The First Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 1 July 2015. The appeal was heard by Mr Justice Lavender on 1 December 2016. The appeal was dismissed and the First Respondent was ordered to pay the SRA's costs assessed on the indemnity basis at £20,000. Ogunniyi v Solicitors Regulation Authority [2016] EWHC 3516 (Admin).

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11265-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NOAH OLUWATOSIN OGUNNIYI First Respondent

TOM KUMAR ADHIKARI Second Respondent

Before:

Mrs J. Martineau (in the chair)
Mr D. Green
Mrs L. Barnett

Date of Hearing: 12th and 13th May 2015

Appearances

Edward Levy, Counsel of Fountain Court Chambers, Fountain Court, Temple, London, EC4Y 9DH instructed by Pennington Manches LLP, Abacus House, 33 Gutter Lane, London, EC2V 8AR for the Applicant.

The Respondents did not appear and were not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondents were:

1.1 The Respondents acted in breach of Principles 6 and 10 of the SRA Principles 2011, and Rules 6 and 20.1(a) and (f) of the SRA Accounts Rules 2011 ("the AR") in that client money was withdrawn from client account (i) when it was not properly required for a payment to or on behalf of the client, and (ii) without the client giving instructions for the withdrawals, which withdrawals resulted in a minimum client account shortfall of £171,700 as at 31 July 2013. It was alleged the First Respondent had acted dishonestly, or in the alternative that he had acted recklessly and had breached Principle 2;

1.2 The Respondents acted in breach of Principles 6 and 10, and Rules 6 and 7 of the AR in that they failed to remedy promptly the misappropriation of funds belonging to Messrs Ali and/or their family;

1.3 The Respondents acted in breach of Principles 6 and 10, and Rules 6 and 29.1 of the AR in that they failed to keep accounting records properly written up to show their dealings with client money;

1.4 The Respondents acted in breach of Principles 4, 5 and 6 in that they failed to supervise properly a non-admitted employee, Mr Mia. The Respondents thereby failed to achieve Outcomes 1.2 and 7.2 of the SRA Code of Conduct 2011 ("the Code");

1.5 The Respondents acted in breach of Principles 6 and 7 in that they failed to report to the SRA serious misconduct in the form of the misappropriation of clients' (Messrs Ali) funds. The Respondents thereby failed to achieve Outcome 10.4;

1.6 The Respondents acted in breach of Principles 6 and 7 in that they failed to cooperate fully with the SRA and/or its agents in the course of the intervention into their firm. The Respondents thereby failed to achieve Outcome 10.6;

The additional allegations against the First Respondent only were:

1.7 The First Respondent acted in breach of Principles 2, 6 and 7 in that he made false and/or misleading statements to a Forensic Investigation Officer ("FIO") of the SRA. It was alleged the First Respondent had acted dishonestly;

1.8 The First Respondent acted in breach of Principles 2, 6 and 7 in that he provided false documents to the FIO with the intention of misleading that officer. It was alleged the First Respondent had acted dishonestly;

1.9 The First Respondent acted in breach of Principles 2, 6 and 7 in that he failed to comply with an Order of the High Court;

1.10 The First Respondent acted in breach of Principles 2, 3, 4 and 6 in that he advised clients, Messrs Ali, in respect of the loss they had suffered as a result of misconduct on the part of the firm, such advice including (but not limited to) (i) advising those clients to enter into a loan agreement with an employee of the firm and/or (ii) failing

to advise those clients to obtain, and failing to ensure that they obtained, independent legal advice in relation to that loan agreement and/or in relation to the firm's conduct generally. The First Respondent thereby failed to achieve Outcome 3.4.

Documents

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

Applicant:

- Application dated 5 August 2014 together with attached Rule 5 Statement and all exhibits
- Second witness statement of Jumail Ahmed Ali dated 29 January 2015 together with appended documents
- Applicant's Chronology
- Bundle containing all documents submitted by the Respondents including some of those listed below
- Emails between Mr J Ali and the First Respondent dated 19 October 2012, 21 October 2012, 21 November 2012, 27 February 2013, 18 March 2013 and 25 March 2013
- Email from the First Respondent to the SRA Accountants Reports Department dated 25 July 2013
- Letter dated 26 February 2014 from the SRA to the First Respondent
- Letters dated 6 October 2014 from Pennington Manches LLP to each of the Respondents
- Witness Statement of Anis Mia dated 14 April 2015 together with attached bank statements
- Emails between Pennington Manches LLP and the Second Respondent dated 23 April 2015 and 8 May 2015
- Letter dated 11 May 2015 from Pennington Manches LLP to the First Respondent
- Applicant's Statement of Costs dated 24 April 2015

The First Respondent, Noah Oluwatosin Ogunniyi:

- The First Respondent's Answer dated 3 September 2014

- Letter dated 24 October 2014 from the First Respondent to Pennington Manches LLP together with attached Amended First Respondent's Answer dated 24 October 2014

- Letter dated 5 May 2015 from the First Respondent to Pennington Manches LLP together with attached Statement of Facts dated 20 April 2014

- Email dated 8 May 2015 from the First Respondent to Pennington Manches LLP together with attached letter dated 8 May 2015 from the First Respondent to Pennington Manches LLP and various enclosures

- Email dated 11 May 2015 timed at 12.33 from the First Respondent to the Tribunal and Pennington Manches LLP

- Email dated 11 May 2015 timed at 15.46 from the First Respondent to the Tribunal and Pennington Manches LLP

The Second Respondent, Tom Kumar Adhikari:

- Email dated 21 October 2014 from the Second Respondent to the Applicant

- Letter from the Second Respondent to the Applicant received on 23 June 2014

- Documents submitted by the Second Respondent to the High Court including witness statements from the Second Respondent dated 30 May 2013 and 15 May 2014

- Witness statement of the Second Respondent dated 31 October 2013

- Various letters, documents and emails between the Second Respondent and the Applicant

- Historic medical records and other documents sent by the Second Respondent to the Applicant

- Email dated 11 May 2015 timed at 15.48 from the Second Respondent to the Tribunal together with attached letter from Dr Gautam dated 5 May 2015

- Email dated 12 May 2015 timed at 10.52 from the Second Respondent to the Tribunal

- Email dated 12 May 2015 timed at 11.02 from the Second Respondent to the Tribunal

- Letter dated 26 November 2013 confirming the Second Respondent received state benefits

The First Respondent's Application for an Adjournment

3. The First Respondent sent an email dated 8 May 2015 to the Applicant's solicitors which attached a letter dated 8 May 2015 and various other documents in support of his application for an adjournment. In that email the First Respondent indicated that his wife was dependent upon him as she had recently given birth and he provided details of his wife's medical condition. The First Respondent stated he was unable to attend the scheduled hearing as he considered it "imperative" that he provide care and support for his wife so as to ensure that her health did not deteriorate further, and that his children did not suffer any instability. In the circumstances, he requested an adjournment to enable him to attend the hearing. The documents attached to the First Respondent's letter included a letter from Dr Shabir dated 6 May 2015 concerning Miss EO, extracts from Miss EO's medical records, a copy of Miss EO's prescription and a copy of a marriage certificate confirming Miss EO and the First Respondent were married. Miss EO's address had been redacted on the documents provided.

4. The Applicant's solicitors responded to the First Respondent in a letter dated 11 May 2015 opposing the application on the basis that the substantive hearing had been listed over six months ago and the Applicant's witnesses had made arrangements to attend the hearing. The Applicant's solicitors sought clarification as to why Miss EO appeared to be receiving medical treatment in Bedfordshire when the First Respondent's home address was in Essex, and requested confirmation as to whether the First Respondent was living at the same address as his wife. The Applicant's solicitors also requested an explanation as to why Miss EO's address on the documents had been redacted. The Applicant's solicitors indicated that they would be willing to agree to vary the daily hearing timetable in order to accommodate the First Respondent so as to allow a slightly later start and/or earlier finish time.

5. The First Respondent then sent an email to the Tribunal on 11 May 2015 at 12.33 confirming he was currently living with his wife in Bedfordshire, but was receiving correspondence at another address which was his family home. He stated he had redacted the address details "due to the safety of my young family". The First Respondent stated he could not have foreseen that the birth of his second child would cause his wife's health to deteriorate and that he was unable to attend the substantive hearing on the given dates, even if the time was altered, for the reasons he had given in his previous correspondence. The First Respondent stated his absence was unavoidable and that the Applicant would not incur any further costs if the hearing was postponed and costs were addressed at the conclusion of the matter.

6. The First Respondent's emails of 8 and 11 May 2015, and the letter of 11 May 2015 from the Applicant's solicitors were placed before the Tribunal to consider his application on 11 May 2015. The First Respondent was informed by the Tribunal that the Chairman of the Tribunal, having considered the correspondence, decided that if the First Respondent required an adjournment and/or shortened court today, he must attend in person at 10am on the first day of the hearing on 12 May 2015 to make his application.

7. On 11 May 2015, having been notified of the Chairman's decision, the First Respondent sent a further email to the Tribunal and the Applicant's solicitors at 15.46 stating he was unable to leave his wife at home with two infant children in her current

state and this would cause tremendous stress to both his wife and the two children, in particular the newborn. The First Respondent stated it would be impractical and irresponsible for him to do so. The First Respondent advised he was unable to attend the Tribunal on 12 May 2015 to make an application in person and that the exceptional circumstances surrounding his absence clearly demonstrated this. He made a request for the hearing to be adjourned.

8. At the start of the hearing on 12 May 2015, Mr Levy, on behalf of the Applicant, reminded the Tribunal that the First Respondent sought an adjournment but the Second Respondent did not. The Applicant opposed the adjournment and Mr Levy confirmed the Applicant's position remained as set out in the Applicant's letter to the First Respondent dated 11 May 2015. The First Respondent had failed to attend before the Tribunal, even for a short period to explain his position, despite a clear direction requiring him to do so and Mr Levy submitted the Tribunal could draw an inference from this.

9. Mr Levy submitted the First Respondent had been properly served with details of today's hearing and indeed he had fully engaged with the process. However, Mr Levy submitted the First Respondent was using the birth of his child as an excuse to delay proceedings. He further submitted the medical evidence was very limited in that it only related to the First Respondent's wife who had made a self referral for her medical condition. The medical report did not state the First Respondent's wife needed constant care nor did it give sufficient information about the extent of the First Respondent's wife being incapacitated or any details explaining why the First Respondent was unable to attend before the Tribunal himself. Whilst the Applicant was sympathetic to the First Respondent's wife's position, Mr Levy reminded the Tribunal that she appeared to have suffered from the symptoms complained of for a period of six months prior to the recent birth.

10. Mr Levy referred the Tribunal to the cases of R v Hayward, Jones and Purvis [2001] QB 862 and Timothy Paul Schools v Solicitors Regulation Authority [2015] EWHC 872 (Admin). He reminded the Tribunal that whilst each case must be considered on its own facts, the medical evidence provided by the First Respondent related to his wife. There was no evidence that the First Respondent could not call on others to assist him with her care, even if only for a few hours, to allow the First Respondent to attend before the Tribunal to deal with his application for an adjournment.

11. Furthermore, Mr Levy submitted that whilst the First Respondent had filed an Answer, he had failed to deal with the nub of the allegations relating to him fabricating documents and making false statements to the SRA's Officer. The content of the Answer provided by the First Respondent was not accepted by the clients who had taken time off work to attend as witnesses at this hearing to give evidence. Mr Levy submitted it was in the public interest that the hearing should proceed today, particularly as the clients involved in this case had lost money and were extremely distressed about the prospect of an adjournment. Mr Levy read out an extract from an email from one of the witnesses in response to being told the hearing may be adjourned. That witness had been a client of the firm and in his email he had expressed how distressed he was about the prospect of an adjournment. The witnesses had all been put to great inconvenience to attend today.

12. The Second Respondent had not made any written submissions regarding the First Respondent's application for an adjournment. He had sent an email dated 12 May 2015 to the Tribunal indicating that he was in Nepal and unable to prepare bundles of documents but had not requested an adjournment himself.

The Tribunal's Decision

13. The Tribunal considered carefully whether both Respondents had been properly served with proceedings. The Tribunal had notified both Respondents by letters dated 17 November 2014 sent by recorded delivery of the date of today's hearing. The Tribunal was provided with proof of delivery of both of those letters and was therefore satisfied that both Respondents had been properly served with details of today's hearing.

14. The Tribunal then considered the First Respondent's application for an adjournment together with the Tribunal's Practice Note on Adjournments. Paragraph 4 of the Practice Note made reference to the medical condition of the Applicant or Respondent but did not allow for adjournments to be granted on the basis of the medical condition of a third party. Furthermore, paragraph 5 of the Practice Note indicated any application for an adjournment, which was made within a three week period before the date fixed for hearing, should be supported by a statement of truth from the Respondent giving reasons for the adjournment sought. The First Respondent had failed to comply with this. He had chosen to absent himself from today's hearing, despite a clear direction from the Chairman requesting him to attend the hearing to make his application in person.

15. The Tribunal considered carefully the cases of R v Hayward, Jones and Purvis and Timothy Paul Schools v Solicitors Regulation Authority to which it had been referred. The Tribunal did not find the case of Timothy Paul Schools v SRA to be helpful as the circumstances of that case were very different to the circumstances concerning the First Respondent.

16. In relation to the case of R v Hayward, Jones and Purvis, the Tribunal was mindful that it must exercise the utmost care and caution when considering whether to proceed in the First Respondent's absence. The First Respondent was clearly aware of today's hearing, having made an application for an adjournment; however, that application had been made extremely late and was not supported by proper evidence. Nor had the First Respondent explained whether he was able to arrange alternative care for his wife and if not, why not. The allegations against the First Respondent were extremely serious and included allegations of dishonesty. This hearing had been listed many months ago and four witnesses had attended today with the intention of giving evidence to the Tribunal. If the matter was to be adjourned, it was unlikely to be re-listed for many months. The public interest required matters should proceed promptly where possible. The Tribunal noted that the First Respondent had engaged with these proceedings and had provided an Answer to some of the allegations of which the Tribunal would take account. The Tribunal concluded it would not be fair, reasonable or in the public interest to grant the First Respondent's application for an adjournment on the grounds sought. Accordingly, the Tribunal refused the First Respondent's application.

17. Having refused the First Respondent's application, the Tribunal was further satisfied that it was appropriate and in the public interest to proceed in the First Respondent's absence. He had chosen voluntarily to absent himself from today's hearing which involved extremely serious allegations. Matters should be concluded without any further delay.

18. Both Respondents were immediately informed by the Tribunal office, by an email sent to both of them on 12 May 2015 at 11.29 that the First Respondent's application for an adjournment had been refused and the hearing was proceeding that day.

Factual Background

19. The First Respondent, born on 8 December 1982, was admitted to the Roll on 15 August 2008. He did not currently hold a practising certificate.

20. The Second Respondent, born on 23 May 1970, was admitted to the Roll on 1 September 2005. Since 4 July 2014, he had held a practising certificate subject to conditions.

21. At all material times, the Respondents practised in partnership as Goldfields Solicitors, at Unit F2 Macbean Centre, Macbean Street, London, SE18 6LW ("the firm"). The First Respondent was the firm's Compliance Officer for Legal Practice (COLP) and the Second Respondent was the firm's Compliance Officer for Finance and Administration (COFA).

22. On 15 August 2013, an inspection of the firm's books of account and other documents was commenced by a Forensic Investigation Officer ("FIO") from the SRA, who subsequently produced an investigation report dated 7 October 2013. On 17 October 2013 an Adjudication Committee of the SRA resolved to intervene into the firm.

Misappropriation of Client Funds

23. In May 2012, the firm was instructed by Mr J Ali to act for him in relation to the purchase of a property in Bromley. Initially, the instructions were that the property was to be purchased in Mr J Ali's name, although the funds for the purchase were being provided by his wider family. However, the firm was later instructed that the family had decided the purchase would proceed in the joint names of Mr J Ali and his brother, Mr Z Ali ("Messrs Ali").

24. The First Respondent had conduct of the transaction with Mr Mia, who was an un-admitted fee earner dealing with the matter on a day-to-day basis. Mr Mia had undertaken conveyancing transactions for Mr J Ali and his family on two previous occasions, including the sale of a property in February 2012. Following the sale of the property in February 2012, Mr Mia approached Mr J Ali's family with a proposal that they invest the sale proceeds into one of Mr Mia's family businesses. This offer was declined.

25. Mr J Ali's family provided at least £171,700 to the firm for the purpose of purchasing the property in Bromley. On 26 June 2012, Mr Mia informed Mr J Ali that exchange of contracts was imminent. However, in an email dated 4 July 2012, Mr Mia

confessed to Mr J Ali that he had lent £10,000 to "a colleague" who was in financial difficulty. Mr Mia asked Mr J Ali to forgive him for doing this. Mr Mia advised Mr J Ali against completing that day (4 July 2012) saying it would be better to wait until he had "all the funds to complete". This was the first time Mr J Ali became aware of any financial issues which may prevent completion.

26. On 7 July 2012, Mr Mia exchanged contracts with the sellers with completion due to take place on or before 13 July 2012. Although Mr Mia had informed Mr J Ali on 4 July 2012 that he had lent £10,000 of the Ali family's client funds, it transpired that by that date at least £127,600 had been withdrawn without the clients' knowledge or authority. Further improper withdrawals had been made after 4 July 2012 until the majority of the Ali family's client money had been improperly withdrawn and disbursed.

27. Only the Respondents were able to operate the firm's bank accounts. Due to the unauthorised use of client funds, which the Ali family had intended to be used for the purchase of the property in Bromley, the purchase did not complete and the Ali family forfeited a £17,000 deposit which had been paid to the sellers. The misappropriated funds had not been repaid to the Ali family and at no time prior to the SRA's investigation did either Respondent report the misappropriation of funds to the SRA.

Loan Agreement

28. On or after 13 July 2012, the First Respondent took steps in an attempt to resolve the matter, giving a number of assurances to the Ali family that their monies would be replaced. The First Respondent recommended that Mr J Ali and Mr Z Ali should sign a retrospective agreement to the effect that they had consented to lend Mr Mia £171,700. The agreement was signed on 10 August 2012 at the Ali family home. However, at that time:

- Messrs Ali still believed the purchase of the property in Bromley would be completing;
- Messrs Ali had not been told how much of their money had been misappropriated, and what it had been used for;
- The agreement was not dated; and
- Messrs Ali had not been advised to take, and had not taken, independent legal advice regarding the agreement. The only advice Mr Z Ali had received in relation to the agreement was from the First Respondent himself.

Shortfall on Client Account and Accounts Rules breaches

29. On 15 August 2013, the First Respondent produced a list of the firm's liabilities as at 31 July 2013 to the FIO totalling £16,409.30 and being attributable to 13 individual client matters. The First Respondent also produced such lists for each of the preceding five months. However, all these lists were inaccurate or incomplete because no reference was made to the remaining balance on the Ali family's purchase

of the property in Bromley. Furthermore a balance of £5,650 attributed to another client, AA, was not genuine and should not have been included.

30. On 9 September 2013, the FIO raised these issues with the First Respondent who then produced a revised list of liabilities later that day. The revised list made reference to a balance of £900 credit on the Ali family's purchase file and eliminated the balance on AA's file. The First Respondent attributed the early inaccuracies to accounting errors.

31. However, despite these revisions, the total liability to clients as at 31 July 2013 remained unchanged at £16,409.30 but was attributable to 23 client matters instead of 13 as stated on the earlier list. The FIO concluded that in view of the lack of reliability of the client accounting records, and the evidence of misappropriation of the Ali family's funds, it was not possible to rely on the firm's books of account or list of liabilities.

Minimum Cash Shortage, Inconsistent Client Ledgers and Payments to Third Parties

32. On 5 November 2012 the First Respondent provided Mr Ali with a ledger in relation to the matter concerning the purchase of the property in Bromley. However, this differed in several material aspects to the ledger subsequently produced by the First Respondent to the FIO on 9 September 2013.

33. The 5 November 2012 ledger recorded that the Ali family had paid £171,700 to the firm in various tranches between 22 May 2012 and 19 June 2012, and that £171,600 had been paid out (including the deposit of £17,000 on exchange of contracts). A remaining credit balance of £100 was shown. That ledger contained insufficient information regarding transactions in that of the 13 withdrawals shown on the ledger, 11 simply stated "withdrawal" without any additional information regarding the recipient or the purpose of the withdrawals.

34. However, the second ledger produced to the FIO on 9 September 2013, recorded the Ali family had paid £181,000 to the firm in various tranches between 22 May 2012 and 20 June 2012 and that £180,100 was withdrawn. A remaining credit balance of £900 was shown. The FIO concluded that a minimum cash shortage had arisen as a result of the misappropriation of funds from these clients, as this money had not been returned to the Ali family. In his report the FIO adopted the figure of £171,700 as the minimum shortfall, being the sum provided by the Ali family which had not been returned.

35. At the FIO's request, the First Respondent prepared a schedule of payments made out of the Ali family's client account on the file relating to the purchase of the Bromley property. 26 transactions were identified and one inter ledger transfer. These included 11 cash withdrawals totalling £56,500, various payments to third parties in sums varying from £5,000 to £43,600 and an inter ledger transfer of £20,000. Messrs Ali were unaware of these withdrawals and had not authorised them.

36. On 4 July 2012, Mr Mia had informed Mr J Ali that he had loaned £10,000 to "a colleague". The First Respondent had continued to refer to the monies having been loaned to Mr Mia's colleague during his dealings with Messrs Ali. Attendance notes provided by the First Respondent to Messrs Ali on 5 November 2014 recorded

various payments to Dr A, who, although he had not worked at the firm, had been a partner of another firm at which the First Respondent had worked from 2006 to 2009. The First Respondent informed the FIO that the monies had been provided to Mr Mia. However, contrary to this, on the schedule of payments provided only one payment of £5,000 was shown to have been made to Mr Mia and there were no payments to Dr A or any other employees of the firm.

37. The First Respondent told the FIO that no further internal documents, such as payment requisition forms, were available and there was therefore no explanation as to who at the firm had arranged the withdrawals, or authorised them, or instructed them to be debited from the Ali family's ledger. Nor was there any explanation of the nature and purpose of any of the payments, the full identity details of any recipients or the identity of the recipient of the 11 cash withdrawals which came to a total of £56,500.

Allegations against the First Respondent only

38. The First Respondent attended the Ali family residence with Mr Mia on 13 July 2012, after the purchase of the Bromley property did not complete that day as contracted. The First Respondent apologised for the situation and said he would undertake an investigation and seek to resolve matters.

39. Following this meeting, the only direct contact Mr J Ali had with Mr Mia was when Mr Mia accompanied the First Respondent to meetings in person with Mr J Ali and his family. Communication between the First Respondent and the Ali family between 13 July 2012 and 22 May 2013 included:

- 36 emails from the First Respondent to Mr J Ali
- 112 emails from Mr J Ali to the First Respondent
- 4 meetings at the Ali family home which the First Respondent attended and
- Various telephone calls and texts between the First Respondent and Mr J Ali.

40. The First Respondent provided repeated confirmations that he was arranging repayment of the Ali family's funds. Additionally, on 17 and 29 May 2013, solicitors acting on behalf of Messrs Ali sent letters to the firm indicating legal proceedings were to be commenced against the firm in relation to the misappropriated funds. On or around 17 May 2013, the solicitor acting for Messrs Ali spoke with the First Respondent about the letter of 17 May 2013.

41. During his first interview with the FIO on 15 August 2013, before the FIO informed the First Respondent that the SRA was aware of the issues concerning the Ali family's purchase of the Bromley property, the First Respondent stated:

- He was not aware of any issues that may have been reported to the SRA;
- He was not aware of any misuse of client funds at the firm;

- He was not aware of any problems with the firm's books of account; and
- There were no matters he wished to bring to the FIO's attention.

42. Furthermore, in a second interview also on 15 August 2013 after the FIO indicated the SRA was aware of the issues concerning the Ali family's purchase of the Bromley property, the First Respondent:

    - Portrayed the matter as a "family dispute" in which, pursuant to a commercial arrangement, funds which the Ali family had lent to Mr Mia had not been returned in time for a property purchased by the Ali family to be completed;
    - Made no mention of his own extensive involvement in the matter;
    - Suggested that his knowledge of the matter was limited and that he would need to check the file;
    - In respect of the correspondence from the solicitor acting for Messrs Ali, he suggested the Second Respondent may have dealt with this, and that the Second Respondent had made the First Respondent aware of the family dispute.

43. The First Respondent provided the FIO with a copy of the firm's breaches register on 15 August 2013 which had been signed and dated by him and stated "No Breaches". He also stated in an email to the FIO on 16 September 2013 that he was not aware of any email exchanges between the firm and the Ali family.

44. The Second Respondent, in a letter to the FIO sent in or around October 2013 claimed he had no substantive involvement in dealing with the Ali family purchase of the Bromley property or with the complaint received from their solicitors.

45. When the FIO initially attended the firm on 15 August 2013, the First Respondent was unable to produce the file relating to the Ali family's purchase of the Bromley property. However, a copy of the file and client account ledger was subsequently produced when the FIO visited the firm again on 9 September 2013. The First Respondent stated that this was a copy of the original file, which he claimed had been sent to the solicitor acting for Messrs Ali. The First Respondent also produced a written summary dated 9 September 2013 of the matter relating to the purchase of the Bromley property in which he:

    - Stated that the clients had met with Mr Mia on 16 May 2012 and had agreed to lend Mr Mia money for a "private business transaction". He further stated that once the money had been repaid by Mr Mia, it was to be used to purchase a property for the clients
    - Stated he had obtained confirmation of the agreement from the clients and then the funds had been released to Mr Mia; and
    - Made reference to his understanding that Mr Mia had been making regular payments to the clients.

46. The copy file produced by the First Respondent on 9 September 2013 contained a client ledger, a letter from the firm to Messrs Ali dated 17 May 2012, a telephone attendance note made by the First Respondent dated 18 May 2012 and an undated loan agreement. These four documents supported the First Respondent's written summary as the narrative on the client ledger identified Mr Mia as the recipient of the funds, the letter of 17 May 2012 from the firm to Messrs Ali referred to a loan agreement between them and Mr Mia, and the telephone attendance note of 18 May 2012 recorded Mr Z Ali's confirmation of the loan arrangements during a telephone conversation with the First Respondent. None of these four documents were included in the firm's original file sent to the client's new solicitors.

47. The client ledger produced to the FIO on 9 September 2013 was materially different to the one provided to Mr J Ali on 5 November 2012 in that the two versions showed different receipts and payments, and the 9 September 2013 ledger referred to Mr Mia being the beneficiary of the payments, whereas Messrs Ali had been told the beneficiary was Dr A. Mr Z Ali stated that he did not speak to the First Respondent on 18 May 2012 and the first time he met or spoke to the First Respondent was on 13 July 2012. Messrs Ali said they did not receive a letter dated 17 May 2012 from the firm. Mr Mia had admitted in writing in an email to Mr J Ali dated 4 July 2012 that he had no authority to use the funds in the way that he had.

48. Messrs Ali stated that there was no pre-existing loan agreement between them and Mr Mia. They also stated Mr Mia had taken their client funds without their knowledge or consent.

49. On 12 August 2013, the First Respondent signed a Professional History Form which he provided to the FIO, on which he indicated he supervised Mr Mia. Additionally, in an interview on 15 August 2013, the First Respondent informed the FIO that Mr Mia was employed by the firm as a caseworker but was absent that day due to family medical reasons. When the FIO attended the firm again on 9 September 2013, the First Respondent again stated Mr Mia was absent that day.

50. However, on 26 September 2013, the First Respondent stated in an email to the FIO that Mr Mia did not work at the firm and had not worked there since April 2013. This statement was made in the context of the First Respondent suggesting he was not authorised to liaise with the SRA on Mr Mia's behalf in relation to arranging an oral interview with Mr Mia. In a further email dated 4 October 2013, the First Respondent stated he had not advised the FIO that Mr Mia still worked at the firm.

51. On 25 September 2013, the FIO received an email from an email address at the firm belonging to a Mr A, but that email had been signed in the First Respondent's name and sent in response to an email from Mr Chambers to the First Respondent. The First Respondent did not explain who Mr A was and whether he worked at the firm. When the FIO requested further details, the First Respondent stated in an email dated 4 October 2013 that the email had been sent from Mr A's address due to a "technical glitch with the server".

Intervention and Court Orders

52. On 17 October 2013, an Adjudication Committee of the SRA resolved to intervene into the firm. Later that day, an Intervention Officer from the SRA informed the First Respondent by telephone of the decision to intervene. Additionally, on 17 October 2013, a letter was sent to both Respondents at the email address given by the First Respondent to the Intervention Officer for that purpose. That letter confirmed the Intervention Officer would be attending the firm's premises at 10:30am the following day with the SRA's Intervention Agent.

53. However, when the Intervention Officer and the Intervention Agent attended the firm the following day at the appointed time, the firm's premises were locked, the telephones were not being answered and the First Respondent did not answer a call to his mobile phone. A barrister instructed by the Respondents later contacted the SRA to confirm the Respondents intended to apply for an injunction to prevent the intervention taking place and that they were considering their options.

54. On 21 October 2013, solicitors acting for the SRA applied to the High Court for an Order requiring the Respondents to produce all documents relating to the firm that were in their possession/control, and to authorise the SRA's Intervention Agent to access the firm's offices. That Order was granted on 22 October 2013 and included a penal notice warning that anyone disobeying the order might be held in contempt of court.

55. On 18 November 2013, the First Respondent applied for an order setting aside both the Penal Notice attached to the Order of 22 October 2013, and the costs order made in the SRA's favour on 22 October 2013. On 19 May 2014, Mr Richard Millett QC, sitting as a Deputy Judge of the Chancery Division, dismissed the First Respondent's application and recorded the application was "totally without merit".

56. On 2 April 2014, solicitors acting for the SRA applied for an order that the Respondents were in breach of their obligations under the High Court Order of 22 October 2013. This was heard on 6 June 2014. At that hearing the SRA chose not to proceed with the allegations against the Second Respondent, save in relation to costs. The Court made an Order that the First Respondent was in breach of the High Court Order of 22 October 2013 in respect of 11 files in that:

- The First Respondent had failed to produce those files to the SRA's Intervention Agent

- The First Respondent had failed to produce sworn written statements dealing with the whereabouts of all documents which had not been produced to the SRA's Intervention Agent which were in the First Respondent's possession or control.

57. The Second Respondent was not present when the FIO visited the firm on 15 August 2013 and 9 September 2013. However, the Second Respondent provided a written statement in which he attributed his absences from the office on those dates due to ill-health, and his failure to respond to the FIO's correspondence due to technical problems with his email. The Second Respondent also claimed to have had little

involvement in dealing with the Ali family's file or complaint and said he received assurances from the First Respondent that there was nothing to be concerned about.

Witnesses

58. The following witnesses gave evidence:

- Jonathan Chambers – SRA Forensic Investigation Officer
- Nazmin Choudhury
- Jumail Ahmed Ali
- Zamil Ahmed Ali

Findings of Fact and Law

59. The Tribunal had carefully considered all the documents provided, and the Applicant's submissions. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.

60. Allegation 1.1 - The Respondents acted in breach of Principles 6 and 10 of the SRA Principles 2011, and Rules 6 and 20.1(a) and (f) of the SRA Accounts Rules 2011 ("the AR") in that client money was withdrawn from client account (i) when it was not properly required for a payment to or on behalf of the client, and (ii) without the client giving instructions for the withdrawals, which withdrawals resulted in a minimum client account shortfall of £171,700 as at 31 July 2013. It was alleged the First Respondent had acted dishonestly, or in the alternative that he had acted recklessly and had breached Principle 2.

60.1 Principles 2, 6 and 10 of the SRA Principles 2011 stated:

> "You must:
> …..
> 2. act with integrity…
> ……..
> 6. behave in a way that maintains the trust the public places in you and in the provision of legal services; …..
> ….
> 10. protect client money and assets."

Rules 6 and 20.1(a) of the SRA Accounts Rules 2011 stated:

> "6.1 All the principals in a firm must ensure compliance with the rules by the principals themselves and by everyone employed in the firm…..
> ………
>
> 20.1 Client money may only be withdrawn from a client account when it is:

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

60.2 The Applicant’s case was that Mr J Ali and his family had provided the firm with funds of £171,700 in or about May/June 2012 for the purchase of a property. However, that money was transferred away without their knowledge or consent and effectively stolen from them. The clients had not entered into any pre-existing arrangement to lend money to anyone and indeed, an employee of the firm, Mr Mia, had confessed in an email dated 4 July 2012 that he had paid £10,000 of their money to a colleague who had asked Mr Mia to lend him some money. The clients later discovered in or about 5 November 2012 that most of their funds had been taken by 10 August 2012 without their knowledge or consent. None of that money had been repaid to the clients who continued to suffer the loss.

60.3 Mr Levy, on behalf of the Applicant, submitted the email from Mr Mia dated 4 July 2012 was clear evidence that the withdrawal of the sum of £10,000 was never a legitimate use of the clients’ money. Although the First Respondent sought to rely on a loan agreement signed by Messrs Ali indicating they had agreed to lend the sum of £171,700 to Mr Mia, this agreement, although undated, was not signed until 10 August 2012. The clients were not told to obtain independent legal advice before signing the agreement and nor did they do so. Furthermore, at the time that the agreement was signed, they were unaware of the actual total amount of their funds that had been taken. Accordingly, the Applicant’s case was that there was no pre-existing agreement for the clients to lend any money to Mr Mia and they never authorised the use of their funds in any manner other than for the purpose of purchasing the Bromley property.

60.4 This allegation also included an allegation of dishonesty against the First Respondent. Mr Levy, on behalf of the Applicant, submitted the Tribunal would need to find that the First Respondent was aware of the improper transfers when they were made, in order to find dishonesty proved against him. Mr Levy accepted there was no real evidence that the First Respondent was aware but submitted that the Tribunal could draw an adverse inference from the facts and evidence before it.

60.5 The Tribunal had been referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the First Respondent’s conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the First Respondent himself realised that by those standards his conduct was dishonest.

60.6 The Tribunal heard evidence from Jonathan Chambers, the SRA’s FIO who had conducted the investigation and completed a report dated 7 October 2013. He confirmed the content of his report was true and accurate. Mr Chambers stated the copy of the Ali family’s conveyancing file, which had been provided to him, had been unusual in that the clients had forfeited a deposit and, although a Notice to Complete was served, it had not been complied with. Significantly, there was no correspondence on the file from the firm to the clients apart from two letters, one being a client care letter dated 8 May 2012 and one being a letter dated 17 May 2012 from the firm to Messrs Ali. There also appeared to be only two letters from the firm

to the solicitors acting for the sellers. Mr Chambers stated he found that particularly odd.

60.7 Mr Chambers also gave evidence to the Tribunal explaining that a number of assertions made by the First Respondent in his Statement of Facts dated 20 April 2014, which related to other allegations made against the First Respondent, were false. Mr Chambers explained what the First Respondent had told him, which was also set out in Mr Chamber's report. The Tribunal accepted Mr Chambers' evidence.

60.8 The Tribunal heard evidence from Ms Nazmin Choudhury who confirmed the content of her statement dated 25 September 2013 was true. In that statement Ms Choudhury confirmed she was a solicitor and that she had been instructed by Mr J Ali and Mr Z Ali on or about 16 April 2013 in connection with an alleged fraud carried out by their former solicitors, Goldfields, in connection with funds in the sum of £171,700 which they had provided to that firm for the purchase of a property in Bromley. In her statement, Ms Choudhury confirmed that on one occasion she spoke to someone at the firm who identified himself as the First Respondent and who acknowledged receipt of her letter to the firm dated 17 May 2013. The Tribunal noted there was a letter from Ms Choudhury to the firm dated 29 May 2013 which made reference to a phone call between Ms Choudhury and the First Respondent on 22 May 2013. That letter stated the call had initially been taken by the Second Respondent and then passed to the First Respondent.

60.9 Ms Choudhury confirmed in her statement that she received a letter from the firm dated 28 June 2013 which appeared to attach Messrs Ali's original file from the firm. That file contained no client ledger account or any other documentation to identify receipts credited, or payments charged against the matter. Ms Choudhury confirmed in her statement that on 13 September 2013 she had been shown a number of documents by Mr Chambers which were not on the file sent to her by the firm. These included a client care letter dated 8 May 2012, a letter dated 17 May 2012 from the firm to Mr J Ali and Mr Z Ali and a telephone attendance note dated 18 May 2012 recording a telephone conversation between the First Respondent and Mr Z Ali.

60.10 Ms Choudhury's evidence was unchallenged and consistent with the contemporaneous correspondence. Accordingly, the Tribunal accepted her evidence.

60.11 The Tribunal then heard evidence from Mr Jumail Ali, who had instructed the firm to act for him and his family in relation to the purchase of a property in Bromley. Mr Ali confirmed the sum of £171,700 had been deposited into the firm's client bank account with the intention of purchasing the property. He became aware as a result of an email from Mr Mia dated 4 July 2012 that £10,000 of that money had been misappropriated but Mr J Ali was led to believe that these monies would be replaced and completion on the property could still be finalised. Mr J Ali confirmed that neither Mr Mia nor the firm were authorised by him or his family to use the money in the way that they had.

60.12 Based upon Mr Mia's advice, Mr J Ali confirmed contracts were exchanged for the purchase of the property on 7 July 2012. At that time, Mr J Ali had been entirely unaware that only £52,100 of his family's funds remained in the firm's client account as at 4 July 2012. This meant that £119,600 had been improperly taken without his or

his family's knowledge. Mr J Ali only became aware of this on 5 November 2012 when he was provided with a copy of his client ledger.

60.13 On 13 July 2012, Mr Mia introduced Mr J Ali to the First Respondent, who apologised for the situation and informed Mr J Ali that he would conduct an investigation and seek to resolve matters. From that date, save for one occasion in January 2014, Mr J Ali only dealt with Mr Mia when the First Respondent was present. Prior to 13 July 2012, Mr J Ali confirmed he had never met the First Respondent or spoken to him.

60.14 In his evidence, Mr J Ali stated he had trusted the First Respondent and thought that the First Respondent was acting in his family's best interests. The family had been led to believe Mr Mia was to blame and at that time believed Mr Mia had taken their money. Accordingly, the family saw the First Respondent as an arbitrator in the middle who would oversee everything and sort it out. The family thought the house would still be purchased and Mr J Ali thought the First Respondent was acting as their adviser as the First Respondent told him that he was looking out for them.

60.15 Mr J Ali accepted that he and his brother, Mr Z Ali, had signed a loan agreement on 10 August 2012 but stated this had been on the recommendation of the First Respondent. The agreement stated that Mr J Ali and Mr Z Ali consented to lending their property purchase monies of £171,700 to Mr Mia. The First Respondent had explained that the agreement would formalise and document the money Mr Mia had taken and would provide the Ali family with evidence that monies were owed to them by Mr Mia.

60.16 At that time, Mr J Ali and his brother did not know how much money had been stolen from them and believed it to be £10,000. He later found out it was far more. Mr J Ali stated that he had "loss of rent" in his mind which he had expected to receive from the Bromley property, had completion taken place as expected. Mr J Ali thought that monthly repayments would help and he wanted to document that the family was owed money.

60.17 Mr J Ali confirmed Mr Mia paid monthly "rental" payments between August 2012 and May 2013 and that restrictions had been placed on Mr Mia's property to ensure Mr J Ali would be informed if Mr Mia tried to sell it. This was collateral for the money owed to his family.

60.18 Mr J Ali confirmed quite categorically that he did not lend or agree for this money to be used in the way that it had, and that somebody had taken their money without their consent. He accepted that the circumstances seemed odd now, but he believed he was not thinking correctly at the time. He had not been given all the facts. The only other option would have been "by force" but the family did not want to take a formal route and felt that this was the best option. Mr J Ali confirmed he had not been pressurised but he had been given the impression that signing the agreement was for his own good even though he did not fully understand the implications. He stated he had signed the agreement without proper information and advice. That agreement had been prepared by the First Respondent on 25 July 2012 and there were some points that Mr J Ali had not been happy with which he raised with the First Respondent.

60.19 Mr J Ali confirmed that on 5 November 2012, he became aware that the full amount of his family's funds was missing. He stated he was shocked when he found out and that he had still not received the money back. Mr J Ali stated he was not experienced in business matters and did not deal regularly with solicitors. He just wanted to get his money back and buy the Bromley property. Whilst signing the loan agreement had troubled him, he was trying to get to his "end goal".

60.20 Mr J Ali confirmed that the First Respondent had blamed Mr Mia for the misappropriation of the family's money and that was the reason why Mr Mia was a party to the loan agreement. Mr Mia was not a blood relative but simply a family friend. Mr J Ali stated that over a period of time it became clear to him that the purchase of the Bromley property would not complete and promises of repayment had not materialised. The First Respondent's responses to Mr J Ali's numerous emails became less frequent and lacked any substance.

60.21 Mr J Ali confirmed in his witness statement of 29 September 2013 that he had received 36 emails from the First Respondent, 15 of which were dated between 19 July 2012 and 10 April 2013. Mr J Ali had asked the First Respondent on numerous occasions to provide a copy of the firm's client ledger so he could see how his funds had been utilised. However, he was informed by the First Respondent that the ledger account was with the auditors and unavailable. Mr J Ali was also informed that the auditors' involvement was preventing the repayment of the funds. The ledger was eventually produced by the First Respondent on 5 November 2012 during a meeting at the family home and showed that only £100 of the family's £171,700 remained. The First Respondent led Mr J Ali to believe that a Dr A was the "colleague" that Mr Mia had referred to in his email of 4 July 2012 as having financial difficulties.

60.22 Finally, Mr J Ali confirmed in his statement that he had been shown a number of documents by Mr Chambers and that he had never received the client care letter dated 8 May 2012 from the firm, nor had he previously seen the letter dated 17 May 2012 from the firm purportedly to him and his brother. Nor had he previously seen the telephone attendance note making reference to a telephone conversation between his brother, Mr Z Ali and the First Respondent on 18 May 2012. Mr J Ali confirmed he had no knowledge of any such telephone call taking place.

60.23 The Tribunal then heard evidence from Mr Zamil Ali, Mr Jumail Ali's brother. He confirmed that, although in June 2012,it was agreed that the purchase of the property in Bromley would proceed in both his name and his brother's name, in actual fact his brother, Mr J Ali, was the primary point of contact with the firm. Mr Z Ali stated the first time he spoke to the First Respondent was on 13 July 2012 when the First Respondent made an unannounced visit to their family home with Mr Mia. During that visit, the First Respondent apologised that the completion of the Bromley property had not happened and said he would investigate the circumstances.

60.24 Mr Z Ali stated he was present at a number of subsequent meetings on other dates when the First Respondent and Mr Mia visited their family home. His brother, Mr J Ali and his parents were also present at those meetings. During those meetings, the First Respondent eventually informed the family that there was no prospect that completion would take place and that all of their funds of £171,700 had gone missing.

Mr Z Ali stated that the explanation was not clear but the First Respondent appeared to say the monies had been lent to a colleague with financial problems who had failed to repay the funds.

60.25 Mr Z Ali stated that at one of these meetings on 10 August 2012, the First Respondent and Mr Mia attended the family home with a loan agreement which was then signed by Mr Z Ali, Mr J Ali and Mr Mia. The agreement was to the effect that Mr Z Ali and Mr J Ali had agreed to lend Mr Mia £171,700. Mr Z Ali confirmed that the only legal advice he received prior to signing that agreement was from the First Respondent himself.

60.26 Mr Z Ali stated that despite various promises and proposals being made by the First Respondent to repay the funds to the family, no repayment had been made. Mr Z Ali further confirmed that he had been shown a number of documents by Mr Chambers and that he had never received the client care letter dated 8 May 2012 from the firm, nor had he previously seen the letter dated 17 May 2012 from the firm purportedly to him and his brother.

60.27 Mr Z Ali stated he had not previously seen the telephone attendance note making reference to a telephone conversation between him and the First Respondent on 18 May 2012. Furthermore, Mr Z Ali confirmed he did not hold any such telephone conversation with the First Respondent and at that time Mr Z Ali had not been involved with the transaction at all. He confirmed the First Respondent would not have had Mr Z Ali's telephone number at that time because Mr J Ali was dealing with the transaction. In any event, Mr Z Ali stated he had no authority to give any other instructions regarding the use of his family's money.

60.28 Mr Z Ali confirmed that at the time the loan agreement was signed on 10 August 2012, the family still wanted to buy the Bromley property and had been informed the missing money would be repaid. They had wanted to make sure the money was safe and they would not lose it. The First Respondent told them that he was acting in their best interests and that they didn't need any other legal advice. The First Respondent appeared to Mr Z Ali to be an independent person who was dealing with the family's problems, particularly as the First Respondent was blaming Mr Mia for the missing money.

60.29 Mr Z Ali confirmed he did feel a little uncomfortable signing the loan agreement; however, it was the only way to ensure the family would receive their money back and could still buy the house. Mr Z Ali accepted the loan agreement did not represent the true position but he felt pressured as he thought that they would get their money back by signing the agreement. The First Respondent had informed the family that he was acting as their legal adviser and that they didn't need to worry about the situation. Looking back now, Mr Z Ali felt that the First Respondent had hoodwinked the family into signing a document that did not reflect the true position. Mr Z Ali confirmed he was not familiar with legal agreements or with loan agreements. All the family had wanted to do was purchase the Bromley property as originally intended.

60.30 The Tribunal found both Mr J Ali and Mr Z Ali to be compelling, credible and honest witnesses. The Tribunal accepted their evidence in its entirety and considered them to be transparent and straightforward. The Tribunal was satisfied they were telling the

truth and that the First Respondent had convinced them both that he was representing them and acting in their best interests, such that they followed whatever advice he gave them.

60.31 The First Respondent's position was set out in his Statement of Facts dated 20 April 2014. In that the First Respondent claimed an agreement had been reached on 16 May 2012 between Mr Mia and Mr J Ali/Mr Z Ali that they would lend Mr Mia money for a private business transaction, and that repayment of this money would be used to purchase a property in Bromley. The First Respondent claimed he had requested confirmation from the clients that there was such an agreement and having received this "via telephone, money was released to Mr Mia". The First Respondent stated that when the investment became protracted because Mr Mia could not return the money in time for completion, the clients informed the First Respondent "that the agreement between them would become operative". The First Respondent stated the clients put two restrictions on two of Mr Mia's properties and Mr Mia made monthly payments of £1,000 to the clients from about July 2012 to April 2013.

60.32 In his Statement of Facts, the First Respondent stated the Second Respondent was the COFA and the only one who could properly assist with the account documentation.

60.33 The First Respondent made reference to a dispute between the Ali family and Mr Mia's family over the sale of Mr Mia's properties. The First Respondent also disputed the accuracy of Mr Chamber's report and the manner in which the investigation had been carried out.

60.34 The First Respondent in his Answer dated 3 September 2014 and his Amended Answer dated 24 October 2014 denied all the allegations. He denied the clients' money had been misappropriated or that Mr Mia had admitted misappropriating such funds. The First Respondent maintained the monies had been loaned to Mr Mia and disputed the version of events given by Messrs Ali. The First Respondent denied he had conduct of this transaction as Mr Mia had conduct of the file. In his letter dated 24 October 2014, the First Respondent claimed that the documents provided by Mr J Ali and Mr Z Ali to the Applicant were never put to him.

60.35 The First Respondent also claimed in his Answers that he disputed the SRA's investigation report and that documents/information had been provided to the FIO which did not form part of the report. However, the First Respondent failed to provide any detail or evidence of these documents or information.

60.36 The Second Respondent in a letter to the SRA, received on 23 June 2014, and in various other documents before the Tribunal stated no complaint had been made to him by Messrs Ali about their funds being misappropriated by Mr Mia, and there was no complaint that the loan agreement was not genuine. The Second Respondent stated that this was an agreement between relatives. He also stated he had not seen any emails between the firm and Messrs Ali until the SRA investigation report was sent to him. The Second Respondent stated in the letter received by the SRA on 23 June 2014:

> "The Ali file came up for discussion on a few occasions but each time I was fully assured by my partner, Mr Ogunniyi that there was no problem at all in the file as there was an "Agreement" between the parties who are relatives…."

60.37 The Second Respondent, in his email to the Tribunal dated 12 May 2015, stated he refuted all the allegations against him, that he was innocent and did not know about the misuse of the funds. He made reference to a note dated 31 October 2013 given to him by the First Respondent which he claimed absolved him of any of the allegations. The Second Respondent stated he had never met Messrs Ali and nor had they made any complaint to him. The Second Respondent stated the First Respondent had shown him the loan agreement signed by Messrs Ali and assured the Second Respondent that there was nothing wrong on the file.

60.38 The Second Respondent stated in his email of 12 May 2015 that he was totally unaware of email correspondence between Messrs Ali and his colleagues and that he had only seen these emails when he received the investigation report. The Second Respondent stated that if he had been aware of the email dated 4 July 2012 from Mr Mia to Mr J Ali, he would have taken steps to "get to the bottom of the issue and would have reported the matter to the SRA".

60.39 In that email, the Second Respondent maintained that due to his ill health and frequent travel plans, the First Respondent had conduct of the accounts and that the firm's accountants had never informed the Second Respondent that there was any shortfall. The Second Respondent stated that Mr Mia could only view the accounts but could not transfer funds himself. The Second Respondent could view and transfer funds but only did so when authorised by the First Respondent.

60.40 The Tribunal noted from the documents provided that there was no clear evidence in relation to how much had been paid out of Messrs Ali's client account, to whom the payments had been made and on what dates. What was clear from Mr Chambers' evidence was that as at 31 July 2013, the sum of £171,700 was missing. Furthermore, both Mr J Ali and Mr Z Ali had confirmed they had not given any instructions or authority for this money to be withdrawn. The Tribunal particularly noted there was an email from Mr J Ali to Mr Mia dated 4 July 2012, in which Mr J Ali expressed his shock when he received the email from Mr Mia that day informing him that the sum of £10,000 had been paid to Mr Mia's colleague. This was clear contemporaneous evidence of Mr J Ali's state of mind at that time.

60.41 The Tribunal accepted the evidence of all the witnesses who had appeared before it. The Tribunal found as a fact that Messrs Ali had not agreed to loan any monies to Mr Mia prior to finding out on 4 July 2012 that the sum of £10,000 had been misappropriated from their client funds. It therefore followed that the Tribunal rejected the First Respondent's assertions relating to any such loan arrangement between the parties being in place prior to 4 July 2012 and indeed prior to 10 August 2012.

60.42 The Tribunal, having accepted the evidence of Mr Chambers, Ms Choudhury, Mr J Ali and Mr Z Ali, found that the client funds of £171,700 had been withdrawn from client account when not properly required for a payment for or on behalf of the client and without the clients' instructions. Both Respondents as Principals of the practice

had a duty to ensure proper compliance with the Solicitors Accounts Rules and had failed to do so. The Tribunal was satisfied both Respondents had failed to protect client money and assets and had failed to behave in a way that maintained the trust the public placed in them and in the provision of legal services. The Respondents had thereby breached Principles 6 and 10 of the SRA Principles 2011, and Rules 6 and 20.1(a) of the SRA Accounts Rules 2011.

60.43 In relation to the allegation of dishonesty against the First Respondent, whilst it was clear that the client funds of £171,700 were missing, it was not clear to the Tribunal who had misappropriated the money, where that money had gone, or who had authorised the transfer. This was accepted by the Applicant. There was no evidence before the Tribunal that the First Respondent had authorised the transfers or withdrawn these funds himself, or been aware at the time of the transfers that they had been made. The Tribunal was not satisfied as a finding of fact that the First Respondent himself was culpable for these withdrawals, and therefore his conduct would not be considered dishonest by the ordinary standards of reasonable and honest people.

60.44 In relation to the alternative allegation of recklessness and/or a breach of Principle 2 against the First Respondent, again, there was no evidence that the First Respondent had authorised or procured the withdrawals of these client funds. Nor was there any evidence that he had been aware of the withdrawals at the time that they were made. The Tribunal had not received any specific submissions on the allegation of recklessness or a breach of Principle 2 against the First Respondent from the Applicant and accordingly, did not find the allegation of recklessness or a breach of Principle 2 against him proved.

60.45 The Tribunal found Allegation 1.1 proved against both Respondents, but did not find that the First Respondent had acted dishonestly or recklessly or in breach of Principle 2 in this regard.

61. Allegation 1.2 - The Respondents acted in breach of Principles 6 and 10, and Rules 6 and 7 of the AR in that they failed to remedy promptly the misappropriation of funds belonging to Messrs Ali and/or their family.

61.1 Rule 7 of the SRA Accounts Rules 2011 stated:

> "7.1 Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account."

61.2 The Tribunal had already found the client funds had been withdrawn without authorisation from the client account over a period of time prior to November 2012 and in breach of the SRA Accounts Rules 2011. It was clear from the evidence of Messrs Ali that these funds had still not been repaid to them. Accordingly, the Tribunal was satisfied the Respondents had failed to protect client money, and had not behaved in a way that maintained the trust the public placed in them and in the provision of legal services.

61.3 Furthermore, the Respondents had failed to ensure they and employees of their firm had complied with the rules and they had failed to remedy breaches of the rules promptly upon discovery. The First Respondent in particular had been aware since at least 13 July 2012, when he had his first meeting with the Ali family that these funds were missing. The Second Respondent had been aware of this position since receiving the SRA's letter dated 26 February 2014 attaching a copy of Mr Chambers' Investigation Report. Accordingly, the Tribunal found Allegation 1.2 proved.

62. Allegation 1.3 - The Respondents acted in breach of Principles 6 and 10, and Rules 6 and 29.1 of the AR in that they failed to keep accounting records properly written up to show their dealings with client money.

62.1 Rule 29.1 of the Solicitors Accounts Rules 2011 stated:

> "You must at all times keep accounting records properly written up to show your dealings with:
> (a) client money received, held or paid by you ……; and
> (b) any office money relating to any client or trust matter."

62.2 The Tribunal noted no proper explanation had been given by either of the Respondents as to what had happened to the client funds of £171,700 and when. They both denied this allegation.

62.3 Initially, on 15 August 2013, Mr Chambers was provided with a list of the firm's liabilities as at 31 July 2013 which did not identify Messrs Ali's client ledger. Subsequently, on 9 September 2013, a list of revised client liabilities was provided by the First Respondent to Mr Chambers that referred to a client balance on Messrs Ali's ledger of £900 credit. However, on 5 November 2012, the First Respondent had provided Mr Ali with a client ledger for his matter which showed a credit balance of £100. Mr Chambers concluded that, in view of the lack of reliability of client accounting records, and the evidence of misappropriation of Messrs Ali's client funds, he could not rely on the firm's books of account or list of liabilities.

62.4 The Tribunal was satisfied both Respondents had failed to keep accounting records properly written up to show their dealings with client money. They had thereby failed to act in the best interests of each client and had failed to protect client money. They had both breached their obligation to ensure compliance with the rules by themselves and by employees of their firm and had breached Rule 29.1 of the SRA Accounts Rules 2011 by failing to keep their accounting records properly written up to show their dealings with client money received, held or paid. The Tribunal found Allegation 1.3 proved.

63. Allegation 1.4 - The Respondents acted in breach of Principles 4, 5 and 6 in that they failed to supervise properly a non-admitted employee, Mr Mia. The Respondents thereby failed to achieve Outcomes 1.2 and 7.2 of the SRA Code of Conduct 2011 ("the Code").

63.1 Principles 4 and 5 of the SRA Principles 2011 stated:

> "You must …..
> ……
> 4. act in the best interests of each client…..
> 5. provide a proper standard of service to your clients ….."

Outcomes 1.2 and 7.2 of the SRA Code of Conduct 2011 stated:

> "You must achieve these outcomes:
>
> O(1.2) you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice…….
>
> O(7.2) you have effective systems and controls in place to achieve and comply with all the Principles, rules and outcomes and other requirements of the Handbook, where applicable…."

63.2 The Tribunal had been provided with a copy of a statement from Mr Mia dated 14 April 2015. In that statement, Mr Mia stated he was not a signatory to the firm's accounts and had never made any payments, withdrawals or transfers. He confirmed he had conduct of the Ali brothers' file relating to the purchase of a property in Bromley and that his supervisor was the First Respondent. Mr Mia admitted he had written the email sent to Mr J Ali dated 4 July 2014 [sic] after it became apparent that there was a shortfall of £10,000 on the client file, having discussed the matter with the First Respondent. Mr Mia stated the First Respondent had told him that the First Respondent would resolve the issue and that it would be best if Mr Mia informed the clients about the shortfall and offered them compensation. Mr Mia stated that the email of 4 July "was simply a concoction of some truth mixed with a lot of untruths."

63.3 In his Statement of Facts dated 20 April 2014, the First Respondent admitted Mr Mia had conduct of this file. In his Answer dated 3 September 2014 and his Amended Answer dated 24 October 2014, the First Respondent had denied this allegation and denied he had conduct of the transaction. However, it was not clear whether he also denied Mr Mia was supervised by him.

63.4 In his letter to the SRA received on 23 June 2014, the Second Respondent stated Mr Mia worked under the supervision of the First Respondent and that Mr Mia had refused to co-operate with the Second Respondent in relation to these matters. The Second Respondent also stated in his email to the Tribunal dated 12 May 2015 that the First Respondent had been Mr Mia's supervisor.

63.5 The Tribunal had already found as a fact that client funds of £171,700 had gone missing over a period of time and were unaccounted for. This was clear evidence that effective systems and controls were not in place to achieve and comply with the principles, rules and outcomes. Furthermore, the Second Respondent was a partner of the firm and the firm's COFA. As such he had an additional responsibility to ensure proper compliance with the Accounts Rules. Both Respondents, as Principals of the practice had failed to provide services to Messrs Ali which protected their interests, subject to the proper administration of justice. The Tribunal found, based on the evidence of Messrs Ali, that Mr Mia had conduct of this file at the appropriate time. This was clearly evidenced by the emails which had passed between Mr Mia and Mr J

Ali. Furthermore, both Messrs Ali had confirmed in their evidence that they had instructed and dealt with Mr Mia until they became aware of the missing funds, after which the First Respondent became involved. Both Messrs Ali also confirmed Mr Mia and the First Respondent had attended their family home on several occasions to have meetings with them and members of their family about the missing funds.

63.6 The Tribunal was satisfied that the First Respondent had failed to properly supervise Mr Mia and that the Second Respondent as a Principal of the practice also had a duty to ensure the proper supervision of all employees. Both Respondents had thereby breached Outcome 7.2 by failing to have effective systems and controls in place. They had allowed client funds to go missing, and had both breached Outcome 1.2 by failing to provide services to Messrs Ali in a manner which protected their interests in the matter. The Tribunal was satisfied both Respondents had failed to act in the best interests of Messrs Ali, failed to provide a proper standard of service to Messrs Ali and behaved in a way that did not maintain the trust the public placed in them and in the provision of legal services. The Tribunal found Allegation 1.4 proved.

64. Allegation 1.5 - The Respondents acted in breach of Principles 6 and 7 in that they failed to report to the SRA serious misconduct in the form of the misappropriation of clients' (Messrs Ali) funds. The Respondents thereby failed to achieve Outcome 10.4.

64.1 Outcome 10.4 stated:

> "You must achieve these outcomes:
> ……
> O(10.4) you report to the SRA promptly, serious misconduct by any person or firm authorised by the SRA, or any employee, manager or owner of any such firm (taking into account, where necessary, your duty of confidentiality to your client)…….."

64.2 The Tribunal had already found as a fact that Messrs Ali had not agreed to loan any monies to Mr Mia prior to finding out that the sum of £10,000 had been misappropriated from their client funds. It therefore followed that the First Respondent's assertions of any such loan arrangement between the parties being in place prior to 10 August 2012 were not accepted.

64.3 Mr Chambers had confirmed that, at no point prior to him informing the Respondents that the SRA was aware of the situation relating to the Ali funds, either Respondent had reported to the SRA the fact that the sum of £171,700 belonging to Messrs Ali had been misappropriated. The Tribunal noted that the Second Respondent confirmed in his email to the Tribunal dated 12 May 2015 that the First Respondent had shown him the "Agreement" signed by Messrs Ali and assured him there was nothing wrong on the file. It was not clear when the Second Respondent became aware of the missing funds but he stated:

> "Mr Ogunniyi convinced me that there was no problem with Messrs Alis [sic] file apparently in the same way as he tried to convince Mr Chambers the Investigation Officer on 12 August 2013.

64.4 The First Respondent, in his Answers, denied this allegation. The Second Respondent in his letter to the SRA received on 23 June 2014 stated he "hesitated in reporting the matter based just on some strange rumours." He stated he had been assured by the First Respondent that there was no problem with the file as there was an agreement between relatives.

64.5 The Tribunal found it quite incredible that the Second Respondent, who was the firm's COFA, and therefore responsible for the firm's accounts and finance, could not have been aware that client funds of £171,700 had disappeared, prior to him receiving a copy of the SRA's Investigation Report in February 2014. He had a duty as a COFA and as a Principal of the practice to inform the SRA of the misappropriation of client funds.

64.6 The Tribunal was satisfied both Respondents had failed to report the misappropriation of the client funds belonging to Messrs Ali to the SRA and had thereby breached Principles 6 and 7 as well as failing to achieve Outcome 10.4 as alleged. The Tribunal found Allegation 1.5 proved.

65. Allegation 1.6 - The Respondents acted in breach of Principles 6 and 7 in that they failed to cooperate fully with the SRA and/or its agents in the course of the intervention into their firm. The Respondents thereby failed to achieve Outcome 10.6.

65.1 Outcome 10.6 stated:

> "You must achieve these outcomes:
> ……
> O(10.6) you co-operate fully with the SRA and the Legal Ombudsman at all times….."

65.2 The evidence before the Tribunal indicated that a SRA Adjudication Officer made a decision on 17 October 2013 to intervene into the Respondent's firm on 17 October 2013, a letter was sent by email to both Respondents informing them of this decision and that the SRA's Officers would be attending the firm's premises at 10:30am the following day. However, when they attended the offices on 18 October 2013 as indicated, the SRA's Officers were unable to gain access to the premises nor could they contact the Respondents.

65.3 A barrister instructed by the Respondents contacted the SRA later indicating the Respondents intended to apply for an injunction to prevent the intervention taking place.

65.4 It appeared that on 22 October 2013, the SRA's solicitors obtained an order from Mrs Justice Asplin at the High Court authorising, among other matters, the SRA's Intervention Agent to access the firm's offices and requiring the Respondents to produce all documents relating to the firm which were in their possession/control. A penal notice was attached to that order. An order for costs in the SRA's favour was also made.

65.5 On 18 November 2013, the First Respondent applied for an order to set aside the penal notice and the order for costs. That was dismissed on 19 May 2014.

65.6 A further hearing in the matter took place on 6 June 2014 before Mr D Halpern QC at the Chancery Division. The Tribunal had been informed by Mr Levy that the Order of Mr D Halpern QC was believed to be subject to an appeal but the Tribunal was not provided with any further information in relation to this. The Tribunal was not provided with a copy of the grounds of appeal or any information about the current status of those proceedings. It was therefore not clear which part of that decision was subject to appeal or the outcome of that appeal, if it had indeed taken place.

65.7 The First Respondent, in his letter dated 24 October 2014 stated the orders of Mr D Halpern QC and Mr Millet QC were subject to appeal and he could not therefore comment on these allegations at that time while the appeals were pending.

65.8 The Tribunal was provided with insufficient information concerning the appeal proceedings and was therefore not satisfied to the requisite standard, based on the limited information provided, that the Respondents had failed to cooperate fully with the SRA and/or its agents in the course of the intervention into their firm. The Tribunal found Allegation 1.6 not proved.

66. Allegation 1.7 - The First Respondent acted in breach of Principles 2, 6 and 7 in that he made false and/or misleading statements to a Forensic Investigation Officer ("FIO") of the SRA. It was alleged the First Respondent had acted dishonestly.

66.1 The Applicant's case was that the First Respondent had not been truthful with the FIO, Mr Chambers, and had made a number of misleading statements to him. Mr Levy confirmed the Applicant did not require the Tribunal to make any findings of fact relating to the involvement of Mr A and the Tribunal did not therefore consider that issue any further.

66.2 The First Respondent had denied this allegation in his Answers and simply stated the Forensic Investigation Report did not reflect the true facts. In his Statement of Facts dated 20 April 2014, the First Respondent stated that "as far as I am aware, there was no correspondence between Goldfields Solicitors and the clients". He also stated:

> "Mr Chambers asked if Goldfields Solicitors sent formal correspondence to the clients where we made promises to pay them monies and I advised him that Goldfields Solicitors did not send any such emails as far as I was aware."

66.3 However, the Tribunal had been provided with a copy of a number of emails from the Mr J Ali to the First Respondent. In an email dated 18 March 2013, Mr J Ali stated:

> "What is going on with you actually paying bacjk [sic] our STOLEN MONEY? You said a lump sum would occur in January 2013, that has come and gone……….."

There were also many emails in the Applicant's bundle from the First Respondent to Mr J Ali making reference to restrictions being placed on Mr Mia's properties, and Mr Mia trying to raise funds.

66.4 The Tribunal heard evidence from Mr Chambers in relation to this allegation. During his interview on 15 August 2013, the First Respondent informed Mr Chambers of the following:

- That the First Respondent was not aware of any issues that may have been reported to the SRA or of the misuse of any client funds at the firm when in fact he had been aware of the missing Ali client monies and had been involved with the Ali family in trying to resolve issues;

- That the First Respondent was not aware of any problems with the firm's books of account;

- That the First Respondent's knowledge of the purchase of the Bromley property matter was limited, when clearly it was not as he had, by this time, had numerous meetings with the Ali family about the matter. He made no reference to his own extensive involvement in the matter;

- That the missing Ali funds were related to a "family dispute" and money which the Ali family had lent to Mr Mia. This had not been returned in time for completion of the purchase of the Bromley property;

- The First Respondent claimed that the Second Respondent may have dealt with Messrs Ali's new solicitors, when the First Respondent had in fact dealt with them himself;

66.5 The Tribunal accepted the evidence of Mr Chambers, Mr J Ali and Mr Z Ali, and Ms Choudhury. The Tribunal was satisfied that all of these statements made by the First Respondent were untrue in light of the wealth of evidence which showed the position was quite different from that claimed by the First Respondent. It was quite clear to the Tribunal that the First Respondent had extensive knowledge of the Ali family's situation, indeed the First Respondent had been involved in instigating the loan agreement and had attended a number of meetings after 13 July 2012 at the Ali family home to discuss how the funds would be repaid. The First Respondent was by this date well aware that there were issues with the firm's books of account in light of the missing funds. The First Respondent had had a telephone conversation with Messrs Ali's new solicitor, Ms Choudhury, shortly after receiving her letter of 17 May 2013.

66.6 In addition, on 15 August 2013, the First Respondent produced to Mr Chambers a copy of the firm's breaches register signed and dated 12 August 2013 by him which stated "No Breaches". This was untrue as the Ali family money was still missing on that date.

66.7 Mr Chambers confirmed that he had received an email dated 16 September 2013 from the First Respondent stating the First Respondent was not aware of any email exchanges between the firm and the clients. The Tribunal had been referred to a large

number of 140 emails which had passed between the firm and Mr J Ali/Mr Z Ali. More specifically, a number of these emails had passed between the First Respondent and Mr J Ali and related to the loan agreement as well as the subsequent attempts made by the First Respondent to recover the missing funds. It was quite clear to the Tribunal that the email sent by the First Respondent to Mr Chambers dated 16 September 2013 contained a false statement.

66.8 The Tribunal was satisfied that the First Respondent, in making these false statements to Mr Chambers, had acted with a lack of integrity, had behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services and had not complied with his legal and regulatory obligations to deal with his regulator in an open, timely and cooperative manner. The Tribunal found the First Respondent had acted in breach of Principles 2, 6 and 7.

66.9 The Tribunal then considered whether the First Respondent's conduct had been dishonest. The Tribunal was satisfied that the First Respondent's conduct in making these false and misleading statements to Mr Chambers would be considered to be dishonest by the ordinary standards of reasonable and honest people.

66.10 The Tribunal was further satisfied that the First Respondent had made statements to Mr Chambers that he knew were false and misleading in light of the fact that he knew he had been extensively involved with the Ali family, in claiming to resolve these issues for them, some considerable time prior to his interview with Mr Chambers. It was inconceivable, in light of the wealth of evidence provided to the Tribunal, particularly the large number of emails sent between the First Respondent and Mr J Ali contained in the Applicant's bundle, that the First Respondent could not have known the statements he was making to Mr Chambers were false and misleading. The First Respondent had made the statements to Mr Chambers in order to conceal the true position and thereby protect himself and his firm. The Tribunal was satisfied that the First Respondent must have known that his conduct in making these false and misleading statements would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Tribunal found Allegation 1.7 proved in its entirety.

67. Allegation 1.8 - The First Respondent acted in breach of Principles 2, 6 and 7 in that he provided false documents to the FIO with the intention of misleading that officer. It was alleged the First Respondent had acted dishonestly.

67.1 The First Respondent had provided Mr Chambers with four documents on 9 September 2013. These consisted of a client ledger for the Messrs Ali file, a letter from the firm to Messrs Ali dated 17 May 2012, a telephone attendance note dated 18 May 2012 and an undated loan agreement signed by Messrs Ali and Mr Mia. The Applicant's case was that these documents were all false.

67.2 The First Respondent denied this allegation. Dealing firstly with the client ledger for the Ali file, one ledger was produced on 5 November 2012 to Mr J Ali. A different ledger was produced on 9 September 2013 to Mr Chambers, when the First Respondent provided Mr Chambers with a copy of the Ali file. Accordingly, there were two separate client ledgers, which contained different information and it was not clear to the Tribunal which of those ledgers was correct. Accordingly, the Tribunal

could not be sure which ledger was false and could not conclude that the ledger provided to Mr Chambers on 9 September 2013 was a false document.

67.3 The First Respondent also provided Mr Chambers with a letter from the firm to Messrs Ali dated 17 May 2012 which made reference to an agreement between Messrs Ali and Mr Mia to transfer funds to Mr Mia. Both Mr J Ali and Mr Z Ali confirmed they had never seen this letter before being provided with a copy of it by Mr Chambers. The Tribunal noted the evidence of Messrs Ali that the loan agreement was first discussed with Messrs Ali in July 2012 and signed in August 2012. The Tribunal accepted the evidence of both Messrs Ali that there was no pre-existing loan agreement. Furthermore, Ms Choudhury had also confirmed in her evidence that this letter was not on the file of papers sent to her by the firm on 28 June 2013. Accordingly, the Tribunal was satisfied that the letter dated 17 May 2012 was a fabricated and false document intended to mislead Mr Chambers.

67.4 The Tribunal then considered the telephone attendance note dated 18 May 2012. This recorded a telephone conversation which had purportedly taken place between the First Respondent and Mr Z Ali. The Tribunal had heard evidence from Mr Z Ali that no such telephone conversation had taken place and indeed, at that time Mr Z Ali was not involved with the transaction as the primary point of contact was his brother, Mr J Ali. Mr Z Ali confirmed that the firm did not even have his telephone number in order to be able to contact him. The Tribunal noted no telephone number was given on the attendance note. Both Mr J Ali and Mr Z Ali confirmed they had never seen that document before, and Ms Choudhury confirmed that it was not on the file of papers sent to her by the firm on 28 June 2013. The Tribunal was therefore satisfied, having accepted the evidence of Mr J Ali, Mr Z Ali and Ms Choudhury that the telephone attendance note dated 18 May 2012 was a fabricated and false document intended to mislead Mr Chambers.

67.5 Finally, the Tribunal considered the undated loan agreement which had been signed by Mr J Ali, Mr Z Ali and Mr Mia on 10 August 2012. Both Mr J Ali and Mr Z Ali accepted they did sign this document on that date although they disputed that there had been any pre-existing loan arrangement prior to this date. The Tribunal accepted that evidence and further noted the evidence of Mr J Ali that he had suggested some amendments to the loan agreement which had troubled him. Accordingly, whilst the intention to grant a loan to Mr Mia was disputed by the Ali brothers, the Tribunal was not satisfied that the undated loan agreement itself was a false document.

67.6 The Tribunal therefore found the First Respondent had provided Mr Chambers with two documents, namely a letter dated 17 May 2012 from the firm to Messrs Ali and a telephone attendance note dated 18 May 2012, which were both false documents intended to mislead Mr Chambers. The Tribunal was satisfied that in doing so, the First Respondent had acted with a lack of integrity, had behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services and had not complied with his legal and regulatory obligations to deal with his regulator in an open, timely and cooperative manner. The Tribunal found the First Respondent had acted in breach of Principles 2, 6 and 7.

67.7 The Tribunal then considered whether the First Respondent's conduct had been dishonest. The Tribunal was satisfied that the First Respondent's conduct in relation to supplying these two false documents to Mr Chambers would be considered to be dishonest by the ordinary standards of reasonable and honest people.

67.8 The Tribunal was further satisfied that the First Respondent had provided these false documents to Mr Chambers with the intention of misleading Mr Chambers to believe that the loan agreement signed by Messrs Ali and Mr Mia reflected the true position in relation to the missing monies, when he knew this was not the case. The First Respondent had had numerous discussions and meetings with the Ali family, as well as email communications discussing the missing funds so he was well aware that Messrs Ali had not agreed to a loan to Mr Mia before they were informed that the sum of £10,000 of their money was missing. The First Respondent had provided these documents to Mr Chambers in order to conceal the true position and thereby protect himself and his firm. The Tribunal was satisfied that the First Respondent must have known that his conduct in providing false documents to mislead Mr Chambers would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Tribunal found Allegation 1.8 proved in relation to the letter dated 17 May 2012 and the telephone attendance note dated 18 May 2012 and found the First Respondent had acted dishonestly in relation to these.

68. Allegation 1.9 - The First Respondent acted in breach of Principles 2, 6 and 7 in that he failed to comply with an Order of the High Court.

68.1 The Tribunal had already indicated that it had been provided with insufficient information in relation to the outstanding appeal proceedings issued on behalf of the First Respondent against the Order of the High Court. It was not clear precisely what the grounds of appeal were, or the current status of the appeal proceedings. Accordingly, based on the limited information provided, the Tribunal could not be satisfied to the requisite standard that the First Respondent had failed to comply with an Order of the High Court. The Tribunal found Allegation 1.9 not proved.

69. Allegation 1.10 - The First Respondent acted in breach of Principles 2, 3, 4 and 6 in that he advised clients, Messrs Ali, in respect of the loss they had suffered as a result of misconduct on the part of the firm, such advice including (but not limited to) (i) advising those clients to enter into a loan agreement with an employee of the firm and/or (ii) failing to advise those clients to obtain, and failing to ensure that they obtained, independent legal advice in relation to that loan agreement and/or in relation to the firm's conduct generally. The First Respondent thereby failed to achieve Outcome 3.4.

69.1 Principle 3 stated:

> "You must:
> …….
> 3. not allow your independence to be compromised."

Outcome 3.4 stated:

> "You must achieve these outcomes….

……..

O(3.4) you do not act if there is an own interest conflict or a significant risk of an own interest conflict…..”

69.2 Messrs Ali both gave evidence to the Tribunal explaining that the First Respondent had recommended they enter into the loan agreement with Mr Mia, that they had been led to believe the First Respondent had been acting as their legal adviser in their best interests, and at no time had they been advised to take independent legal advice in relation to that loan agreement, or in relation to the firm’s conduct generally.

69.3 The First Respondent, in his Statement of Facts dated 20 April 2014 stated that he had advised the Ali clients to seek independent legal advice when he became aware that the clients had been informed by Mr Mia and his family to pursue an insurance claim against the firm. The First Respondent, in his Answers dated 3 September 2014 and 24 October 2014 denied this allegation and maintained the Ali clients’ money was not misappropriated. The Tribunal had already found as a fact that this was not true and the monies were missing and unaccounted for.

69.4 The Tribunal accepted the evidence of Messrs Ali in its entirety and was satisfied that the First Respondent had advised them to enter into a loan agreement with an employee of the firm and had failed to advise them, or ensure they obtained independent legal advice in relation to that agreement. The Tribunal was satisfied the First Respondent’s conduct had breached Principles 2, 3, 4 and 6 in that he had acted with a lack of integrity, he had allowed his independence to be compromised, he had failed to act in Messrs Ali’s best interests and he had behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services. The Tribunal also found the First Respondent had breached Outcome 3.4 and had acted where there was an own interest conflict. The Tribunal found Allegation 1.10 proved.

Previous Disciplinary Matters

70. None.

Mitigation

71. There was little mitigation from the First Respondent save information about his wife’s health contained in his application for an adjournment.

72. The Second Respondent in his various emails and letters to the Applicant and the SRA made reference to his ill health and stated he had been a “victim” of what had happened at the firm. The documents before the Tribunal contained some of the Second Respondent’s medical records. The Second Respondent in a letter to the SRA, received on 23 June 2014 stated he had not wanted to take the role of a COLP or a COFA at the firm. He stated he had tried to comply with his role as a COFA as far as his health permitted, and that he had been assured by the First Respondent that everything was in place and there was nothing to worry about. The Second Respondent stated he did not intend to take the role of a COFA until his health became stable. He stated the First Respondent had a major role in managing the

accounts. The Second Respondent stated that if he had not complied with the SRA Rules and Principles, it was due to his illness and the assurances of his colleague.

73. In his letter to the SRA dated 10 May 2014, the Second Respondent stated the First Respondent was to deal with the firm's accountants due to the Second Respondent's ill health and travel plans. He also stated he had only transferred money with the First Respondent's authority.

74. In his email dated 12 May 2015 to the Tribunal, the Second Respondent provided details of his financial circumstances indicating that he was receiving benefits prior to leaving the UK for Nepal. He stated he had not practised since the closure of the firm in October 2013 and provided details of his current medical condition. The Second Respondent made reference again to being a "victim" of what had happened at the firm and requested he be allowed to continue practice without any restrictions.

Sanction

75. The Tribunal had considered carefully both Respondents' documents. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also had due regard to both Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

76. The Tribunal also considered the aggravating and mitigating circumstances which applied to each Respondent.

77. In relation to the First Respondent, this was a case where the Tribunal had found two allegations of dishonesty proved against the First Respondent, as well as allegations relating to conduct amounting to a lack of integrity, failing to act in the best interests of his clients such that a substantial sum of the clients' money was now missing, failing to protect client money, failing to comply with his regulatory obligations, failing to provide a proper standard of service and behaving in way that did not maintain the trust the public placed in him and in the provision of legal services.

78. The First Respondent's conduct had been deliberate and calculated and had taken place over a long period of time. He had taken advantage of vulnerable clients and had attempted to conceal the true position from the FIO. These were all aggravating factors. In relation to mitigating factors, the Tribunal took into account the First Respondent's previous good record. However, the clients were still out of pocket and the breaches had still not been remedied despite the considerable period of time which had passed. There had been no admissions and the First Respondent had shown no evidence of insight or remorse.

79. These matters were extremely serious matters which had resulted in a loss of £171,700 to clients who had trusted the First Respondent and relied upon him to help them recover their money. Furthermore, the First Respondent had behaved dishonestly when investigated by the SRA and had attempted to mislead and conceal the true position from the FIO. This was wholly unacceptable conduct. Solicitors were expected to be trusted to the ends of the earth and had a duty to be honest and transparent with clients and their regulator.

80. The Tribunal was mindful of the case of the SRA v Sharma [2010] EWHL 2022 (Admin) in which Coulson J stated:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll"

81. The Tribunal was satisfied that there were no exceptional circumstances. Taking into account all the circumstances of this case, the only appropriate sanction was to strike the First Respondent off the Roll of Solicitors. Any lesser sanction was considered by the Tribunal to be insufficient. Even absent dishonesty, the Tribunal was of the view that the First Respondent's conduct was so serious that it would still merit the ultimate sanction. He had breached numerous SRA Principles and SRA Accounts Rules and was a risk to members of the public.

82. The Tribunal then considered the position of the Second Respondent. The Second Respondent had failed to notify the regulator voluntarily of the shortage on client account despite the fact that he had been the firm's COFA since January 2013. He was certainly under a duty to make a notification at that time and the Tribunal was mindful that the shortage existed up until the firm closed in October 2013, some considerable time later. Furthermore, the Tribunal was of the view that the Second Respondent had not properly fulfilled his own responsibilities as a Principal of the practice, and as a COFA, by simply accepting the First Respondent's assurances that matters were being dealt with. These were aggravating factors identified by the Tribunal.

83. The Tribunal took into account the Second Respondent's previous good record but noted that he had not made any admissions and had not shown any insight or remorse. Whilst the Tribunal accepted the Second Respondent was suffering a degree of illness, which was evidenced by the limited medical documents provided, this did not detract from the Second Respondent's responsibility as a Principal of the practice. The Second Respondent had shown a lack of vigilance in circumstances where it was his responsibility to monitor the client account and deal with any shortfall. Whilst the Second Respondent's degree of knowledge in relation to the Ali file was not clear, he had discussed this file with the First Respondent and he certainly had some knowledge of matters by the time he spoke to Messrs Ali's new solicitors on 29 May 2013. The Tribunal found it surprising that the Second Respondent had not taken more interest in the issue of the missing funds and that he had simply accepted the assurances of the First Respondent without any further investigation.

84. The Tribunal considered this to be serious misconduct and a failure by the Second Respondent to act to ensure the protection of clients and their funds. The Tribunal was deeply troubled by the fact that the Ali family had lost £171,700 and it was still the position that it was not known where that money had gone. The Second Respondent had failed to fulfil his duties as a COFA and appeared to have turned a blind eye to what was going on. His conduct had caused serious damage to the reputation of the profession, and had allowed clients to suffer substantial financial losses.

85. The Tribunal took into account the case of Bolton v The Law Society [1994] I WLR 512 and the comments of Sir Thomas Bingham MR who had stated:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness... Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust. A striking off order will not necessarily follow in such a case but it may well.

86. Taking all the circumstances of this case into account, the Tribunal considered that neither a reprimand, nor a fine nor a restriction on the Second Respondent's current ability to practice were a sufficient sanction to mark the seriousness of his misconduct. A restriction order alone would not be sufficient to protect the public. The Second Respondent had failed to protect client money, he had failed to act in the best interests of these clients, had failed to provide a proper standard of service to them, he had failed to comply with his regulatory obligations and had failed to ensure effective systems and controls were in place at the firm. He had also breached a number of the Solicitors Accounts Rules as well as failing to report matters to his regulator thereby preventing the regulator from carrying out its regulatory function properly and promptly. The Second Respondent had behaved in a way that did not maintain the trust the public placed in him or in the provision of legal services.

87. The Tribunal concluded that the appropriate and proportionate sanction in this case was to suspend the Second Respondent for a period of 4 months and that thereafter he would be subject to practising conditions preventing him from practising as a sole practitioner or partner, allowing him to work only as a solicitor in employment approved by the SRA, preventing him from holding or having responsibility for any client money and preventing him from being a signatory to any client or office accounts. The Second Respondent would also be prevented from being appointed as a COLP or COFA and would be required to inform any actual or prospective employer of these conditions and the reason for their imposition. The imposition of such conditions would protect the public once the term of suspension came to an end.

Costs

88. The Applicant requested an Order for his costs in the total sum of £59,168.29. The Tribunal was provided with an amended Schedule of Costs which reflected the fact that the hearing had taken less time than originally anticipated. Mr Levy accepted that most of the allegations related to the First Respondent and therefore suggested it may be appropriate to apportion a large amount of the costs to him. He suggested both Respondents should be jointly and severally liable but that the Second Respondent should be liable for £15,000 being a fair apportionment to him whereas the First Respondent should be liable for the full amount of costs.

89. The Tribunal considered the amount of costs claimed to be too high. The brief fees were excessive and the Tribunal reduced these by £2,000. The amount of time spent on documents by two separate senior fee earners was excessive and the Tribunal reduced this by 5 hours from each fee earner. Time had been claimed for preparation for the hearing to include a "Skeleton". Given that Counsel had dealt with the hearing and the Tribunal had not been provided with any Skeleton Argument, the Tribunal reduced this figure by £290.

90. Having made all of these reductions, the Tribunal calculated the total costs for Part A at £24,139.50, the total costs for Part B at £11,580, VAT on Parts A and B at £7,143.90. Having added on the SRA costs, the Tribunal assessed the overall costs in the total sum of £54,350.29. This figure was then apportioned. The First Respondent was liable for £41,850.29. The Second Respondent was liable for £12,500. The Tribunal did not consider it fair or reasonable to make a joint and several liability Order in this case.

91. The Tribunal had particular regard for the case of 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."

92. The First Respondent had not provided any details or evidence of his current financial circumstances.

93. The Second Respondent in his email to the Tribunal dated 12 May 2015 submitted that if any allegations were proved against the First Respondent then the First Respondent should bear all the costs as the Second Respondent had been a "victim" of what had happened at the firm. Although the Second Respondent had provided a letter dated 26 November 2013 to confirm he had been receiving state benefits at that time, there was no evidence of the Second Respondent's current financial circumstances.

94. The Tribunal had no information as to what either Respondent was currently doing, their means, income, expenditure or assets. As such, it was difficult for the Tribunal to take a view of their financial circumstances.

95. In relation to the First Respondent, the Tribunal was further 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 First Respondent's ability to pay those costs, given that he had been permanently deprived of his livelihood. However, in this case, the First Respondent was relatively young and it was possible he could gain some form of alternative employment.

96. Accordingly, the Tribunal did not consider it appropriate to make any order to defer the payment of costs against either Respondent.

Statement of Full Order

97. The Tribunal Ordered that the First Respondent, NOAH OLUWATOSIN OGUNNIYI solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £41,850.29.

98.

1. The Tribunal Ordered that the Second Respondent, TOM KUMAR ADHIKARI solicitor, be suspended from practice as a solicitor for the period of 4 months to commence on the 13th day of May 2015 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,500.00.

2. Upon the expiry of the fixed term of suspension referred to above, the Second Respondent shall be subject to conditions imposed by the Tribunal as follows:

2.1 The Second Respondent may not:

2.1.1 Practise as a sole practitioner, partner of a Recognised Body or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS);

2.1.2 For the avoidance of doubt the Second Respondent may only work as a solicitor in employment approved by the Solicitors Regulation Authority;

2.1.3 Hold or have responsibility for any client money and does not authorise client or office account transfers, electronic or otherwise;

2.1.4 Be a signatory to any client or office account cheques;

2.1.5 Act as a Head of Legal Practice (HOLP)/ a Compliance Office for Legal Practice (COLP) or a Head of Finance and Administration (HOFA)/ a Compliance Officer for Finance and Administration (COFA);

2.1.6 Shall immediately inform any actual or prospective employer of these conditions and the reason for their imposition;

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

DATED this 1st day of July 2015
On behalf of the Tribunal

J. Martineau
Chairman