against the Respondent including an allegation that he had been dishonest. The Tribunal recognised that the good reputation of the solicitors’ profession was more important than the fortunes of an individual member. Having concluded that the Respondent knew that the bills he rendered did not properly reflect work done and were unreasonable and that he had not notified the paying parties before taking monies in payment, and recognising that the profession must maintain the highest levels of probity integrity and trustworthiness, the Tribunal determined to strike-off the Respondent from the Roll of Solicitors.
130. The Tribunal recognised that a Striking off Order was likely to be a disaster for the Respondent and his family. Nevertheless the Tribunal concluded that a Striking off Order was appropriate and proportionate in the circumstances of this case.
131. The Tribunal noted that the Applicant sought the costs of and incidental to the application and enquiry and that following discussions with the Respondent’s representative the Respondent very properly agreed that he should be responsible for costs in a fixed sum. The Tribunal therefore ordered the Respondent to pay the costs in the agreed fixed sum.

Application

132. After the pronouncement of its Order an application was made on behalf of the Applicant that the Tribunal's Order be stayed. The Tribunal has dealt with this on pages 2 & 3.

Dated this 10th day of March 2010
On behalf of the Tribunal

N Pearson
Chairman